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## P R E F A C E

World over it is now being realised that a balanced gender representation in the legislative bodies may save the world from complex socio-economic problems effectively. Mahatma Gandhi's non-violent struggle for our independence for the first time created space for women to become equal partners in public life. As early as in 1930s, he famously stated that he would boycott the future legislature of India if it did not have enough women in it. Our freedom movement brought women to the centre stage of political and public life and produced a critical mass of women leaders at all the levels – local, provincial and national levels. These enlightened women joined the provincial legislative bodies under British India. Some of them became the Members of the Constituent Assembly, which has been described by Prof. Granville Austin as the most important event after Philadelphia Convention of the US in 1787.

In the present context when there is new awakening and assertion in India and the world over for correcting gender imbalance in politics, a review of the contribution of 15 women Members of Constituent Assembly, will put the entire debate in proper historical perspective. Despite a fairly large corpus of literature on the Constituent Assembly nothing throws light on women Members and their role in framing the Constitution. It was, therefore, decided that on the occasion of 60th Anniversary of our Parliament, Rajya Sabha should take the initiative in putting together the contributions of women Members of the Constituent Assembly in one volume by compiling their selected speeches.

In going through their speeches, one gets the unmistakable impression about the faith and conviction they had in the Gandhian ways of social reforms. They were aware of the retardation suffered by India due to colonial rule and the new opportunities available to Indians, particularly the women, to enjoy equal rights enshrined in the Constitution for them. Their erudite articulation added the verve and élan to the debates in the Constituent Assembly. Therefore, the social issues which stunted the empowerment of marginalized section were prominently raised by them in the Constituent Assembly - like prevention of forced labour and human trafficking, particularly the Devdasi System and control of the State over religious instruction in educational institutions. There have been perceptive debates over the issues of minority rights, particularly in respect of the discrimination minorities faced in educational institutions. Educational planning and protection of children against exploitation were the issues prominently raised by most of the women Members. They also extensively

participated in the debates on Fundamental Rights and the Directive Principles of the State Policy. They reposed faith in the State and the law, which they were framing, to realize the freedom and empowerment for every section of the society. It is also instructive that none of the women Members ever supported the measures like positive discrimination or separate electorate on gender or communal lines.

This Volume is a tribute to the women Members of the Constituent Assembly some of whom – Begum Aizaz Rasul, Smt. Ammu Swaminathan and Rajkumari Amrit Kaur – later became the Members of Rajya Sabha.

Some of the women Members delivered short speeches while moving amendments to alter the rules or affect changes in the draft articles of the Constitution. It was a difficult and sensitive task to put together short and brief speeches of some women Members. They delivered speeches while moving amendments to alter the rules and amend the draft articles of the Constitution. It was, therefore, decided that only speeches on substantive issues delivered by them are to be included in the Volume. Given the complex format of debates on certain amendments on which intensive debates were marked by several interjections and replies by other Members and in certain cases the issue spilled over to another Session or was to be referred to a Committee, such issues have been excluded from this Volume.

Also, in the absence of a list of all the women Members throughout the tenure of the Constituent Assembly, the task was to first identify the women Members of the Constituent Assembly. Proceedings of Constituent Assembly, as published by the Lok Sabha Secretariat, suggest that fifteen women Members were present throughout the tenure of the Constituent Assembly. This has been corroborated through other sources too.

I sincerely believe that this Volume, the first of its kind, will be an invaluable reference for further researches on role of women Members in the framing of our Constitution. This book should be a useful reference for any gender discourse in India.

This Volume is based on the Constituent Assembly debates brought out by the Lok Sabha Secretariat. I am thankful to the LARRDIS Branch of the Rajya Sabha Secretariat for proposing to bring out such a volume at a very short notice.

It is expected that this Volume will be found useful by people's representatives, policy makers, activists, research scholars and all those striving to ensure gender equality and women's empowerment.

New Delhi;  
April, 2012

DR. V.K. AGNIHOTRI,  
*Secretary-General*  
*Rajya Sabha*



## ABBREVIATIONS

U.P.	United Provinces
U.S.A.	United States of America
C.P.	Central Provinces
C.A.D.	Constituent Assembly Debates
L.S.S.	Lok Sabha Secretariat



## LIST OF WOMEN MEMBERS OF CONSTITUENT ASSEMBLY

Name of the Member	Date of Signing Register	Constituency
1. Ammu Swaminathan	9 December 1946	Madras/General
2. Annie Mascarene	29 December 1948	Travancore and Cochin Union
3. Begum Aizaz Rasul	14 July 1947	United Provinces/Muslim
4. Dakshayani Velayudan	9 December 1946	Madras/General
5. G. Durgabai	9 December 1946	Madras/General
6. Hansa Mehta	9 December 1946	Bombay/General
7. Kamla Chaudhri	9 December 1946	United Provinces/General
8. Leela Ray	9 December 1946	West Bengal/General
9. Malati Chowdhury	9 December 1946	Orissa/General
10. Purnima Banerji	9 December 1946	United Provinces/General
11. Rajkumari Amrit Kaur	21 December 1946	Central Provinces and Berar/General
12. Renuka Ray	14 July 1947	West Bengal/General
13. Sarojini Naidu	9 December 1946	Bihar/General
14. Sucheta Kripalani	9 December 1946	United Provinces/General
15. Vijayalakshmi Pandit	17 December 1946	United Provinces/General



I.

## AMMU SWAMINATHAN

---

### Fundamental Rights and Directive Principles: Twin Pillars of the Constitution<sup>1</sup>

**Shrimati Ammu Swaminathan** (Madras : General): Sir, the passing of this Constitution for an Independent India can be called without exaggeration the realisation of a great dream of four hundred million people. For so many years the people of this country had been working for this realisation and today we have actually got what we had been working for.

The first picture which really comes into my mind when I stand here this afternoon is the picture of the great man, Mahatma Gandhi, who by years and years of untiring work made it possible for us today to be an independent country. I think if we are to deserve this Constitution we have to make up our minds to work it, into something alive and something that will be of benefit to every citizen of this country. I know that the Constitution gives us in the Fundamental Rights, equal status, adult franchise and has also provided for the removal of untouchability and things of that kind for which India had been fighting all these years. But all these things appearing on paper is not enough if we are to make this country happy and prosperous. We have to see that these ideas and ideals which are on paper in the Constitution are implemented by the people of this country.

Sir, I would also like to pay my tribute to you and join with other Members who had congratulated you and shown their gratitude to you. All Members of this Assembly will always remember you with great affection and esteem and we will always remember the kindness and consideration you have shown towards every Member of this House.

We have also to pay our tribute to Dr. Ambedkar and the members of the Drafting Committee and the Secretariat of the Constituent Assembly for the very hard work that they had put in for so many weeks and months. I know their task has not been an easy one but they have overcome all difficulties and thus we are today on the eve of passing this great Constitution of our country.

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<sup>1</sup> Discussion on the Motion by Dr. B.R. Ambedkar to pass the Draft Constitution, C.A.D., Vol. XI, L.S.S., 24 November 1949, pp. 914-915.

I feel that the Constitution actually rests on two pillars - Fundamental Rights and the Directive Principles of State Policy. The fundamental rights of the people of India are guaranteed in such matters as freedom of speech, association and worship. The last is a very vital question to the people of this country. The Hindus have always been known to be tolerant towards all religions and we have put that down in our Constitution so that there will be no mistake about it and nobody can say that our Constitution did not include freedom of worship to every citizen of this country.

Now it is for us to see that this Constitution is worked properly so as to bring about the democratic State in India for which we had been working and hoping for and when we bring this about we must see that not only the rights are assured to every citizen but that he knows his duties and responsibilities towards the State. His freedom should be so used as to be of benefit to this country. Freedom is not to be used for doing anything that anyone likes. As it is so often said, freedom does not mean license. Let us hope that in the years to come this Constitution will be considered as something worthy of our country. Though there are many who find fault with a great number of clauses in it I hope they will remember that when we were going on with this work of constitution-making India was passing through difficult times, very unhappy times and our task was a very difficult one. I feel that it has been a great achievement to have been able to bring all the divergent opinions together and frame a Constitution of this kind which has been agreed to by a very large majority, though perhaps not by all.

A great many Members of this House have been praising this Constitution and there has been a certain amount of criticism also. There is one criticism which I would like to make and that is that this Constitution is to my mind a very long and a very bulky volume. I always imagined a constitution and still believe, to be a small volume which one could carry in one's purse or pocket and not a huge big volume. There was no necessity to go into so many details as has been done here. All the details, I think, should have been left to the Government and the legislatures. After all they are going to function according to the policy laid down by the Constitution and was it necessary, I would ask, to load the Constitution with all this? I know very little about constitution making, nor do I pretend to be an expert. But I do feel as one of the citizens of India and as one of those who have been a member of a legislature for two or three years that it was not necessary to have so much details in the Constitution. However, as it is I do think that it is a great piece of work and I would like to say that it has been a great joy and happiness to me to have been here as a Member of this Assembly when framing the Constitution of India and I hope that some of us will live to see that the Constitution becomes a real stronghold for human rights and it will be worked towards establishing a real democracy, so that there will be happiness and prosperity for every one in India.

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Equal right is a great thing and it is only fitting that it has been included in the Constitution. People outside have been saying that India did not give equal rights to her women. Now we can say that when the Indian people themselves framed their Constitution they have given rights to women equal with every other citizen of the country. That in itself is a great achievement and it is going to help our women not only to realise their responsibilities but to come forward and fully shoulder their responsibilities to make India a great country that she had been.

With these few words, Sir, I strongly support that the Constitution may be passed.

## II.

### ANNIE MASCARENE

---

#### Provincial Elections<sup>2</sup>

**Shrimati Annie Mascarene** (Travancore & Cochin Union): Mr. President, Sir, after hearing Dr. Ambedkar's explanation two days back I thought I would abide by this Article. But after listening to Mr. Munshi's speech this morning I am provoked to speak again on the subject and resume my old position. Sir, I am a believer in the right of the people of the Province to elect their representatives independent of any control, supervision and direction of any power on earth. I believe that to be democracy. If the Centre is to think that expediency demands that they should supervise and control the election, as one sitting in the Provincial Legislature I can see in the Centre as many delinquencies as they see in us. From this Article it looks as if the Centre is assuming to be the custodian of justice. Well, justice is not in the custody of anybody but of those who are lovers of truth. Mr. Munshi this morning spoke that Article 289 is calculated to defend the rights of the people in the provinces in view of expediency and reality. May I remind him of the expediency and reality of nations in days long gone by-of the Parliament of Rome, of the Long Parliament of England? Cromwell thought that it was expedient to run the administration by a unicameral legislature. The Napoleonic heroes thought that it was expedient to run the administration by a unicameral legislature. But time has proved the effect of those expediencies. What is reality and expediency today is not reality and expediency tomorrow. We are here laying down principles - rudimentary principles - of democracy, not for the coming election but for days to come, for generations, for the nation. Therefore principles of ethics are more suitable to be considered now than principles of expediency. I am a believer in politics as nothing but ethics writ large. I am not a believer in politics as a computative principle of addition, subtraction and multiplication. If this section is to be accepted we are to believe that thereafter the Provincial election will be under the perpetual tutelage of the Centre. That means, Sir, that the integrity of the provincial people is questioned. I wish to turn the tables on the Centre itself. Sir, should we, at this psychological moment when the people of India are demanding their rudimentary right of electing their representatives without being interfered with by any authority on earth, impose any restriction? If democratic principles are to be accepted, this Article should be deleted from the Constitution.

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<sup>2</sup> Discussion on Article 289 of the Draft Constitution, C.A.D., Vol. VIII, L.S.S., 15 June 1949, pp. 953-954.



Then I come to the latest amendment, giving the legality of Parliament to a section which was hitherto blooming as autocratic. Well, Sir, whatever may be the amendment added on to it, it cannot lose its old shade or colour and it stands there as the ancient Roman tutelage under the patriarchal system. If the Provincial or the States people are to be guided, let them be guided by experience. If we have erred, we will err only for a time or a period. They say that this is a deviation from the democratic principle. Well, I ask where is the necessity to deviate from the experience of nations and ages? Have you any *prima facie* case to show that we have erred in our democratic principles? In that case I am willing to accept this clause. But, as it is, we have not tried the experiment. We are only in the making of it. If in the experimental stage we fail, well, there is provision in the Constitution to amend it when time and circumstances demand. But let us not sully the fair name of the nation by believing in the first instance that the provincial people will not be guided by principles of truth and justice and will not keep up the democratic principles of fairness by electing by fair means. Centralisation of power is good enough for stable administration, but centralisation of power should be a development at later stages and not from the very inception of democracy. At the very inception of democracy, centralisation would look more autocratic than democratic. We are living in an age when democratic experiments are being tried by many a nation. Dr. Ambedkar quoted from the Canadian Act of 1920. How is it that he did not travel down to the United States from Canada? Why would he not look at the Australian Commonwealth? If Canada has adopted a measure, is it necessary that India, with twenty-five times the population of Canada and half the size of Europe, should adopt those very principles in her Constitution and take it as a salutary example for experiment in democracy? If democracy could succeed in the United States, if it can succeed in England, why should it not succeed in India without this Clause? Well, Sir, I hope this House will give consideration to this Article and be guided by principles of democracy rather than by principles of expediency.

### **Tribute to Sardar Patel for Unifying India Without Bloodshed<sup>3</sup>**

**Shrimati Annie Mascarene** (Travancore and Cochin Union): Mr. President, Sir, after listening to the speech of the Sardar, I feel that all my difficulties with regard to the States have disappeared. Section 306B had been rather a disquieting one since I had come across it, and I had thought that in the making of democratic India, the States are going to be under a Roman-like

<sup>3</sup> Discussion on Sardar Patel's Statement on the developments taking place in Indian States, C.A.D., Vol. X, L.S.S., 12 October 1949, p. 174.

tutelage for ages to come. Travancore, Cochin and Mysore, in fact the South Indian States, had been the territories in which democracy had been given its first advent. I am not flattering myself, but I should like to inform this House - I think they already know - that adult franchise was first introduced in India by Travancore, and democratic institutions were introduced in Travancore and Cochin before any other province could think of them. When Article 306B was introduced, we thought, are we going to be dropped down with an inferiority complex by the States Ministry? The wisdom of the Bismarck of India had been too deep for us to understand. He has so moulded the destiny of democratic India that States which are already quite advanced are on par with the Provinces, and the States which are to advance hereafter are given a safety valve so that they may develop without fear.

There is one point which strikes me as being of great importance and that is the centralization of power. No nation, no empire had survived in the world without a strong centralization of power. The confederation of Germany as moulded by Bismarck today finds a place so difficult on the map of Europe that European administrators find it a problem to dismember them. The examples of Venezelos in Greece and Sun Yat Sen in China are enough to convince us that this Bismarck of India is an administrator whose wisdom and experience are unequalled. The States people are very much obliged to the States Ministry for the work they have done during the last few months. They are able to feel now that they are no more going to be tyrannized by autocracies which under the British Administration repressed them. 40 per cent of the territory of India and 23 per cent of the population of India are now on a par with the Provinces and provincial subjects, so much so the moulding of the destiny of democratic India is made easy and in a short time we shall be one of the foremost democracies that the world had ever seen. We should congratulate ourselves that this is the first occasion in the history of the world when four hundred million people have launched on the ocean of self-government and that is going to be the best example ever known in the history of the world. I thank the States Ministry once again and request the people of the States under development to rise equal to the occasion and come soon on a par with the Provinces so that by next year we shall have no States but only Provinces in a democratic India.

### Fixing a Time-table for the House<sup>4</sup>

**Mr. President :** Before we rise, we have to fix the time-table. It was suggested in the morning by some Members that we should meet tomorrow. (*cries of "No" and "Yes"*).

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<sup>4</sup> Discussion on the time-table of the House, C.A.D., Vol. X, L.S.S., 15 October 1949, p. 324.

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**Shrimati Annie Mascarene** : Sir, are we to be imposed upon by the tyranny of the majority party?

**Mr. President** : I do not think the Honourable Member is justified in saying that. There is no question of tyranny by any majority. The only question is that of fixing a time-table and surely the time-table for going to the church can be adjusted to the time-table of the House. There is no difficulty in that. If the Members do not want to sit on a Sunday then it is a different matter.

### III.

## BEGUM AIZAZ RASUL

---

### Autonomy to Ministers from Party Affiliations<sup>5</sup>

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I wish to move that at the end of the amendment moved by Mr. Aziz Ahmad Khan to Clause 12 the following words be added:

“and shall hold office during the life of the Assembly.”

Sir, my purpose in moving this amendment is that the Ministry should be a strong and stable Ministry and that it should not be subject to the whims and fancies of the party or legislature to which it is responsible. Sir, in England and France the Ministry is responsible to the legislature. We see what happens in France every day. The Ministry is weak and the Cabinet has fallen several times. That always happens where there are more than two parties in the legislature, and therefore in India which is so young in democracy, where the sense of responsibility is neither ingrained nor so well developed, we should have a strong and stable Ministry which can initiate long range policies and be uninfluenced daily by the repercussions in its party. We do not want a repetition of what is happening in France in our country. Sir, my experience of the last ten years after the introduction of the Government of India Act of 1935 has been that in the Provinces where the Ministers are responsible to the legislature and are liable to fall on a vote of no-confidence by their party or the provincial legislature, they cannot put forward any long range policies. As I said before, often they are influenced daily by party feelings and are therefore necessarily weak. I therefore feel that a Ministry that has been elected by the legislature should have a long life in which it can formulate its policies and not be influenced by party factions. We may have the American system under which the President nominates his executive, but our country may not be ready for that. But the Swiss system under which the legislature elects the executive for a certain period during which it is irremovable is to my mind the best form of government for the Provinces, because the Ministers who have once been elected by the legislature cannot be removed by a vote of no confidence in it by the legislature. I feel therefore that the Swiss system

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<sup>5</sup> Consideration of Clause 12 of the Report on the Principles of a Model Provincial Constitution regarding appointment of Ministers in Provinces, C.A.D., Vol. IV, L.S.S., 17 July 1947, pp. 631-632.

is the best *via media* that can be accepted by us in this country, keeping in view the political and other conditions that are prevailing here and will continue for a long time to come. The system of the single non-transferable vote is to my mind the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented, and therefore, I strongly support the amendment that has been moved by Mr. Aziz Ahmad Khan.

I also wish to point out that the best thing for a Ministry is to have its life synchronous with the life-time of the Assembly so that it can be an irremovable executive.

My other point is that in the constitution we are framing, we are giving such strong and wide powers to the Governor who will be an elected Governor, that there is no need for another head of the State, because the Governor is there and will be in a position to allot portfolios, to represent the State on ceremonial occasions and to preside at meetings and to co-ordinate the work of the Ministers. All these things will come under the duties of the Governor and the Ministers who will be responsible men elected by the legislature will be able to initiate their policies and work out their long range policies not at the whim of the party but from their own strong positions. My experience is that where the Ministers are the representatives of a party, it is impossible for them to carry on the day to day work and the administrative work of the province uninfluenced by their party members. This necessarily means that the Ministry is weak and the administration suffers on this account because it is natural that Ministers who have to keep their party men pleased, have to do many things which are not good from the administrative point of view. Therefore I hope that this amendment of mine which is moved with a view to having a strong and stable government in the provinces will be accepted.

### Election to Council of States<sup>6</sup>

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, the amendment standing in my name is:

“That in sub-clause (1) (d) of Clause 14, the following be added at the end:

by a system of proportional representation by single transferable vote.”

Sir, I do not propose moving this amendment at the present moment in view of the amendment moved by Sir N. Gopaldaswamy Ayyangar. I hope

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<sup>6</sup> Consideration of Report on the Union Constitution, C.A.D, Vol. IV, L.S.S., 31 July 1947, pp. 974-975.

that this very important aspect of the question as to the method of election to the Council of States will be considered by the Union Constitution Committee in order to safeguard the interest of minorities. I do not wish to move this amendment at this time, Sir, because of the great possibility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

**Mr. President:** There is another amendment in your name.

**Begum Aizaz Rasul:** There is another amendment standing in my name:

“That in sub-clause (4) of Clause 14, for the word “second” the word “third” be substituted.”

Sir, the clause will then read:

“The Council of States shall be a permanent body not subject to dissolution, but as near as may be, one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in Schedule—”

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected. Sir, if my amendment is accepted it will mean that the House being a permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system, as it has been working for the last ten years in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U.S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir, another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present,

and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the right to elect twice in their life time members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

### **Additional Representation to East Punjab<sup>7</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I am afraid I have not been able to study this Report of the Committee to which you referred to just now, because I do not find it in the papers. I would, therefore, request you, Sir, kindly to postpone discussion of this very important matter until Members have had the time to study the implications of these amendments to the rules.

Sir, it is true that a very large proportion of the population in East Punjab have gone to West Punjab. In the same way a very large number of non-Muslims in West Punjab have gone over to East Punjab. They must have representation in this House, and as far as that matter goes, it is quite a justifiable demand and I do not think anyone here can possibly refuse it. But at the same time, it has to be seen and carefully studied as to the number of people who have gone and settled down from one part of the Punjab to the other part. And as everyone knows, non-Muslims have gone not only to East Punjab, but they have also migrated to the U.P. and to the province of Delhi and other places. The situation at the present moment is very fluid. All these matters have to be taken together with reference to the context before any amendment can be passed in this House. I would, therefore, most respectfully request you, Sir, to postpone the consideration of these matters to a later date when we are in a position to know definitely what are the numbers of the people who are settling down in East Punjab and those who go back to their homes in West Punjab and also when Members have had the time to study the Report of the Committee. I hope this suggestion of mine will be acceptable and that the consideration of this subject will be postponed to a later date.

### **On Fundamental Rights, Minority Rights<sup>8</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

<sup>7</sup> Discussion on additional representation of East Punjab, C.A.D., Vol. VI, L.S.S., 27 January 1948, p. 10.

<sup>8</sup> Debate on Motion regarding Draft Constitution, C.A.D., Vol. VII, L.S.S., 8 November 1948, pp. 305-307.

Sir, I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.

Much has been said about the fact that most of the provisions have been borrowed from the Constitutions of the U.S.A., England, Australia, Canada, Switzerland, etc. Sir, I for my part see nothing wrong in so borrowing as long as the higher interests of the nation and the well-being and prosperity of the country are kept in mind. There is no doubt that the draft Constitution has been framed to fit in with the present administration. But this had to be so in the very nature of things. After all, we have all become used to a certain way of life of government and of administration. If the draft Constitution had changed the whole structure of Government, there would have been chaos. India is a new recruit to the democratic form of Government. Its people have been used to centuries of autocratic rule and, therefore, to carry on more or less on the lines they have been accustomed for some time more, with changes here and there according to changed conditions, is the best thing possible. The important thing is that power is derived from the people and it is the people who will make or mar the destiny of India.

A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.

Sir, coming to the Fundamental Rights, I find that what has been given with one hand has been taken away by the other. Fundamental Rights should be such that they should not be liable to reservations and to changes by Acts of legislature. It is essential that some at least of the civil liberties of the citizen should be preserved by the Constitution and it should not be easy for the legislature to take them away. Instead of this, we find the provision relating to these Rights full of provisos and exceptions. This means that what has been given today could easily be changed tomorrow by an Act of the legislature.

To my mind it is necessary that some sort of agency should be provided to see that the Fundamental Rights and the Directive Principles are being



observed in all Provinces in the letter and in the spirit. Otherwise it may be that the absence of such an agency may give rise to the formation of communal organisations with the object of watching the interests of their respective communities. It should be the function of the agency I have suggested to bring to the notice of the Government the cases where the Fundamental Rights and the Directive Principles are not being followed properly. I hope this point of mine will be seriously considered by this august Assembly when we come to discuss the Draft Constitution clause by clause.

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Constitution.

Sir, I will not go into the details of the Constitution because I shall deal with the various provisions as we discuss the Constitution clause by clause, but there are a few fundamental issues which have been raised and discussed on the floor of this House during the last two or three days to which I may refer in passing.

Sir, the question of the reservation of seats for the minorities has engaged the attention of this House. It is true, Sir, that last year on the recommendations of the Minorities Sub-Committee, this House accepted the principle of the reservation of seats for certain communities. At that time also I was opposed to this reservation of seats, and today again I repeat that in the new set-up with joint electorates it is absolutely meaningless to have reservation of seats for any minority. We have to depend upon the good-will of the majority community. Therefore speaking for the Muslims I say that to ask for reservation of seats seems to my mind quite pointless, but I do agree with Dr. Ambedkar that it is for the majority to realise its duty not to discriminate against any minority. Sir, if that principle that the majority should not discriminate against any minority is accepted, I can assure you that we will not ask for any reservation of seats as far as the Muslims are concerned. We feel that our interests are absolutely identical with those of the majority, and expect that the majority would deal justly and fairly with all minorities. At the same time, as has been pointed out by some honourable Members in their speeches, reservation of seats for minorities in the Services is a very essential thing and I hope that the members of this House will consider it when we deal with that question.

Then, Sir, another question which has been engaging the attention of this House is the question of language. Sir, the question of language in its very nature is a very important question because after all we have to

devise something which is most acceptable to the people living in this country. It is quite true that the language of the country should be the language that is mostly spoken and understood by the people of the country, and I do not deny the fact that Hindi is the language which is understood and spoken by the majority of the people (*hear, hear*), but, Sir, the word 'Hindi' as it is being interpreted today is a very wrong interpretation. After all there is not much difference between Hindi and Hindustani. Everyone will bear witness to the fact that the language spoken in the country, whether by Hindus or Muslims, is a very different language to that which is being described as Hindi and which is being advocated by the protagonists of Hindi. What is advocated is Sanskritised Hindi which is only understood by a small section of the people. If we take the villages, the language spoken there is very different to what is called Hindi here.

Then, Sir, I do not think that the forty million Muslims living in this country can immediately be asked to change their language. I agree that we will have to learn Hindi in the Devanagri script, but some time must be given to us to affect the change-over. It is very unfair of you to ask us suddenly to transact all the business of the state as well as the business in the legislatures in a language that we are not conversant with. I therefore feel that this is a matter which should be calmly and coolly considered. After all, this is not a matter which can be decided on the spur of the moment or on grounds of sentiment or passion. We have to keep in mind the requirements of the country. The Father of the Nation up to the last advocated Hindustani written in both the scripts as the only language which is most suitable and which can be acceptable to the mass of the people living in this country. I therefore recommend that, whereas Hindi in the Devanagri script can be made the ultimate *lingua franca* of the country, a certain time limit, say about 15 years, must be given for the change-over and until then Hindustani in both the scripts should remain the language of India.

In conclusion, Sir, I would say that whatever we put in this Constitution, we must see that all our efforts are concentrated to make India strong and prosperous with equality of opportunity, happiness and prosperity for all so that India may lead the countries of the world on the path of peace and progress.

### On Electoral System<sup>9</sup>

**Begum Aizaz Rasul** (United Provinces : Muslim): Sir, I beg to move:

“That in Clause (3) of Article 44, the words “in accordance with the system of proportional representation” be omitted.”

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<sup>9</sup> Consideration of Article 44 of the Draft Constitution, C.A.D., Vol. VII, L.S.S., 13 December 1948, p. 1005.

My arguments have more or less been covered by the speech of the previous speaker. The object with which I move this amendment is that the first condition of proportional representation is the existence of a multiple member constituency. If only one man is to be returned then the question of proportional representation does not arise and this point has been clearly made out by Mr. Tyagi. Therefore I do not want to take up the time of the House in repeating his arguments. It might have been understood that the single transferable vote would have been beneficial in this election, because it would have meant the elimination of candidates who got the least number of votes. I will give an example of proportional representation in a constituency which is a multi-member constituency. For instance, if there are 100 voters and 5 people have to be returned and party A gets 50 votes, B gets 25 and C gets 25, in ordinary election all the candidates returned will come from Party A. Whereas in proportional representation Party A will get 3, B will get 1 and C will get 1. The idea is that the proportion of the electorate is reflected in the number of persons elected. For this it is essential that there is more than one seat but when there is only one seat how can the proportion of the electorate be represented in that seat, because one seat cannot be portioned into 3 or 2? Therefore I believe that this system of proportional representation will certainly not be correct for the election of the President and the minority as such, where it is able to send in its candidate in a multiple member constituency, cannot do so in a constituency which can only return one member. Hence it is that I have moved this amendment.

### **Naming the Parliament<sup>10</sup>**

**Begum Aizaz Rasul (United Provinces: Muslim) :** Sir, I beg to move:

“That in Article 66, for the words ‘There shall be a Parliament for the Union which’, the words ‘The Legislature of the Union shall be called the Indian National Congress and’ be substituted.”

The Article will then read:

“The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People.”

Sir, my object in moving this amendment is that the word ‘Parliament’ may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words ‘Indian National Congress’ are

<sup>10</sup>Consideration of Article 66 of the Draft Constitution regarding Union Legislature, C.A.D., Vol. VII, L.S.S., 3 January 1949, p. 1196.

substituted for the word 'Parliament', the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically or otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation's urge to freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word 'Congress' is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words 'National Congress' should be substituted for the word 'Parliament'. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words I move my amendment.

### **On the Membership of Legislative Assembly of U.P.<sup>11</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I move:

"That in the proviso to Clause (3) of Article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted."

The House will remember that last year when the discussion on the different clauses of the Constitution was taking place, the House decided that the maximum number of Members in any House in the Provincial Legislature should not exceed 300. Later on, it became apparent that my Province, the United Provinces, stood to lose a great deal by this clause. The population of the United Provinces is over 55 million and it would be very unfair to that Province if the maximum number of Members for the Lower House was fixed at 300. I think this honourable House will agree that some amendment in that direction is necessary. The reason why I supported the maximum number of 300 Members last year was that a House consisting of more than 300 Members would be a very unwieldy House and the discussions in a very big House on legislation would not give results that would be conducive to good working of a legislature in a State. But as I have made it clear, our Province stands to lose a great deal if this maximum number is adhered to and I am therefore moving this amendment.

<sup>11</sup>Consideration of Article 149 of the Draft Constitution regarding Membership in State Legislature, C.A.D., Vol. VII, L.S.S., 6 January 1949, pp. 1325-1326.

I am glad to see that the Chairman of the Drafting Committee, the Honourable Dr. Ambedkar, has also seen the injustice and the unfairness of limiting the number of Members to 300 and is moving an amendment to that effect. My amendment, therefore, is strengthened a good deal by the amendment that has been moved by the Honourable Dr. Ambedkar. I hope that the number of 450 will be accepted. Though according to the population our number really should have been above 550, considering that a House of 550 or more would be an extremely unwieldy House, I feel that the number of 450 serves the purpose and we would be willing to make a sacrifice and have a lesser number of Members than our population demands. I hope, therefore, that this amendment of mine, if it is supported by Honourable Dr. Ambedkar, will be accepted by the House.

With these few words, I move this amendment.

### **In Support of India's Membership of the Commonwealth<sup>12</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I come to give my wholehearted support to the motion moved by the Honourable Prime Minister yesterday and I join in the felicitations that have been extended to him on the floor of this House. I am rather surprised at the amount of criticism that has been levelled against the action of the Prime Minister in agreeing that India should remain in the Commonwealth. Since this news was published in the papers, the general opinion not only in this country but all over the world has been in favour of the action that has been taken by the Prime Minister and I therefore should have thought that in this House there would have been more unanimous support of what the Prime Minister had done in elevating the position of India in the eyes of the world and raising its prestige. The hearts of Indians have been filled with pride at the very high position that the Prime Minister of India occupied in the deliberations of the Commonwealth Conference and in the Prime Minister's Conference, and there is no doubt that today the position that our Prime Minister enjoys amongst the statesmen of the world is far above that enjoyed by any other Prime Minister. They look up to India for leadership of Asia and I make bold to say that the Prime Minister enjoys that leadership not only by the circumstances in which he is placed on account of the position of India in Asia, but by the statesmanship he has shown in the political arena, not only for the last two years since India achieved independence but during the vast number of years that he has been in the political field under the guidance of Mahatma Gandhi. Sir, the main question that is being asked by critics is: what are the advantages that accrue to India by remaining in the

<sup>12</sup>Resolution *reg.* ratification of Commonwealth decision, C.A.D., Vol. VIII, L.S.S., 17 May 1949, pp. 60-62.

Commonwealth? But I ask a counter-question what are the disadvantages that accrue to India by remaining in the Commonwealth? Sir, points regarding the political and economic aspects of this country *vis-a-vis* Great Britain have been ably dealt with by Pandit Kunzru, Mr. Munshi and others. We cannot forget that inspite or perhaps on account of British rule in India we have come to think on those lines which are very akin to the lines of thought that are followed by people in Britain and in the countries of the Commonwealth and it stands to the credit of Great Britain and to the statesmen of Great Britain that inspite of the fact that they ruled India for 150 years, they have been able to achieve the goodwill and friendship of this country after their departure from here. But I think it stands to the greater credit of India and to its Prime Minister that he has been able to shake away the old ties of suspicion and mistrust that were prevalent in India against Great Britain and has been able to accept the hand of friendship extended to India in order that India may progress on the lines of peace and prosperity. Sir, I believe that criticism and opposition to this is mainly based upon mistrust—not only mistrust but a fear complex.

But I feel that fear complex must be shed and we must realise that conditions now are vastly different to what they were before. India is now a free country, and master of its own destiny, and we who have trust in India's greatness must realise that we cannot go forward unless we do away with small things like suspicion and distrust and accept friendship when it is offered. Sir, I have just said that there are many things akin with British thought in India today. I do not think that we should hesitate in saying that the democratic system as prevalent in India today is exactly on British lines. We are aware that India is the youngest member in the comity of democratic nations. We like the way in which Britain has built up its democratic institutions and has worked them during the last few centuries and therefore if we follow the lines of British democracy, we feel that we are going on right lines. Today in India our institutions, our parliamentary life, our local self-Government, our administrative machinery, etc., are more or less based on British lines. Our army and defence organisations have been built up on British lines. Therefore, remaining in the Commonwealth will certainly be to our advantage.

It has been said that Britain is a poor country and will not be able to help us financially. We do not want Britain's financial help. We certainly can go forward with our own industrial development, and the development of our own resources, and make India rich and prosperous. We do not want any country's financial help. But we want their help and their guidance, their advice and the advice of their technicians, so that India may develop on the lines she desires to develop.

There is also no doubt that Britain and the countries of the Commonwealth are today the greatest factor working for world peace. India has always aligned itself on the side of peace, and it would certainly co-operate with those countries which wish to build up world peace, with countries which have no desire to fight, but which desire only to prosper and let other countries of the world also prosper. Therefore, I think it is in the fitness of things that India should remain in the Commonwealth of Nations. I do not see any disadvantage in it. I feel that it will be to the benefit of India to be associated with countries that are working towards world peace.

We cannot also forget that Indian ideology is opposed to communism. There is no doubt that we do not want communism in our country, and we know that Britain and the countries of the Commonwealth are also opposed to communism. Therefore, that is also a common factor between the two. As has been repeatedly pointed out if at any time there comes a stage when India feels that its association with the nations of the Commonwealth is to its disadvantage, there is nothing to debar it from coming out of it. Therefore, I feel that it is entirely to the advantage of India and consistent with its prestige and dignity to remain in the Commonwealth.

With these few words, Sir, I wholeheartedly support the motion of the Honourable Prime Minister.

### **Passing a Legislation: Powers of Parliament and the President<sup>13</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I beg to move:

“That in Article 91, after the first proviso the following second proviso be added:

‘Provided further that if after the President has declared that he withholds assent from the Bill or has returned the Bill with a request for reconsideration of the Bill or of a specified provision thereof, or of any amendment by him, the Houses of Parliament should, after reconsideration of his recommendations pass the Bill again with or without an amendment and return it to him for his assent, he shall not withhold his assent therefrom.’ ”

Sir, the present provision in Article 91 provides for the action that the President has to take presumably on the first presentation of a Bill. But it does not make it clear what should be the procedure if a Bill is returned

<sup>13</sup>Discussion on Article 91 of the Draft Constitution, C.A.D., Vol. VIII, L.S.S., 20 May 1949, p. 192-193.



to the President without accepting any of the amendments suggested by him. Does it mean that he can again return the Bill to Parliament for reconsideration of his amendments? This will mean unnecessary delay and will mean that the Bill can be returned to Parliament more than once. My object in moving this amendment is to do away with this ambiguity and to make it clear that the President can return the Bill to Parliament with his suggestions once only, but if Parliament does not agree to the amendments that are suggested by him and returns the Bill to him, he should not in that case return the Bill a second time for the reconsideration of Parliament. In the House of Commons any bill which has been passed twice by the House of Commons automatically becomes law even if the House of Lords disagree. In the same manner in the U.S.A. a Bill becomes an Act even if the President vetoes it, provided it is passed by two-thirds majority of the Congress. Some such provision should be made here in this article also so that unnecessary delay may not take place. With these words I move my amendment.

(Amendment No. 1690 was not moved.)

### **Against Separate Electorate<sup>14</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I come to give my whole-hearted support to the resolution moved by the Honourable Sardar Patel regarding the representation of the minority communities. Sir, I am sorry that I have to oppose the amendment moved by Mr. Ismail from Madras. The basis of his amendment is the retention of separate electorates. For my part I have from the beginning felt that in a secular state separate electorates have no place. Therefore the principal of joint electorates having once been accepted, the reservation of seats for minorities to me seems meaningless and useless. The candidate returned on the joint votes of the Hindus and Muslims in the very nature of things cannot represent the point of view of the Muslims only and therefore this reservation is entirely unsubstantial. To my mind reservation is a self-destructive weapon which separates the minorities from the majority for all time. It gives no chance to the minorities to win the good-will of the majority. It keeps up the spirit of separatism and communalism alive which should be done away once and for all. This reservation was for ten years only and to my mind these first ten years are the most crucial in the life of our country and every effort should be made to bring the communities together.

Sir, this is one ground on which I support the motion of the Honourable Sardar Patel.

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<sup>14</sup>Consideration of Report of Advisory Committee on Minorities, C.A.D., Vol. VIII, L.S.S., 25 May 1949, pp. 300-303.



The second ground on which I support it is that there is still a feeling of separatism prevalent amongst the communities in India today. That must go. I feel that it is in the interests of the minorities to try to merge themselves into the majority community. It is not going to be harmful to the minorities I can assure them, because in the long run it will be in their interests to win the goodwill of the majority. To my mind it is very necessary that the Muslims living in this country should throw themselves entirely upon the good-will of the majority community, should give up separatist tendencies and throw their full weight in building up a truly secular state.

Sir, I will go into the history of the events of the last two years. It is a very sad history and no one can deny that the Muslims living in this country have been the greatest sufferers as a result of the events that have taken place. Not only have their lives and property been in danger and full of insecurity, but their very honour has been at stake and their loyalties have been questioned. This caused great sense of frustration and mental depression. We want to finish with the past and we want that a new page should be turned over in which all communities living in this country would feel happy and secure. There is some fear in the minds of the Muslims that by doing away with reservations they will not be returned to the legislature according to the members of their population. This fear to my mind is baseless because I feel that when we put the majority community on its honour, it will be up to it to retain its prestige and honour and return members of the minority community not only in numbers to which they are entitled on a population basis but perhaps in greater numbers. I do not visualise any political party in the future putting up candidates for election ignoring the Muslims. The Muslims comprise a large part of the population in this country. I do not think any political party can ever ignore them, much less the Indian National Congress which has stood for the protection of minorities. Sir, I feel that we Muslims should pave the way for not only the introduction but the strengthening of a secular democratic State in this country. The only way in which we can do it is by giving up reservations that are meant for us and by showing to the majority that we have entire confidence in them. Then only I feel that the majority will realise its responsibility.

Sir, I would like my Muslim friends to visualise this position : If reservation of seats for Muslims remains, it would be tantamount to an act of charity on the majority community. They will say : 'Let us give them so many seats.' We will get the seats, but there will not be much good-will on the part of the majority in giving that. The idea of separatism will remain—but if we agree to have no reservation, the honour and prestige of the community as well as of the party that will be contesting the elections will be on test and I do not think that any party can ignore or can afford to ignore the

minorities, especially the Muslims. In that event I visualise the Hindus going about not only to the Muslims but to their own brethren asking them to vote for the Muslims and return the Muslim candidate set up in this or that constituency. Which would be better, I would like to know : this reservation of seats which keeps up a division between the two communities or to be returned by the majority of Hindu votes, not because a seat is reserved for us but because our Hindu brethren went about asking the Hindus to return Muslims? I therefore feel that it is in the interests of both the communities that this should happen and this is the only way in which good-will and friendship can be created between the two communities. Trust begets trust and when we place a sacred trust in the hands of the majority it is sure to realise its responsibility.

Sir, I come from the United Provinces where the Muslims are largest in numbers in any one province in India today. Having worked amongst the Muslim masses, men and women for ten years, I can claim to know something of the working of their minds. Muslims are backward educationally and economically, but as far as political consciousness is concerned they are very much alive today and have been so for sometime. I can say that the Muslims in the United Provinces understand the state of affairs very well. They have realised that the changed conditions demand a change in attitude on their part. Therefore I feel that I am not in any way betraying the confidence of my electorate when I say that this attitude that I am taking today is absolutely in their interests and I know that the majority of Muslims of the United Provinces are behind me in this matter.

Sir, a friend remarked to me yesterday that Muslims are realists. I entirely agree. I think that they are a very realistic people. They are not a static people and they have no static ideas. They have always advanced with the times as Muslim history will show. Therefore, if today we demand the abolition of reservation of seats for the Muslim community I feel that we are entirely on the right path and want to proceed according to changed conditions.

Sir, those Muslims who wanted to go to Pakistan have done so. Those who decided to stay here wish to be on friendly and amicable terms with the majority community and realise that they must develop their lives according to the environments and circumstances existing here. I do not say that they have to change except in accordance with the aspirations of the other people living in this country. Sir, we do not want any special privileges accorded to us as Muslims but we also do not want that any discrimination should be made against us as such. That is why I say that as nationals of this great country we share the aspirations and the hopes of the people living here hoping at the same time that we be treated in a manner consistent with honour and justice.

Sir, sometimes the loyalty of the Muslims has been challenged. I am sorry to bring this up here, but I feel that this is the right moment to mention it. I do not understand why loyalty and religion go together. I think that those persons who work against the interests of the State and take part in subversive activities are disloyal, be they Hindus or Muslims or members of any other community. So far as that matter is concerned, I feel that I am a greater loyalist than many Hindus because many of them are indulging in subversive activities, but I have the interest of my country foremost at heart. I think I can say that of all the Muslims who have decided to live here. They only want to avoid struggle and strife, want security, want their mental attitude to develop that way. Sir, it is for the majority to infuse into the minds of the minority communities a feeling of confidence, good-will and security. Then only can loyalty accrue, because it is the condition of people's minds that creates loyalty. It is not the asking for it that makes for it. Therefore, I feel, Sir, that in introducing this resolution Sardar Patel has done the right thing, because he is giving the various communities the chance of getting together.

Another point, Sir. There are some Hindus and some Muslims also who think and are exercised over the fact that some seats may be lost to them by the abolition of reservation for minorities. I am sorry that they should think on those lines. The advantages of this abolition of reservation far outweigh the disadvantages of the loss of a few seats. I do not myself visualise any loss of seats because, as I have said, the parties, out of concern for their honour and prestige, will put up more candidates than are warranted on the population basis in order to ensure that the right number is returned. Today everything is moulded by public opinion, and India with its declared objective of a secular democratic state cannot afford to have any complaints against it on these grounds. Therefore I feel that the minorities, especially the Muslims, do not stand to lose in any way. Our Hindu friends might think that they might lose a few seats on that ground. I feel that they are thinking on the wrong lines. It is true that a much greater responsibility is now thrown upon the majority because now it is up to them to see that the Muslims and the other minorities are returned according to their quota, but the majority must bear this responsibility. I feel that this will work so much towards harmony and good-will between the communities that this risk should be taken. For those Muslims who think that this is going to be harmful to them, I say that it is not going to be harmful because it will create better relationship between the two communities. Even if a few seats are lost to the Muslims, I feel that sacrifice is worth while if we can gain the good-will of the majority in that way.

In spite of the great and able advocacy of Mr. Lari of the principle of proportional representation, I was not impressed by it. He quoted the example of other countries. Those countries are highly advanced, politically and educationally. They are much smaller in area and in numbers, and to compare India, with those countries is, to my mind, not a very feasible proposition. In India the principle of proportional representation and single transferable vote is understood by very few people. Even in the legislatures it cannot work properly because there are very few people who know how to work that out. Where there are lakhs and lakhs of voters, the principle of cumulative votes cannot work successfully because the electorate is so big and illiterate that it will be impossible to work that system out. The only solution to my mind is joint electorates without any reservation of seats. I feel that this is the only way in which we can get along together. We must once and for all give up all ideas of separatism and to my mind even this proposition of Mr. Lari keeps up that spirit alive. I feel, Sir, that there are so many evil forces at work in the world and in the world of Asia especially that these small things regarding reservations of seats will be very soon forgotten by us, because after all in the larger context of world affairs today, we have to see how India can retain its position of leadership in Asia as well as save itself from aggression and other subversive forces. We do not want our country to go the way China has done or the way Burma is threatened. Therefore we have to develop all our resources, material and moral, in order to make India a prosperous and strong country. Therefore, to my mind, these are matters which should be relegated to the background. We should now harness all our energies in order to make India prosperous and strong.

### **Against Making the Acquisition of Property by State Non-justiciable<sup>15</sup>**

**Begum Aizaz Rasul** (United Provinces: Muslim): Mr President, Sir, I am wondering whether after waiting for so long, it is my good fortune or bad fortune to be called upon to speak on this very important and controversial matter after the speech of the Honourable Premier of my province, Pandit Govind Ballabh Pant. But in a way I think it is just as well, because after my speech he will not be able to make any reply to anything that I might say about my province, though I feel sure that I stand on strong ground when I answer some of the remarks he has made.

The Honourable Prime Minister, in moving this amendment to Article 24 yesterday, rightly remarked that few articles in the Constitution have

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<sup>15</sup> Consideration of Article 24 of the Draft Constitution, C.A.D., Vol. IX, L.S.S., 12 September 1949, pp. 1293-1302.

evoked greater and more keen discussion than this article. There is no doubt that for more than a year Members of this House as well as people outside, have been greatly concerned as to the shape and manner in which principles regarding acquisition of property and compensation will be laid down in the Constitution. Sir, with due respect to the Honourable Prime Minister, I am constrained to say that the amendment proposed by him does not lay down principles based on fairness and justice. There are two principles laid down in this article: One is acquisition of property, Clause (1), and the second is the manner and mode of the payment of compensation, Clause (2). Now, Sir, under the following Article 25 (1) it is clearly laid down that every person will have the right to approach the Supreme Court. This of course is not only in regard to acquisition of property but for every purpose. But ordinarily also any person has a right to file a suit attacking an Act authorising the acquisition of property if the compensation is not proper in his opinion. Therefore, Sir, my contention is that when a right has been given to every person living in this Union to approach the Supreme Court, to have recourse to justice, why should this right be taken away under Clauses (4) and (6) from only those people who are being deprived of their property in the three provinces of the U.P., Bihar and Madras, who are being subjected to legislation which will deprive most of them of their only source of livelihood. I contend that in the Constitution of a country such exceptions cannot be made and therefore I feel that if Clauses (4) and (6) of this article are allowed to remain, it will be a great blot upon this Constitution. The Constitution of a country is not made merely for a few years, or to suit this programme or exigencies of a political party - it is made for generations and for all peoples and to keep a provision such as is provided in Clauses (4) and (6) will not do credit to the Constitution-makers and will remain an ugly blot. Therefore, I earnestly hope that wiser counsels will prevail and that such an absurd provision will not be included.

It may be considered by some people that I am speaking in this strain because I am being affected by it personally, but, Sir, I may say that, although my voice may be feeble in this House, I know that I am voicing the feelings and sentiments of hundreds of thousands of people when I say that such discriminating clauses should not find a place in the Constitution. Many newspapers in India have written leading articles on this and expressed their strong disapproval.

The Honourable Premier of the U.P. stated that the Zamindari Abolition Bill that he has introduced in the House and which is now before a Select Committee of which I have the honour to be a member, can be shown in any court of law and that the provisions that he has made regarding compensation would be borne out to be fair by any legal authority. I may

respectfully suggest to him that if this is the case, then why the inclusion of this Clause (4) which, it is well known, has been inserted at his insistence? If he feels that he is on such safe ground that he can challenge any court of law about the validity, the fairness and the equity of the compensation that he is giving to the zamindars of U.P., then I submit that he should not deprive us of that right that is being given to every man under this Constitution to approach a court of law. The Honourable Premier of U.P. also made the remark that the Taluqdars of Oudh have a lust for litigation. Sir, I should have thought that that would have gone in our favour. If we share our riches with other people and help lawyers in getting rich, I do not think that we should be condemned for that. I had given notice of amendments for the deletion of Clauses (4) and (6), because I feel that such provisions, which are more on the lines of Parliamentary legislation, should certainly not find a place in the Constitution of a country.

My objection is based on two grounds: one is, as already stated, that certain provinces where legislation for acquisition of property is pending or has already been passed are being debarred from having recourse to the basic and fundamental right given to every citizen in India, namely, the right to approach the Supreme Court. The second reason is the discrimination between industrial and zamindari property because only zamindari property is on the anvil of legislation in the three provinces. Not only that but it also means that if any zamindari legislation is brought up in any other province of the Indian Union, say the C.P., the East Punjab, Rajasthan, etc., the people of those provinces will have justiciable rights. I feel strongly that a Constitution of a country should not find a place for this sort of discrimination. Sir, I am afraid, that you will not give me time.....

**Mr. President:** I think you had better conclude because before I close the discussion at 12.30, I want to give an opportunity to another Member to speak for some time.

**Begum Aizaz Rasul:** I only want to say something about U.P.

**Mr. President:** I do not think it is necessary.

**Begum Aizaz Rasul:** I am grateful to you for having given me an opportunity to speak but I am sorry I will not be able to make out my case properly at all, because the time that has been given to me is so short. I would like to ask the Premier of the U.P. to kindly consider whether by inserting this Clause (4) he is not also taking upon himself the right of not giving any compensation at all if the legislature feels that on account of financial reasons, it is not in a position to do so. The Honourable Prime Minister yesterday said that the legislature is supreme and no court can override its decisions. If that is so, then why are fundamental rights

incorporated in the Constitution? It is only because there is a fear that people might encroach upon other people's rights and therefore some basic fundamental rights are laid down, which are beyond the purview of any legislation and which cannot be touched by the Provincial or the Central legislature. Therefore, my contention is that either Article 24 should not be placed in the Fundamental Rights chapter and if it is, it should be without Clauses (4) and (6). In the U.P., nearly a crore of people are being affected by the zamindari legislation. The compensation proposed is so meagre that it will be extremely difficult for these people to plan their lives and exist. Has our Premier given thought to the fact as to what will happen to these people? They are being turned on the streets with no proper provision for their livelihood. Socialisation of the country means all round socialisation. You must guarantee free education to our children - free medical aid and guarantee of employment to every citizen and we will not ask for any compensation. I warn the Premier of U. P. that by depriving the zamindars of their source of livelihood without making any proper provision for them he is creating problems for himself which may be difficult for him to cope with. With these few words, I hope I have been able to convince some honourable Members of the injustice of these clauses.

### **Commending the Work of Drafting Committee<sup>16</sup>**

**Begum Aizaz Rasul** (United Provinces : Muslim): Mr. President, Sir, this is indeed a very solemn and auspicious occasion that this Constituent Assembly has finished its mighty task of drafting a Constitution for free India – a Constitution which embodies in itself the hopes and aspirations of the Indian people. If a Constitution can be judged by its phraseology, or by the provisions it contains, then, certainly, our Constitution deserves a very high place in the constitutions of the world and I think we are justified in feeling proud of it. I would like to congratulate Dr. Ambedkar and members of the Drafting Committee on their wonderful work and to thank you, Mr. President, for the patient and efficient manner in which you have conducted the proceedings of this House. The Secretariat staff of the Constituent Assembly also deserve our thanks for their hard work and incessant labours.

Sir, the most outstanding feature of the Constitution is the fact that India is to be a purely secular State. The sanctity of the Constitution lies essentially in its affirmation of secularity and we are proud of it. I have full faith that this secularity will always be kept guarded and unsullied, as upon it depends that complete unity of the peoples of India without which all hopes of progress would be in vain.

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<sup>16</sup>In support of Dr. Ambedkar's motion for adoption of Draft Constitution, C.A.D., Vol. XI, L.S.S., 22 November 1949, pp. 774-775.



Then, Sir, being a Democratic Republic, the Constitution provides for all citizens, individually and collectively, the best fruits of democracy and ensures to them those basic conditions and freedoms which alone made life secure, significant and productive. Even though these Fundamental Rights are hedged in by various conditions and provisos, yet to my mind, Sir, they guarantee to the citizen that measure of liberty which is necessary for a free and full development of his total personality. These are also justiciable which is an essential corollary to the theory of Fundamental Rights which are incorporated in a Constitution to ensure the principle that man has certain rights independently of the Government under which he lives and a court of justice is there to see that these rights are not infringed by any of the governmental bodies—the Legislature or the Executive.

Articles 14 to 28 ensure to the individual social, economic and political equality, irrespective of caste, creed or sex, religious freedom and equality of opportunity. Articles 29 and 30 ensure to the minorities the preservation of their language, script and culture. I hope that Article 29 will be so applied as to be effective, and primary education of children will be imparted in their mother-tongue wherever such demand is reasonably made.

But, Sir, I regret to say that Article 31 relating to the right of property has been very unfairly and unjustly embodied in the Constitution. Like builders of cities, the makers of the Constitution frame a Constitution for all times, embodying principles of universal applicability. The Constitution should not favour one party or one group or one province. It is regrettable that the provisions of Article 31 do not pass this test and have been made to facilitate party programme in some provinces. It discriminates against zamindari abolition in provinces other than the U.P., Bihar and Madras, and also discriminates between agricultural and industrial property. It takes away the rights of justiciability from agricultural property in these provinces. This is a strange provision and makes an ugly blot on an otherwise beautiful picture.

Sir, the introduction of adult franchise in the country means a great step forward, but with the large masses of uneducated people this system would only succeed if effective measures are taken immediately to educate the people of India for citizenship.

Sir, the women of India are happy to step into their rightful heritage of complete equality with men in all spheres of life and activity. I say so because I am convinced that this is no new concept which has been postulated for the purposes of this Constitution, but is an ideal that has long been cherished by India, though social conditions for some time had tragically debased it in practice. This Constitution affirms that ideal and gives the solemn assurance that the rights of women in law will be wholly honoured in the Indian Republic.



Then, Sir, one of the most important and historic features of the Constitution is the abolition of reservation of seats for minorities. I am in the happy position to remind the House that right from the very beginning I have consistently supported the thesis for the abolition of these seats, as I made clear in my speech at the time of the First Reading of this Constitution. The part that I have played in the removal of these reservations and which I did with the greatest sense of responsibility, was inspired by the conviction that it was absolutely suicidal for a religious minority to keep alive the spirit of separatism by demanding reservation on communal lines. As a matter of fact nothing can protect a minority or group less than a barrier that divides it from the majority. It makes it a permanently isolated group and prevents it from moving closer to the other groups in the country. I hope that by doing away with reservations we have also swept away those difficulties and misunderstandings which so unfortunately marred our public and political life in the past few years. I look forward, Sir, to the day when individuals will cease to regard themselves as members of religious minorities. But this, Mr. President, can only be done if and when the majority also cease to be conscious of their majority and members of all communities, big or small, sincerely and simultaneously begin to consider themselves and one another as full and equal citizens of a Secular State.

Another interesting aspect of our Constitution is the fact that it is now applicable to the whole of India, including the erstwhile Indian States. This has been made possible by the remarkable genius of Sardar Vallabhbhai Patel who has achieved in a miraculously short period of time, in a completely non-violent manner, the unification of our country in spite of the intransigence and obduracy of such States as Hyderabad and Bhopal. We look forward to welcoming very shortly in our midst the chosen representatives of Hyderabad.

May I say, Sir, what a thrill of pride we felt on reading that the Prime Minister had referred to and quoted from the Constitution of India when he addressed the Parliament of the mightiest democracy of the modern world. By this gesture of his we feel that the seal of authenticity has been placed on the democratic nature of our Constitution. Sir, a Constitution is judged by the spirit in which it is worked : it is judged by the manner and method of its implementation. Then, again, the ultimate aim of all constitutions is to increase human happiness, human well-being and weld together the various elements in a country into one nation. Ours is a great country with a great destiny stretching before her. I hope and pray that the implementation of this Constitution will be such as to enhance the prestige of our motherland and make her a dynamic force that will bring together all nations of the world within the orbit of a enduring peace. Sir, I support Dr. Ambedkar's motion.

## IV. DAKSHAYANI VELAYUDAN

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### An Appeal to Dr. Ambedkar<sup>17</sup>

**Shrimati Dakshayani Velayudan (Madras: General):** Mr. Chairman, before I express my views on the Resolution, let me pay my humble homage to our Revolutionary Father, Mahatma Gandhi (applause). It is his mystic vision, his political idealism and his social passion that gave us the instruments to achieve our goal. I submit that a Constituent Assembly not only frames a constitution, but also gives the people a new framework of life. To frame a constitution is an easy job, because there are many models for us to imitate. But to renew a people on a new foundation requires the synthetic vision of a planner. The Independent Sovereign Republic of India plans a free society. In our ancient polity, there were conflicts between absolutism and republicanism. The slender flame of republicanism was snuffed out by the power political States. The Lichavi Republic was the finest expression of the democratic genius of our ancients. There, every citizen was called a Raja. In the Indian Republic of tomorrow, the power will come from the people.....

We could understand the attitude of the Princes in this matter from the statement made by the members of the Negotiating Committee who represent the Chamber of Princes. But here comes a Maharaja with a historic message to his people. I mean the Maharaja of the Cochin State, which is one of the most advanced States in India and I am proud to say that I belong to it. Here is a part of the message:

"I believe in pure constitutional rule and, throughout my life, I have sedulously cultivated an attitude towards life and institutions which are antipathetic to autocracy and personal rule."

From this message it is obvious that the power comes from the people. In the Indian Republic there will be no barriers based on caste or community. The Harijans will be safe in a Republican State of the Indian Union. I visualise that the underdogs will be the rulers of the Indian Republic. I therefore appeal to the Harijan Delegates of this Constituent Assembly that they should not harp on separatism. We should not make ourselves the

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<sup>17</sup>Debate over Pandit Jawaharlal Nehru's Resolution regarding Aims and Objectives, C.A.D., Vol. I, L.S.S., 19 December 1946, pp. 151-152.

laughing stock of our future generations by harping on separatism. Communalism, whether Harijan, Christian, Muslim or Sikh, is opposed to nationalism. (*hear, hear*) What we want is not all kinds of safeguards. It is the moral safeguard that gives real protection to the underdogs of this country. I am not at all afraid of the future of the Harijans. It is not safeguards that go to improve the status of the Harijans.

The other day we heard Mr. Churchill waxing eloquent over the question of the Harijans. He said that the British Government is responsible for the life and welfare of the so-called Scheduled Castes of India. I would like to ask him one question. What has the British Government done to improve the social status of the Harijans? Did they ever pass any legislation to remove the social disabilities of the Harijans except producing some *chaprassis* and butlers? And Mr. Churchill also complained that the Harijans were thrown at the mercy of the Caste Hindus, their oppressors. Mr. Churchill cannot take the 70 million Harijans of this land to Great Britain to give them protection. He may give protection to a few communalists who might fly to England. Mr. Churchill should understand that we are Indians. The Harijans are Indians and they have to live in India as Indians and they will live in India as Indians. We also heard recently that the Scheduled Castes are considered as a minority. Nothing of the sort is mentioned in the State Paper of May 16. I refuse to believe that the 70 million Harijans are to be considered as a minority. Neither Lord Pethick-Lawrence, the Secretary of State for India, nor even the Prime Minister, Mr. Attlee, nor even the Leader of the Opposition, Mr. Churchill, is going to improve the condition of the Harijans. What we want is the removal, immediate removal, of our social disabilities. Only an Independent Socialist Indian Republic can give freedom and equality of status to the Harijans. Our freedom can be obtained only from Indians and not from the British Government.

Let me make a personal appeal to Dr. Ambedkar to join the nationalist forces of this country. He is the only leader of the Harijan community and his non-cooperation with the nationalist forces is a great tragedy to the Harijans; his co-operation with the nationalist forces will enhance the emancipation of the Harijans. Here is a unique occasion for you Sir, (addressing Dr. Ambedkar) to place your services before the country.

The Harijans will be free only in a Socialist Republic India, and let us all support the Resolution and work for its implementation even if it demands the utmost sacrifices from us.

Regarding the amendment brought forward by the Right Hon'ble Dr. Jayakar, I think those who support the amendment get their inspiration from Whitehall and not from the people of this land. Recently we heard much about the postponement of the Constituent Assembly from different

quarters Lord Wavell pleaded for it, Mr. Jinnah insisted on it. I feel that Dr. Jayakar by moving this amendment, is questioning the very validity of the Constituent Assembly and is strengthening the argument put forward by Mr. Churchill the other day in the House of Commons.

Dr. Jayakar also expressed a pious sympathy for the people of the States. If by the term 'States' the Hon'ble Members mean the real representatives of the States, I can assure the Hon'ble Member that the people of the States are behind the Congress and the Constituent Assembly, (*applause*) and any decision made by the Constituent Assembly will be acceptable to the people of the States.

I think, I should make some reference to the views expressed by the Communist leader. In the historic Resolution moved by Pandit Jawahar Lal Nehru, I think every provision is made for the development of every individual in this land. And now the Party which called the war as the People's war, has come here to advise the Constituent Assembly to postpone the consideration of this Resolution for some time. If I am wrong there, I may be excused. The so-called Communists, instead of emancipating the Harijans, are only exploiting them. They promise pieces of land to the Harijans and in that way they try to take them away from the nationalist forces. I think the Communist Party is getting its inspiration from some outside quarter and so it is not for us to accept the views of the Communists. We cannot depend on such a party for our emancipation and our emancipation lies in the national forces which are represented in this Assembly. I therefore hope that in the future independent India the Harijans will have an honourable place as every other citizen of this land.

### **Harijans as Hindu Candidates from Muslim Provinces<sup>18</sup>**

**Shrimati Dakshayani Velayudan** (Madras: General): Mr. President, I wish to bring to the notice of this House that there is provision for 7 members to represent the Hindus in the Muslim provinces. Sir, I find that no Harijan's name is included among the Hindus. We, Harijans, consider ourselves one with the Hindu community and we have every right to represent the Hindus in the Muslim Provinces. We have every right to represent the Hindus in Bengal or the Hindus in Sind or in the Punjab. Somebody remarked now that there are already 7 members of the Harijans in the list. That does not mean that the Harijans have no right to represent the Hindus in the Muslim majority provinces. So I simply wanted to bring to the notice of this House that they should not go with the impression that the Harijans here

<sup>18</sup>On the occasion of the Election of the Advisory Committee, C.A.D., Vol. II, L.S.S., 24 January 1947, pp. 342-343.

have come only to represent the Harijans of India. We claim that we belong to the Hindu fold. It is the duty of the Caste Hindus to see that the promises that they made should be put into practice by including a Harijan in the list, to represent the Hindus in the Muslim majority provinces. But nobody should be under the impression that I came to speak in this manner here in order that my name may go into the list. I have no desire of that sort, because I do not want to represent those provinces, but there are Harijans, who have come from the Muslim majority Provinces, who have every right to represent the Hindus in their Provinces. So I hope that this House will take into consideration that my opinion is not against the fundamental principle that we are expected to follow.

### Freedom from Forced Labour<sup>19</sup>

**Shrimati Dakshayani Velayudan** (Madras: General): Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even nowadays we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. It is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of '*begar*' in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation, economical and in all sorts of ways. The underdogs of this land are deprived of the facilities that make life happy. This system ought to have been abolished even before the provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes into existence will give great relief to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from

<sup>19</sup>Discussion on Clause 11 of Interim Report on Fundamental Rights pertaining freedom from 'Forced Labour' as one of the Rights of Freedom, C.A.D., Vol. III, L.S.S., 1 May 1947, pp. 480-481.

this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their self respect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

### **Against Separate Electorate or Reservations for Harijans<sup>20</sup>**

**Shrimati Dakshayani Velayudan** (Madras: General): Mr. President I find that for the Motion four Members have given their names and first comes the name of the Honourable Dr. B.R. Ambedkar. I am surprised to find that a Member who came in as a result of a joint electorate came forward to move this amendment whereas a member who was all the while standing for separate electorates and for the so-called percentage is not to be seen in the House today. If there was any sincerity in moving this amendment we could have found the person who headed the list, and I do not know why another member took up that responsibility. There may be some reason behind the scene. The mover of the amendment, Mr. Nagappa said when they come to the Assemblies as a result of joint electorates, they may not be coming with the votes of the community and so they are not entitled to represent the community. If Mr. Nagappa thinks that he has come here as a result of such an election, the wisest and the best thing that he ought to do would be to withdraw his candidature or his membership from this Assembly and the Provincial Assemblies (*hear, hear*). If anybody thinks that he is unfit to speak for the community when he comes on the vote of the community or the vote of the people in general, the best way to do service to the community is to disappear from the scene and not to take part in any political activities whatsoever and I think Dr. Ambedkar was wise enough to be absent on the occasion because he knew that this is not going to be carried in the Assembly today or on any day. As the Chairman of the Minority Committee spoke yesterday these things were passed in the committee by majority of votes and, whatever reasons that he may bring forward here, it may not be carried out. So without wasting his time, he has gone for his work as he is engaged in Cabinet work. Somebody has come forward with an excuse that if this form of electorate exists, the real representatives of the people will not be able to come. If we analyse the demand for a percentage of the votes of the community, we will come to the conclusion that it is nothing but unadulterated separate electorates (*hear, hear*). I must ask the Honourable Members who moved the amendment whether they are giving any meaning to the votes that will be cast by the members of other communities. In practice, we have to take into account only the votes that will be cast by the community. If a candidate gets 34 percent and another candidate gets 35 percent of the votes of his

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<sup>20</sup>Discussion on the Report on Minority Rights, C.A.D., Vol. V, L.S.S., 28 August 1947, pp. 263-264.

community, if the first candidate gets 200 votes from the general public and the next candidate gets 100 votes from the general public, and if we take into account the percentage of votes cast by the community, certainly the second candidate should be elected. Then it comes to this that there will be no meaning to the votes cast by other communities though it amounts to double the number of votes which the second candidate gets from the general people.

Then there is another reason for my opposing this amendment. Even if the Harijans are given this percentage of votes, and this kind of electorate system, the Harijans are not in a position to withstand the attractions that they will have to face at the time of elections. So many parties can set up candidates and they can purchase the Harijans and put up any candidate they desire, and any candidate can come up in the assembly and certainly he may not represent the community though he may get percentage of votes that is desired by this system. As long as the Scheduled Castes, or the Harijans or by whatever name they may be called, are economic slaves of other people, there is no meaning demanding either separate electorates or joint electorates or any other kind of electorates with this kind of percentage. (*cheers*). Personally speaking, I am not in favour of any kind of reservation in any place whatsoever. (*hear, hear*). Unfortunately, we had to accept all these things because the British Imperialism has left some marks on us and we are always feeling afraid of one another. So, we cannot do away with separate electorates. This joint electorate and reservation of seats also is a kind of separate electorates. But we have to put up with that evil because we think that it is a necessary evil. I wanted to oppose this amendment because it will be standing in our way and because when the system is put into actual working it will be standing in the way of Harijans, getting a correct ideology. It is lack of correct ideology among Harijans that has led them to bring this sort of amendment here. If they think that they can better their lot by standing apart from the other communities, they are in the wrong. They can do better by joining with the majority community and not depending on the votes of their own community. I must assure the Mover of the amendment that the Harijans are not going to gain anything, if you get this sort of electorate system. So I oppose this amendment and I hope that nobody in this House will support the amendment. (*cheers*)

### **Draft Constitution: Imprint of the Government of India Act, 1935<sup>21</sup>**

**Shrimati Dakshayani Velayudan** (Madras: General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman

<sup>21</sup>Discussion on the Motion by Dr. B.R. Ambedkar on the Draft Constitution, C.A.D., Vol. VII, L.S.S., 8 November 1948, pp. 310-312.



of the drafting Committee has done his duty creditably within the scope of the general set up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame – and I think there is – it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft. I fear that the Constituent Assembly from the very beginning of its formation showed more interest in things other than making a Constitution. We hear daily speeches made by our great leaders and their ideals and principles but in the Constitution we find that it is barren of their ideas and principles. We have got leaders of national and international importance but in our Constitution we find that those principles and ideals are absent and it is a great tragedy to find that such a draft has been placed before us and I do not think even the members of the Drafting Committee have completely read the Draft that is placed before us.

The general criticism is that the draft is a replica of the 1935 Act, but we cannot forget the fact that we have got a legacy of the British Imperialist administration which goes by the name of the Parliamentary system of Government. The trouble was that we were depending on it and we will have to depend on it even after the Constitution is put into operation. The trouble arose from one point, viz., just as the British administrators who wanted to keep India centrally and provincially as a single unit, we in our bewilderment and anxiety tried to bring India centrally and provincially as a strong unit and this centralisation of power has led to all the troubles. There are two ways of making India a strong unit. One is by the method of centralisation of power and the other is by decentralisation; but centralisation is possible only through parliamentary system which now goes under the safe words 'democratic methods', but in this draft we can't find anything that is democratic and decentralisation is totally absent. It is a great tragedy that in making the Constitution of a great country with thirty crores of people, with a great culture behind it and the great principles and teachings of the greatest man of the world on the surface, we were only able to produce a Constitution that is totally foreign to us. The arguments put forward by the Chairman of the Drafting Committee are not at all convincing. He has said that we are very late in making the Draft Constitution. But I can cite examples which will show that his arguments are not sound. The Drafting Committee recommends that the President of the Union can nominate fifteen members to the Council of States. Then another plea is that the term of the legislature should be more than four years. There is another misnomer in the Draft and that is about the selection or the election of the Governors. The Committee feels that if the Governor



and the Chief Minister who is responsible to the Legislature are elected by the people then there will be friction between the two. But the remedy they have suggested is worse than the disease. There is a panel and the President is to select from the four, one person as a Governor. If the Centre happens to have a Congress President and if a province is having a Socialist majority, suppose the Socialist Party recommends three from their party and one from the Congress, certainly the President at the Centre will select the Congress man to be the Governor. Certainly this will lead to friction. We find that this direct recruitment to Governorship is taken from the Government of India Act and it shows that we have not left out even a comma from it.

Then, Sir, I cannot understand why there should be Centrally Administered areas under the new Constitution. The British kept these areas simply to have the military rule in the country. But I do not understand why we should have such areas under the present Constitution. It is better that these provinces are merged with the adjoining provinces and thus we will not be losing anything. We find that the draftsmen included such a clause and as a result it has come before us for discussion.

Then I want to say a few words about the Socialist demand at this stage. The Socialists are the second party which wants to come as an Opposition to the official bloc. We cannot deny the large following that they are having in the country. They have declared that they want to be a Constitutional Opposition in the future. But I must say that I do not agree with their demand that this Constituent Assembly should be buried. I have to make one suggestion. The present Constitution, when it comes into force, will be put before the public by way of the General Elections. Then this Constitution can be made an election issue either for its acceptance or rejection. If the majority of the electorates accept the Constitution, then we can take it that the whole country has accepted it. If the majority of the electorates reject it then we must take it that the whole country has rejected it, and the party that comes into power, and the Legislature that will be formed thereafter, can take up the Constitution and makes the amendments that are necessary. I think, Sir, the Congress Party that is in power today will accept such a policy and see that we are not blamed for being undemocratic in our approach to Constitution making.

### **Beyond Constitution: Need for a Campaign Against Untouchability<sup>22</sup>**

**Shrimati Dakshayani Velayudan** (Madras: General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself

<sup>22</sup>Discussion on Article 11 of the Draft Constitution, regarding 'untouchability', C.A.D., Vol. VII, L.S.S. 29 November 1948, pp. 667-668.

belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my classmates approached me for subscribing to a fund for the abolition of untouchability. My reply was, 'you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-cooperated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, 'untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

**Mr. Vice-President:** You have exceeded the time-limit. It is only because you are a lady I am allowing you.

**Shrimati Dakshayani Velayudan:** The working of the Constitution will depend upon how the people will conduct themselves in the future, not on

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the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

V.  
G. DURGABAI

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**Welcoming the Representatives of Indian States<sup>23</sup>**

**Shrimati G. Durgabai (Madras: General):** Sir, I consider it my proud privilege to be able to stand here today and move the motion which stands in my name. Before I do so, I may be permitted to express my great joy at the presence of the representatives of some of the Indian States who are here today in our midst on this occasion. My heart-felt and sincere thanks are due to those States which have extended their co-operation and joined us in our work.

With your leave, Sir, I move:

“Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.”

Sir, sub-rule (2) of Rule 40 of the Constituent Assembly Rules lays down the procedure for election of members to the Steering Committee. It says:

“The Assembly may from time to time elect, in such manner as it may deem appropriate, 8 additional members of whom four shall be reserved for election from among the representatives of the Indian States.”

Sub-rule (1) of Rule 40 lays down:

“A steering committee shall be set up for the duration of the Assembly and shall consist of eleven Members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.”

Sir, I may be permitted to state in this connection that in accordance with these Rules, eleven members were initially elected to this Committee on 20th January and the Committee has been functioning with these members. According to sub-rule (2), eight additional members are to be elected from time to time out of whom four are reserved for election from among the representatives of Indian States. It is considered desirable at

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<sup>23</sup>Election of additional members to Steering Committee, C.A.D., Vol. III, L.S.S., 28 April 1947, pp. 378-379.

present that only two out of four will be elected now and that the election of the two other members shall be postponed to a future date. We would have been happy had all the four members been elected on this occasion. But we thought it desirable to elect only two members at present and postpone the election of two other members to a subsequent date, when we will be fortunate enough to have a much larger representation of Indian States on this Assembly and all present here. We fondly hoped that some of the leading States like Hyderabad, Travancore, Mysore and some other States would have made up their minds to join us here in our work and co-operate with us. But I am sadly disappointed to find that they are not able to come and see eye to eye with us and that they are still pursuing a policy of "wait and see". I hope that it will not be before long, that they will follow the noble example set up by States like Baroda, Bikaner, Rewa, Gwalior, Cochin, Udaipur, Jodhpur and some other States, whose representatives we have here in our midst and send their representatives also to help us in this great task of forging a constitution for this great country. I extend a hearty welcome to those representatives who will be elected to this Committee, to function on this Committee to help us with their advice and guidance in our work. With these words, I commend this motion for the acceptance of this House.

### **Appointment of Judges of Provincial High Courts<sup>24</sup>**

**Shrimati G. Durgabai** (Madras: General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the appointment of judges to the Provincial Courts. The clause runs on the following lines:

"...the judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed)."

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the Provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity of an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of

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<sup>24</sup>Consideration on the Principles of a Model Provincial Constitution, C.A.D., Vol. IV, L.S.S., 21 July 1947, pp. 695-697.

provincial autonomy. But, Sir I confess myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greater and heavier tasks and onerous responsibilities. They are the repositories of the Constitution; they have got to interpret the Constitution. They are the guardians of the fundamental rights in the Constitution. Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore, if we have got to achieve this, we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or that person or to this party or to that party. They have to feel that they are independent. It is only in that case that we get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may feel why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary. Several matters of the High Courts have got to come before this Court by way of revision, reference and appeal. Therefore, the Chief Justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see. Therefore, considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent but this sort of check will be used only on rare occasions and generally the

recommendations made by the Governor on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely this, that we need not feel that we are doing something very unusual. There is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor General who will make the appointment. Therefore, we can accept this principle without any fear or favour and adopt it in our system.

With these few observations, Sir, I support this clause and I commend it for the acceptance of the House.

### **Establishing High Courts in Newly Created Provinces<sup>25</sup>**

**Shrimati G. Durgabai** (Madras: General): Mr. President, Sir, I beg to move the following amendment:

“That after Clause 18, the following new clause be inserted:

18-A. New High Courts may be established in any newly created province on an address being presented by the Legislature of that province to the Governor and on the same being approved by the President.”

Sir, I will ask your permission for a debate on this, later.

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**Shrimati G. Durgabai:** Mr. Vice-President, yesterday I moved an amendment that Clause 18A be added to Clause 18. It appears in the Supplementary List as Amendment No. 15. It reads:

“18A. New High Courts may be established in any newly created province on an address being presented by the legislature of that Province to the Governor and on the same being approved by the President.”

**Mr. Vice-President:** Does any member wish to speak on this proposed Clause 18A?

**Shrimati G. Durgabai:** I wish to say a few words in support of my amendment. Sir, in the draft I found no such provision made, as is contained in my amendment. So I thought it would be necessary, because by virtue

<sup>25</sup> Consideration on Clause 18 of Report of the Union Constitution Committee pertaining Federal Judiciary, C.A.D., Vol. IV, L.S.S., 28 July 1947, p. 887 and 29 July 1947, pp. 905-908.

of the power we have given to the Federal Legislature we find that some new Units will be springing up hereafter, and not only that, it will become more necessary, because already there are two newly carved out units, West Bengal and East Punjab. Therefore, some kind of procedure must be laid down for the establishment of High Courts in these newly created units. That is why I have suggested the addition of this Clause 18A.

*After some debate Smt. G. Durgabai, further spoke-*

**Shrimati G. Durgabai:** Mr. Vice-President, Sir, with your permission I would like to add a few more words to this amendment:

“That new High Courts may be established in the already, existing provinces of Orissa and Assam and also in the newly created provinces.”

The rest remain as they are.

I commend this amendment for the acceptance of the House.

*After some debate the Vice Chairman said-*

**Mr. Vice-President:** I understand Sir N. Gopaldaswami Ayyangar’s assurance to mean that provision will be made for this in whatever parts of the Constitution such provision may be found necessary, by the draftsmen. Does the Mover press the amendment in view of that assurance?

**Shrimati G. Durgabai:** On that assurance, I withdraw my amendment.

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

### **Judges should be Citizens of India<sup>26</sup>**

**Shrimati G. Durgabai (Madras : General):** Sir, I beg to move amendment No. 19 in Supplementary List II:

“That in para 14 of Appendix, the following be added:

Every judge shall be a citizen of the Union of India.”

Paragraph 14 lays down the tenure of office and conditions of service of judges. Mr. President, I want that every judge shall be citizen of the Union of India. I have moved Clause (a) only, I am not pressing Clause (b).

**Shrimati G. Durgabai:** I moved this amendment, Sir, that every judge shall be a citizen of the Union of India. Of course, I realize, Mr. President that I need hardly say anything on this matter, because I expect that this House will fully realize the importance of this matter and agree with me.

<sup>26</sup>Consideration of Report of the Union Constitution Committee pertaining Federal Judiciary, C.A.D., Vol. IV, L.S.S., 29 July 1947, pp. 894, 900-901.



My amendment, if accepted, will have this effect that it will remove the alien or the foreigner from the field of selection for the appointment of judges. Of course, I would like to add only one or two words, that only a citizen and a citizen alone who will pledge his loyalty to this Dominion of India will be competent to hold this office and however eminent a man maybe and however perfect his legal knowledge maybe, a foreigner or an alien can never be competent to hold this post. That will be the effect of my amendment. Mr. President, Sir, we have already provided for this qualification in the case of the Federation and also in the case of the Governor of the Province. If we have provided in these two cases, it is all the more necessary that we should do it in the case of the Supreme Court judges or the judges of the High Court, because the Supreme Court is considered to be the watchdog in a democracy which will guarantee the fundamental rights and other privileges of the citizens of India. That is all I want to say to the House before I commend my amendment for the acceptance of the House.

### **Commending the Efforts of Smt. Muthulakshmi Reddy in Prohibiting the Devdasi System<sup>27</sup>**

**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 Devdasis 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 devdasis 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 Reddy. 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

<sup>27</sup>Discussion on Article 17 of the Draft Constitution, regarding involuntary servitude, C.A.D., Vol. VII, L.S.S., 3 December 1948, p. 808.

necessary to include this provision in Article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.

### **Opening up Hindu Religious and Educational Institutions for all Sections<sup>28</sup>**

**Shrimati G. Durgabai** (Madras: General): Mr. President, Sir, I beg to move the following amendment:

“That in sub-clause (b) of Clause (2) of Article 19 for the words “any class or section” the words “all classes and sections” be substituted.”

Sir, if my amendment is accepted, the clause would read thus:

“That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus.”

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus:

“.....for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.”

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious maths, and educational institutions or *Pathshalas* conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the Provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as *Pathshalas*, educational institutions and others managed or conducted by these religious institutions. As I have already explained,

<sup>28</sup>Consideration over Article 19 of the Draft Constitution in respect of State and religion, C.A.D., Vol. VII, L.S.S., 6 December 1948, pp. 828-829.

my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

### The Constitutional Remedies for Fundamental Rights<sup>29</sup>

**Shrimati G. Durgabai** (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of *habeas corpus* etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in

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<sup>29</sup>Discussion on the Article 25 of the Draft Constitution regarding guarantees for fundamental rights, C.A.D., Vol. VII, L.S.S., 9 December 1948, pp. 937-938.

these matters there is no question of *res judicata*. A person can move any number of courts and before any judge an application for the issue of this writ, though the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court in granting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application. Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

### Reposing Faith on Youth<sup>30</sup>

**Shrimati G. Durgabai (Madras : General):** Sir, I beg to move:

“That in the new Article 68-A proposed for insertion after Article 68, in Clause (b) for the word ‘thirty-five’ the word ‘thirty’ be substituted.”

The object of this is to lower the age to 30 from 35 for a seat in the Council of States. It was held for some time that greater age confers greater wisdom on men and women, but in the new conditions we find our boys and girls more precocious and more alive to their sense of responsibilities. Wisdom does not depend on age. It was also held that the Upper House consisted of elders who should be of a higher age as it was a revising chamber which would act as a check on hasty legislation. But that is an old story and the old order has been replaced by the new. As I said our boys and girls are now more precocious and the educational curriculum is now so broad-based that it will educate them very well in respect of their civic rights and duties. I, therefore, think we should give a chance to these younger people to be trained in the affairs of State. I said wisdom does not depend on age. Our present Prime Minister became President of the Congress before he was 40 and Pitt was 24 when he became Prime Minister of England. Therefore, we have no reason to fear that because a man is only 30 he will not be able to perform his functions in relation to the State. I hope the House will accept this amendment. Sir, I move.

<sup>30</sup>Discussion on new Article 68A of the Draft Constitution, regarding minimum age for election to Council of States, C.A.D., Vol. VIII, L.S.S., 18 May 1949, p. 90.

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### Ensuring the Neutrality of Governor<sup>31</sup>

**Shrimati G. Durgabai (Madras : General):** Mr. President, Sir, I stand here to support the amendment moved by friend Shri Brajeshwar Prasadji and supported by my friend Mr. Kamath. Sir, I must frankly confess that I also for some time held the view that the system of election by direct vote would be a better one compared to every other system. But I should say that I have changed my views in the matter because I am one of those who have given some thought to this question and come to the conclusion that the proposal of nomination or appointment as suggested in the amendment is a better one in the circumstances that we have today. Sir, I find that those friends who opposed this proposal of appointment by the President did it mainly on two grounds, that it would be inconsistent with the principle of democracy and also it would be giving too much power to the President. With regard to their fear that the ideal of democracy would suffer a good deal if people were deprived of their right of franchise in favour of Governor and that the ideology behind that the freedom to exercise their vote would be defeated if this power is given to the President, I may say that the usefulness or otherwise of any institution should be judged by the results that ultimately the institution would yield. Certain functions are expected to be discharged by the Governor. We wanted to introduce the Governor in our Constitution because we thought that an element of harmony would be there and that institution would bring about some sort of understanding and harmony between the conflicting groups of people, if really the Governor is conscious of his duties and he functions well. It is only for this purpose this is proposed, the governing idea is to place the Governor above party politics, above factions and not to subject him to the party affairs. Now, we find a section in the draft Article 135 wherein it is said that he is not to be a member of either of the Legislatures or, even if he was a member at the time when the choice may fall on him, he is expected to resign before he is appointed or elected as Governor. The idea behind it is that he should be above party politics and party factions. May I ask those friends whether this idea would be realised if we make him dependent upon the mercy of the people and make him subject to party affairs? If he is to depend on the mercy of the people for votes, I am afraid the idea that he would be a harmonious element in the constitution of our country would not be realised. Therefore, I feel that the election system as proposed by some, as against the amendment, is very dangerous. The other point, which my friends who opposed nomination is that it would be giving too much power to the President. May I ask whether the President does not mean his Prime Minister, and the Prime Minister in his turn would not

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<sup>31</sup>Discussion on Article 131 of the Draft Constitution, regarding election of Governor, C.A.D., Vol. VIII, L.S.S., 31 May 1949, pp. 448-450.

consult his colleagues before making the choice? Those in favour of this system of appointment said yesterday that a happy and healthy convention would grow of consulting the Provincial Prime Ministers. I think already the system has grown and is growing that whenever a Governor is appointed to a province, the Chief Minister of that Province is invariably consulted. Therefore, I think the fear of my friend that the President would not discharge his responsibilities well and in the interest of the country is absolutely groundless. Therefore, it would be quite safe to leave the entire responsibility to the President and I do not see any danger why we should not leave it if that could be discharged with great caution and I may tell my friends that the person who is to take the responsibility of such a magnitude would not easily take it and would take it after a great hesitation because he knows that he has got to face the criticism of my friends like Shri Rohini Kumar Chaudhuri or Shri Biswanath Das or friends who oppose this idea and who are afraid of giving this power to the President. Therefore, I suggest that there is absolutely no danger and it is always open to those people to go and tell the President that whenever a man is not wanted why he is not wanted and, therefore, he is to be removed on certain grounds.

Therefore, I feel that there is absolutely no danger in that system of appointment and I urge on my friends to be convinced by this argument that this would be a safer method in the present circumstances. The Drafting Committee itself has changed its view and has put forward an alternative proposal, viz., to appoint one of the four candidates out of a panel of four candidates to be elected by the Houses. Sir, this is a proposal which has no counterpart or similarity in the whole world and also it is impossible to defend this panel business on its merits. I would say that this will not carry any responsibility but on the other hand carries all the disadvantages of a divided responsibility. It carries no responsibility of either the President or the Cabinet or the Provincial Cabinet because the responsibility here is very much divided. In this panel system there is this danger that if the votes recorded vary, as they are bound to vary, and if the President happens to pick up a man who has secured less number of votes, the person chosen will come into clash with the Provincial Legislature. Therefore, he would be naturally unwilling to take up that responsibility. Ultimately, therefore, it would resolve itself into an election by the House itself. An election or appointment which rests on the House, I do not think, carries much importance.

I should also say that the system of proportional representation would not improve matters in any way. That will only produce the effect that it would divide the whole House into warring groups and it will also produce all the disadvantages and defects of the French system. This experiment of panels and appointment from the panel is already tried in some of our

universities today and it cannot be said that this has worked well. Every appointment has resulted in a disappointment. Ultimately, the defeated candidate transforming himself into the opposition, has brought about a lot of trouble to the Vice-Chancellor. Therefore, I do not see any reason why we should not have recourse to the simple and straight procedure of appointment by the President. Sir, with these words, I heartily support the amendment of Shri Brajeshwar Prasad.

### **Appellate Jurisdiction of the Supreme Court<sup>32</sup>**

**Shrimati G. Durgabai** (Madras : General): Mr. President, Sir, while accepting and supporting the amendment moved by Dr. Ambedkar, I wish to offer a few remarks on this subject under consideration. I will say that I am in the main in agreement with the principle of the amendment moved by Prof. Shibban Lal Saksena. Though there was an amendment similar to that given notice of by me, I did not move it; but as I have already stated, I am very much in sympathy with the principle underlying that amendment. Sir, the article under consideration lays down, I am sure the House is aware, the conditions in detail for the appeals to the Supreme Court. These conditions are treated in sub-clauses (a), (b) and (c) of Article 111. The effect of this article is to make the conditions of appeal as part of the Constitution, and I am sure that it would be agreed that there should be an element of elasticity to the conditions of appeal, and if we have made these conditions as a part of the Constitution as we find sub-clauses (a), (b) and (c), that would introduce an element of rigidity and also the conditions will be stereotyped. So the object of my amendment, which I did not move, or the object of the amendment moved by Prof. Shibban Lal Saksena is to introduce that kind of elasticity and leave these conditions to the future Parliament to lay down if it finds absolutely necessary and essential. Now if there is to be a change and if we have made these conditions as part of the Constitution, the change could be brought about only by a constitutional revision. Therefore, I am sure that the House has realised the difficulty and the amendment, given that there should be elasticity by leaving this matter absolutely to the future Parliament, is to remove that rigidity and see that the conditions are not stereotyped.

Sir, in the law as it stood prior to the passing of the Federal Court Enlargement of Jurisdiction Act, the conditions of appeal were regulated by the Civil Procedure Code or by Order in Council made by His Majesty. This Civil Procedure Code was liable to be amended by Parliament. So, in answer to my friends who have just said that there should be no intervention of the Parliament, now I would say that this is not a new condition and the

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<sup>32</sup>Discussion on Article 111 of the Draft Constitution, regarding appellate jurisdiction of Federal Court, C.A.D., Vol. VIII, L.S.S., 6 June 1949, pp. 626-627.



intervention of Parliament was not newly introduced because the Parliament could always intervene in the law as it existed today, that it could amend the Civil Procedure Code which would in the main regulate the conditions of appeal by bringing about a legislative change. So, Sir, it would have been very much better if a similar course could have been adopted and also I am sure that the House has noted this fact that the conditions obtaining today are not the conditions as existed some time back. They are radically different today, because we find that a large number of States are being brought under the Indian Administration and also the question is whether the Supreme Court should not be constituted as a Court of appeal from all over India and the idea also is to expand the jurisdiction and extend the jurisdiction to States also. This position has been made clear by an amendment moved by my honourable friend, Shri Raj Bahadur, which I am sure will be accepted. The effect of that amendment is to remove those restrictions with regard to the jurisdiction of the Supreme Court in relation to the States. Therefore, the idea is to expand the jurisdiction and leave the conditions to the Parliament to lay down. Anyhow, I am very glad to support the amendment moved by Dr. Ambedkar, because it has accepted the major part of my amendment namely conditions (a) and (b) accepted, but condition (c) alone is now made rigid by having found a place in this Constitution. Even this matter could have been left to the future Parliament; it would have been open to the Parliament to say under what conditions an appeal should be considered as a fit one to come to the Supreme Court. Anyhow, Dr. Ambedkar has not considered it desirable, but while accepting the two, he has left this matter absolutely beyond the purview of Parliament. As Mr. Alladi Krishnaswami Ayyar stated, half a loaf is better than no loaf at all, and I also would agree with that view and support the amendment moved by Dr. Ambedkar.

### Ensuring High Standards in Films<sup>33</sup>

**Shrimati G. Durgabai:** (Madras : General): Mr. President, Sir, while supporting the new entry 70A moved by Dr. B.R. Ambedkar I wish to make a few observations.

This new entry 70A seeks to give power to the Centre to administer on the exhibition of films and the object of the Centre taking over this power to itself is to lay down certain uniform standards in the films that are exhibited all over this country and also outside this country. Of course, we think whether such a power is necessarily to be given to the Centre to take over this administration. We feel that many films that are dumped on the public today have either very little or no educational value. Nauseating

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<sup>33</sup>Discussion over new Entry 70A in the Union List in the Draft Constitution, C.A.D., Vol. IX, L.S.S., 31 August 1949, pp. 822-823.



songs and very cheap themes are highly detrimental to our culture. Therefore, it is highly necessary to raise the standards of these films and thus help the producers to exhibit better films which reflect the civilization of this country. That is the primary object, and also they should promote international understanding between the citizens of this country and also of the outside world.

Sir, the position today as it stands is that the Provincial Governments have got their censorship boards, and to my knowledge and information the censorship starts only after the film is completed and some lakhs of rupees have been wasted on them and the Centre acts only in an advisory capacity and whatever the Centre does in that capacity will have only a post-mortem effect. Therefore, Sir, keeping this object in view, we have got to introduce uniformity in the standards of the films that are to be exhibited in this country and also outside this country which would help promoting good harmony and reflect our culture and the civilization of this country.

Sir, while supporting this amendment, I should like to say that the provincial interests or the provincial censorship boards that are today functioning in this matter should be consulted and their interests should be taken into consideration and in every matter their advice and co-operation ought to be sought in censoring these films. Sir, a point may be raised against this power being given to the Centre whether the Centre would be able to deal with this matter, because there are different languages and different types of dialects in which these films are exhibited, whether the Centre could cope up with this power and deal with this matter effectively. There is some justification in this argument but anyhow I would like to say that the Centre should act so carefully in administering on this subject that while the provinces could produce and contribute to the international or national unity they could also preserve the type of culture peculiar to themselves.

Sir, in this matter we have got to know that the first step has already been taken. We have amended the Government of India Act to give power to the Centre; also we have passed a Bill in the Legislative session by classifying the films by introducing the system of A and U class service. Therefore, this entry in this list is only a corollary to what we have done. Some objections have been raised. I think my honourable friend, Mr. Raj Bahadur raised a point, that the powers ought to be widened and he suggested the deletion of the words "The sanctioning of" and "for exhibition" and thereby enlarging the power. I should like to say we have got already the licensing authority today under which this could be done. I understand that his object is to see that the Centre could insist on the provinces to produce such films and also exhibit such films which have got an educative

value along with the films that are exhibited today. This we could do under the power that we have got already and even the provinces are exercising it under their licensing power. The Centre has already passed a Bill to classify the films. Therefore, it is not quite necessary. So I feel that this entry might find favour with the House.

### **Protection of Children and Youth from Exploitation and Abandonment<sup>34</sup>**

**Shrimati G. Durgabai** (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment moved by my friend, Dr. Punjabrao Deshmukh. I wish to say and also I appeal to the Drafting Committee and this House to realise the great importance of this subject viz. the protection of children from exploitation or abandonment, and accept the principle behind it; I appeal more especially to the Drafting Committee to find a suitable entry for this subject. Unless the State takes up a direct responsibility to pass legislation on this matter, I do not think there will be adequate attention given to this subject. I know that they have not neglected this matter and the Chairman of the Drafting Committee would come forward to say that there are a large number of entries to this effect in all the three Lists and that sufficient protection is being given to the protection of children and the destitutes and the abandoned. I know that they have accepted this principle under the Directive Principles. Article 31 clause (vi), lays down the principle in the terms of the amendment now moved. It is the protection of children and youth against exploitation and against moral and material abandonment. Sir, this is exactly the language of the amendment which is moved by Dr. Punjabrao.

No doubt this principle has been recognised under the Directive Principles. I should say that there is no use in simply recognising this principle under the Chapter on Directive Principles. It will remain a really pious declaration or intention on our part to do something in the matter of protection of children, but that is not sufficient. None of the entries has mentioned this subject. If you examine all the three Lists, you do not find a definite entry to this effect in anyone of these Lists. In the absence of a definite entry on this matter, really there will not be adequate protection given to children. It will leave this matter in great confusion. You do not know who will legislate on this matter, whether it will be the Centre or the State or both.

Therefore, Sir, I would appeal to the Drafting Committee to see its way to include this matter in this Concurrent List or any other List.

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<sup>34</sup>Discussion on Entry 6 of the Concurrent List of the Draft Constitution, C.A.D., Vol. IX, L.S.S., 3 September 1949, pp. 933-937.

Unless the State undertakes a direct responsibility there will be no good. It is open to the State to come forward and make some subsidy or give some donation or some contribution to an Association either started by private enterprise or by a philanthropist for the protection of infants. We know how these associations are struggling for their daily existence and for lack of fund they are not able to get on well and in this manner these poor homes could no longer serve the cause of poor children. I do not know what kind of help they will get if the State does not take direct responsibility. This is not a matter which could be left to private enterprise, but the State must take direct responsibility. There is no good in our stating the Directive Principles, which will remain as pious declarations unless given effect to by the State.

It may be argued that there is penal law which deals with the matter. I know that the criminal law deals with this matter of abandonment. I also know because I am conversant with it, how deep matters are going on it is true that the persons who is charged with the offence of abandoning is really punished and he or she is sentenced for that offence. But what happens to the child that is abandoned? That is the question. Where is it to go? How long is it going to wait in search of somebody to come forward and take it for protection? Therefore, Sir, it is a very dangerous thing. If only we leave the children to themselves, they will take to beggary and also to many vices such as stealing and they would cultivate very bad habits. Therefore, it is the duty of the State to come forward and help these children sufficiently in time, to see that they are developed well, because these children are our future hope and the nation depends upon these children, their good-manners, their upbringing, their good health and their strong character.

Sir, I tell you that if the Drafting Committee could find its way to make an entry for the protection of wild birds, I do not know whether the children could not come under the classification of even wild birds. Therefore, if you see your way to give a particular place in the Constitution for wild birds, I appeal to you to see your way also to give protection to the children that are abandoned, by a suitable entry in the Constitution.

### **Hindustani Instead of Hindi as the National Language<sup>35</sup>**

**Shrimati G. Durgabai** (Madras : General): Mr. President, the question of national language for India which was an almost agreed proposition until recently has suddenly become a highly controversial issue. Whether rightly or wrongly, the people of non-Hindi speaking areas have been made to feel

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<sup>35</sup>Discussion on New Part XIV-A regarding Language of the Draft Constitution, C.A.D., Vol. IX, L.S.S., 14 September 1949, pp. 1426-1429.

that this fight or this attitude on behalf of the Hindi speaking areas is a fight for effectively preventing the natural influence of other powerful languages of India on the composite culture of this nation. I have heard some honourable Members who are supporters of Hindi with Hindi numerals say, "You have accepted nearly 90 per cent of our thesis; therefore, why hesitate to accept the other 10 per cent?" May I ask them with what sacrifice, we have accepted this? Some friends said: "Absolutely there is no sacrifice on your part. You have to accept. You must". This is the attitude in approaching the people of the non-Hindi speaking areas for asking them to accept their proposition in its entirety.

Sir, the national language of India should not be and cannot be any other than Hindustani which is Hindi *plus* Urdu. For the sake of satisfying the sentiments of our friends we have accepted Hindi in Devanagari script. It is no less sacrifice for us to have had to depart from a principle, which we have all along fought for and lived for. This departure means a very serious inconvenience to us and it is not without a pang that we have agreed to this departure from the tolerant Gandhian ideology, the Gandhian philosophy and the Gandhian proposition, namely, that the official language of India should be only that which is commonly understood and easily spoken and learnt. Sir, this is the sacrifice that we have made.

Perhaps Tandonji, Seth Govind Dasji and others do not know this and are not aware of the powerful opposition in the South against the Hindi language. The opponents feel perhaps justly that this propaganda for Hindi cuts at the very root of the provincial languages and is a serious obstacle to the growth of the provincial languages and provincial culture. Sir, the anti-Hindi agitation in the south is very powerful. My friend Dr. Subbaroyan dealt at some length on this point yesterday. But, Sir, what did we do with the supporters of Hindi? We braved that fierce agitation and propagated Hindi in the South. Long before the Pandits of Hindi Sahitya Sammelan realised the importance of having a national language for India, we all in the South obeyed the call of Mahatma Gandhi and carried on Hindi propaganda in the South. We started schools and conducted classes in Hindi. Thus with great inconvenience we dedicated ourselves very long ago to the propagation and learning of Hindi.

Sir, leaving alone the efforts of the Dakshina Bharat Hindi Pracharak Sabha, I must in this connection pay a glowing tribute to the women and children of the South who have taken with great zeal and earnestness to the learning of Hindi. Sir, Gandhiji's efforts and influence, worked tremendously on the students of colleges who, after putting in hard work in their colleges, used to come in the evenings to the Hindi classes to learn this language. Not only the students, even the lawyers after their court

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hours, officers after finishing their office work, instead of going in the evenings to the recreation clubs, attended Hindi classes and learnt Hindi. I am impressing this fact upon you just to show how genuinely and honestly we took to this propagation of Hindi as a result of Mahatmaji's call and appeal to us.

My friends will do well to note that all this was a voluntary effort on our part to fall in line with the national sentiment. In this connection I may refer to a visit which was paid to by the late Seth Jamnalal Bajaj in 1923. In that year, when Sethji visited Cocanada for the Congress Session he visited some ladies' institutions where he found some hundreds of women learning Hindi. Remember, Sir, that this was in the year 1923, some two and a half decades ago. Sethji was so happy to see the ladies learning Hindi that he offered a very handsome donation to the Hindi institution then working. But, the organisers declined the donation saying: "We also feel that we should have a national language. We are therefore conducting the school in Hindi with our own efforts." That is the spirit with which we worked.

Now what is the result of it all? I am shocked to see this agitation against that enthusiasm of ours with which we took to Hindi in the early years of this century. Sir, this attitude on your part to give a national character to what is purely a provincial language is responsible for embittering the feelings of the non-Hindi speaking people. I am afraid this would certainly adversely affect the sentiments and the feelings of those who have already accepted Hindi with Devanagari script. In short, Sir, this overdone and misused propaganda on their part is responsible and would be responsible for losing the support of people who know and who are supporters of Hindi like me.

I have already said that in the interests of national unity, Hindustani alone could be the national language of India. We urge caution and an accommodating spirit on their part, in the interests of the minorities here who, like the Muslims, need time and sympathy to adjust themselves. Sir, they have all displayed large-hearted readiness to fall in line with the predominant sentiment. Purely from the point of view of excellence of literature and international reputation, Bengali is worthy of adoption as the national language. From the point of view of sweetness and also from the fact that it is the second largest of the languages spoken in India, Telugu could be worthy of adoption as the national language. Sir, we have, given up our claims for Telugu. We have not spoken one word in favour of it. We have not advocated it. We have not suggested that one of these provincial languages should be accepted as the national language of our country.

Now, Sir, when we have made this sacrifice, you come out and say, sacrifice another point and swallow the other five per cent remaining out of the hundred per cent and adopt the Hindi numerals. I should say that is the height – I hesitate to put it that way but I must say it – of language tyranny and intolerance. We have agreed to adopt Hindi in the Devanagari script, but I must remind the House that we have agreed to the adoption of Hindi in the Devanagari script, subject to certain conditions. Condition No. 1 is, whatever be the name of the language – I do not propose to speak about the controversy about Hindi *versus* Hindustani—whatever name you may give it, it must be all inclusive and therefore the clause concerned in Shri Gopaldaswami Ayyangar's draft should commend itself to the House and the House should unhesitatingly and unanimously agree to that clause. That language should be capable of absorbing the words which are already in use whether of Urdu or any other regional language. It is only then you will convince us that you are asking us to accept it as a national language and not the special brand of C.P. or U.P. Hindi.

Another condition which is equally important is that the *status quo* should be maintained at least for a period of fifteen years, which would enable us to learn and to speak and also to adjust ourselves to the new environment. People from the Hindi areas are not even willing to concede this point. They say, "Some of you can speak Hindi and so bring it into effect from tomorrow or at least in the shortest possible time." I have heard some people say—

*Tumari jindagi me hindi kabhi nahi rashtra bhasha banegi*

I ask you, Sir are we going to have this Constitution only for ourselves and our lives? What about our children and the generations to come? Are they not to follow this? I am speaking from my own personal experience. I learnt Hindi, I taught Hindi to some hundreds of women at least, in the South. My experience is this: Those who have passed the highest examinations in Hindi can read and write, but it is impossible for them to speak, because for speaking there must be some kind of environment, some kind of atmosphere. In the South, where do we find this atmosphere? Nowhere in the South have we opportunities of speaking what we have learnt. You will only realise this difficulty when you come to the South and you have to speak one of the provincial languages there. Therefore, be patient and cultivate the spirit of accommodation and tolerance. This is the thing that we ask of you to show to us.

The third condition which is not clear from Shri Gopaldaswami Ayyangar's draft is that there is some obligation placed on the non-Hindi speaking people to speak Hindi. There should be equally an obligation on your part to learn one of the provincial languages. It does not matter whether it is

Bengali, Tamil, Telugu or Kannada or any other language for that matter. Dr. Syama Prasad Mookerjee, while speaking on this subject yesterday, dwelt on this point sufficiently and on the resolution which the Sahitya Sammelan passed recently in their conference in Delhi. We will carefully wait and watch and see how that resolution would be implemented by the Premiers of Provinces who were parties to that resolution.

On the question of numerals, I do not want to say anything because sufficient has already been said. You have already understood the gravity of the situation. Suffice it to say, let there be no sentiment or let there be no question of its being a religion with anybody. If that is religion with you, it would be a powerful religious force with us, not to have adopted a language which is not our own, which is only a provincial language, which is not sufficiently developed. Therefore let not anybody say that it is religious with him or her.

Sir, the other question which I wanted to speak about is that in the non-Hindi speaking areas we have got to learn Hindi which we have raised to the position of an official language. Our purse is very meagre and we are already spending so much for the removal of illiteracy in our provinces. Therefore, it becomes the duty and responsibility of the Centre to give sufficient grants to the provinces which are non-Hindi speaking areas to develop and also to propagate this Hindi.

Sir, you have given me an opportunity to speak and I should not take much time of the House. Please remember that we are accepting Hindi only with these conditions which I have stated. For your part, you should have no hesitation to accept Shri Gopaldaswami Ayyangar's draft. Even we do not agree with some of the provisions there, but we have accepted it, and therefore you should have no hesitation in accepting it and supporting it. Thank you, Sir.

### Limitations on Individual Freedoms<sup>36</sup>

**Shrimati G. Durgabai (Madras: General):** Mr. President, Sir, while I support the new Article 15A moved by Dr. Ambedkar, I shall make a few observations on the subject under consideration. I know that I will be exhausting the patience of the House only if I have also taken some time to speak on this matter. But I feel strongly that I should make a few points and remarks on the speeches made during the debate in this House.

I have heard the honourable Members who were the enthusiastic champions of individual freedom and individual liberty, even to the extent

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<sup>36</sup>Discussion on Article 15A of the Draft Constitution regarding protection against certain arrests, C.A.D., Vol. IX, L.S.S., 16 September 1949, pp. 1554-1556.



of placing the exigencies of individual liberty above the exigencies of the State, describing this article as the Crown of all our failures. Sir, the question before us is this, whether the exigencies of the freedom of individuals or the exigencies of the State is more important. When it comes to a question of shaking the very foundations of the State, which State stands not for the freedom of one individual but of several individuals, I yield the first place to the State. I say this because I know that in my love and enthusiasm for individual freedom, I only stand for myself, and my interests; and the State is far superior, because it stands for the freedom and liberty of several individuals like myself. I do not think there can be a greater champion and advocate of individual freedom than De Valera the product of this century with the best democratic traditions. What is it that he has done? The very first thing that he did after becoming President was to pass a number of Public Security Acts. He had no other go. He had to do it, because a situation arose when he himself was to be murdered, what was he to do?

My friends who spoke here have criticised the power that is being exercised in the matter of arrests and detentions. But they have not examined the position when this power is to be exercised, and under what circumstances. The power is to be exercised only in cases when the individual tampers with the public order, as is mentioned in Concurrent List or with the Defence Services of the country. I need only ask you, to go to my part of the country, Madras, Malabar, Vijayawada. I may tell you, and I may draw your attention that no wife, no mother is feeling secure; they are not sure when their husbands would come back, whether they would return home or not. Such is the position. Also the menfolk, when they go out, are not quite sure by the time they return home, whether the wife or the daughters are safe there in the house. That is the position. In that case, what is the State to do? What is the Government to do, to assure some kind of safety and security to these people? Only in those conditions, when there is ample justification will the State resort to arrests and detentions.

This new Article 15A introduced by Dr. Ambedkar is a very happy compromise. Think of the 1818 Regulation which had no time limit at all. Thereafter, came the Public Security Acts of the various Provinces. Now the Board has been introduced in this new article. The Board has got to go through these cases. Also in no case is the detention to go beyond three months, and if it has to exceed, then the Board has got to report. The Court has got to examine the papers and representations made by the Executive, very carefully. Dr. Ambedkar has very ably explained the limitations and the restrictions over this power and I do not want to repeat them because I may be taking up too much time of the House. One point is that in no case is the detention to exceed three months. If it has to



exceed, then the Board has to get a report and on that report only can the detention exceed; and also there is Parliament which would make the law, describing all such cases in which such detention thus got to exceed this period. These are the restrictions which are there to limit this power.

Sir, I do not want to go into the various amendments introduced by my honourable friend Pandit Thakur Das Bhargava. He said: Give the right of appeal, at least once, and also the provisions for periodical reviews and conditional releases and so on. Dr. Ambedkar will deal with these points. I will only mention one or two points raised by my friend Shrimati Purnima Banerji in her amendments. I must say that I am very much in sympathy with two of her amendments. One of them provided for the personal appearance of the person detained, before the Board, to give reasons and explanations. I think the Drafting Committee should have no difficulty in agreeing to that. After all, the Board will not lose much by at least having a look at the person detained and receiving his explanations and reasons. I do not know whether it raises any administrative difficulty, but that will be dealt with by the Drafting Committee. I have confidence in the Government. Can there be a greater advocate and champion of personal freedom than our Government, our Prime Minister, and our Deputy Prime Minister who always are here to give relief to the poor and the needy and those who suffer?

Another amendment of Shrimati Purnima Banerji asks for the maintenance of the dependents of the person detained. Yes, here also I am very much in sympathy with her point, for if the person detained is a bread-winner, then his dependents, his immediate dependents have got to be provided. It would be better to give some sort of guarantee about this, instead of leaving it to Executive Power and to their sweet will. But how is it practicable? That is the question. There are many people who are poor in our country. Her point is that about fifty per cent of the cases would result in releases or discharges. And she also says that the benefit of doubt might be given to the accused in these cases. Are the dependents of the man detained to suffer indefinitely? That is her question. But I say, this is a question which has always been considered by the Government of the province and in deserving cases, the necessary relief is being provided. But in another way it might be argued that this is putting a premium on delinquency; if he is assured of provision for his family he might go on committing crimes and challenging the foundations of the State. I think it is better to leave this matter to the provincial Governments or which ever Governments might deal with these cases.

Then, Sir, I think the words "legal practitioner" in Article 15A (1) require some explanation. We know that Mr. Kasim Razvi engaged counsel from England whose appearance was refused. Now should it be open to this

man to engage any one from any place? If there are rules to cover this point I have no objection: otherwise I suggest that after the words "legal practitioner" the words "qualified or authorised to appear in these cases" may be added.

Sir, I commend this article for the acceptance of the House.

### **The Supreme Court : Guardian of the Constitution<sup>37</sup>**

**Shrimati G. Durgabai (Madras: General)** : Mr. President, I could not resist the temptation to speak a few words on this occasion which I consider is very important. To avoid taking up much of the time of the House I would straightaway say what I have to say.

I welcome this Bill which is going to be passed in a few seconds and which is a great land-mark in the judicial history of India. When this Bill is passed it will serve the long standing connection existing between the Indian system and the British system in the judicial sphere. I dare say, as a student of law and also a practitioner who is acquainted with the matter, this connection has benefited our Indian law and Indian system of jurisprudence greatly. I have had occasion to read the judgments of the Privy Council and other important decisions which were mentioned by Shri Alladi Krishnaswami Ayyar just now. I felt proud of that connection which had done substantial benefit to us. Therefore we should pay a tribute to this connection from which we are now parting.

This Bill when it becomes an Act will usher in the era of judicial autonomy in India. The important changes made therein are all corollary to the political and constitutional independence of this country. When the Constitution is passed, our Federal Court will be designated as the Supreme Court. It will be the highest court of appeal for all high courts and also the judicial authority for the interpretation of the Constitution. We wish and we hope that the Supreme Court which is going to be the guardian of the Constitution and of the fundamental rights guaranteed therein, will do its function very well and every citizen in India will have the occasion to say that it has protected his rights as a true guardian of this Constitution.

Sir, there was criticism heard this morning here that we are continuing the jurisdiction of the Privy Council in certain matters. May I say in reply that this will be so only in the class of cases, as Dr. Ambedkar explained, where the judgment has already been delivered or where the report has been made to His Majesty or where the cases have been entered in the list of the business of the Judicial Committee. All the other cases will be

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<sup>37</sup>Discussion on Abolition of Privy Council Jurisdiction Bill, C.A.D., Vol. IX, L.S.S., 17 September 1949, pp. 1615-1616.

disposed of here. We have also made provision in Clause 5 that if only leave has been granted after 10th October, the further steps will have to be taken only in the Federal Court. There are some 20 or 25 such cases and these, if they are not decided before 26th January 1950, will have to be taken over to India. It is only just and fair and polite on our part not to take away such classes of appeals which I have already mentioned. With these few words I commend this Bill and say that it will be a very interesting period in our history to watch the progress and functions of the Supreme Court.

### **On the Democratic Credentials of the Draft Constitution<sup>38</sup>**

**Shrimati G. Durgabai** (Madras: General): Mr. President, Sir, the speakers who have preceded me have placed before you in a highly learned way an exhaustive analysis of the Constitutional set up which this country is going to have. Sir, I have no intention to repeat them, firstly because I do not claim to have that legal or constitutional wisdom to say anything by way of throwing further light on the points already placed before this House. I also think that at this stage it is better to look forward than look backward and dissect this Constitution in a theoretical way to find out either the merits or the defects of it. Sir, there is only one standard by which we have got to judge this Constitution. The purpose of a democratic constitution is to find a device and to establish a machinery to find out the general will of the people and also to give scope for the general will to prevail. Does this Constitution fulfil this object? That is the point to be considered. Sir, with the franchise extended to all the adults, and with the ample checks provided to control the executive and the Fundamental Rights solemnly guaranteed by this Constitution, I do not think any fair-minded person would say that this Constitution does not fulfil that democratic purpose, that it does not establish the scope and opportunity for the will of the people to dominate in the administration of their affairs. May I say, Sir, that it is not or should not be the purpose of the makers of the Constitution to give the colour of a particular political ideology to the Constitution, and it is well that it is left to the people and the people should be left alone, and they should be the masters to shape the destiny of this country and also to mould their machinery as they like, as long as they hold the field. It would have been wrong on the part of the makers of the Constitution to have given that kind of colour or to put a kind of interpretation of a particular brand of political philosophy to the provisions that are embodied in this Constitution. What the Constitution should do is to give the people sufficient and free scope to canvass their own particular brand of ideology and give them the means to make their own opinions prevail as long as they have got a voice in the administration of the country.

<sup>38</sup>In support of the motion to pass the Constitution by Dr. B.R. Ambedkar, C.A.D., Vol. XI, L.S.S., 24 November 1949, pp. 886-889.

Sir, it is possible for a socialist to complain that the principles of his own party do not find a place in this Constitution. But ours is a Constitution which is neither a socialist Constitution, or a communist Constitution, or even for the matter of that, a Panchayat Raj Constitution. It is a people's Constitution and a Constitution which gives free and ample scope to the people of India to make experiments in socialism or any other ism in which they believe would make this country prosperous and happy. It would have been wrong on the part of the makers of the Constitution to have introduced their own political philosophy, and they have done well in making this Constitution, as I say, a cent percent people's Constitution, and leaving it at that.

In their own wild disappointment, some unkind critics have described this Constitution as no better than "the Motor Vehicles Taxation Act". That, Sir, is very cheap criticism, I should say. Does this Constitution which for the first time gives adult franchise, for the first time guarantees the Fundamental Rights, and which has amazingly succeeded in blotting out the hundreds of patches of this country and made it a strong and united country, does this Constitution stand on par with the Motor Vehicles Taxation Act? Certainly, as I have said that is a way of criticising this Constitution which is a very cheap way.

Sir, I will not deal with the various constitutional safeguards provided in this Constitution for a democratic government. It is a subject on which many learned disquisition have been made. As I said we should now look forward and see to shape the future of things, by means of this Constitution. Many have dealt with the pros and cons of adult franchise. It is a very good thing, provided it is exercised in the interest of this country. What should we do to bring about this happy consummation? It is said that adult franchise unleashes vast forces which may not work in the interest of national good, but which may work in sectional interests. Sir, it depends upon the leaders who are going to take charge of the destinies of our country and of the new set up to create sufficient safeguards against such an abuse. I do not imagine the problem is so difficult as we think it to be, if we only make, in the first instance, membership of this House the membership of Parliament, not a position of unusual prestige or of position and power, but a post of duty and of heavy responsibility, a post of duty and very hard and efficient work. It is only then that many of the defects of parliamentary democracy will be automatically solved. Can we not devise a method by which the elected representatives would be looked upon, not as belonging to a privileged class, but as persons discharging a heavy responsibility and duties over and above, and in addition to talking which is what we are doing now? As long as we maintain the *status quo* with regard to the position of the representatives of the people there will be that scramble

for seats in Parliament and the consequent scramble for power. Only when we are convinced and make others also realise that the position of an elected representative is not merely a position of luck or prestige, but a place of duty and hard and efficient work, only then will there be the necessary restraint in the matter of the choice of the representatives.

Sir, I will not take up much of the time of the House but will only mention one feature which appears to me to distinguish the Constitution from the American type of constitution, and that is with regard to the judiciary. Although this Constitution is of the federal type there is not a double chain of courts created in this country, that is, one set to administer the federal laws and another set to administer the laws made by the State. All the courts form a single hierarchy, at the head of which is the Supreme Court. Immediate below the Supreme Court there are the various State High Courts and below them the subordinate Courts of the States. But every court of the chain, subject to the usual pecuniary and other local limits, will administer the laws of the country, whether made by Parliament or the Legislature of the State.

Sir, there are several other kinds of criticisms made against this Constitution, but I have not got time because I have to accommodate other colleagues of mine, as the President has already said.

Sir, I would just mention one or two points. It is said that there is nothing Gandhian in this Constitution. Look at the Chapter on Fundamental Rights. It has always been criticised in the House and some of the attacks have been bitter, that the Fundamental Rights are not worth the paper on which they are written. Is it supposed that because the Fundamental Rights are hedged in by certain restrictions they are absolute trash? These restrictions on the Fundamental Rights are completely in consonance and in accord with well recognised restrictions in the whole jurisprudence not only of this country but of the whole world and the constitutions of various countries. The rights should not be absolute.

I have also heard the criticism that this Constitution has not laid down the duties of the citizen. It has laid down only the rights. I do not want to say much on the restrictions which have been placed on the Fundamental Rights. While claiming his rights under the Constitution the citizen should as well remember that he has got an obligation and a duty to the State, from which he expects his rights or his protection.

Look at the Chapter on Directive Principles of State Policy. It is said that they are just merely principles which are not enforceable through the courts of law. Constitutional declarations of social and economic policies of the State are becoming a common practice and it is not even unknown to

ancient India. Artha Shastra mentions an injunction to the King in these terms:

“The King shall provide the orphan, the dying, the infirm, the afflicted, the helpless with maintenance. He shall also provide subsistence to the helpless and the expectant mothers and to the children they give birth to.”

This is a basic injunction of the Artha Shastra, which the King has no option but to obey and it could form the guiding principle of our Government both at the Centre and in the States.

I do not want to deal with the criticism that this Constitution which is a republican Constitution cannot work well within the Commonwealth, which we have chosen to be part of. From many sources we have heard this criticism. I do not want to deal with it at length but would only say a word. I do not think it is an insurmountable difficulty. I would mention again that it is not unknown in ancient India, because the republic of Licchavis is mentioned as having a form of membership or partnership with the empire of Chandragupta. These two names are inscribed on the imperial coins. Berriedale Keith said that in the Commonwealth if there was no room for the republics to work then the enduring character of the Commonwealth itself was of a doubtful nature. Therefore it would be well that we recognised certain authorities for this purpose of working together. Therefore, it need not be thought that this would constitute any difficulty.

Last but not least, I want to say that I have just read the decision of the Government of India this morning in the papers that they have created facilities to bring about the Andhra Province at an early date. They have done well in leaving the details to be worked out by a Partition Council and that the Centre would not interfere with them. I am very glad about it and I hope that the Partition Council which might be created will not do anything that is injurious to the peaceful and quiet life which the people are enjoying hitherto.

## VI. HANSA MEHTA

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### Social, Economic and Political Justice for Women of India<sup>39</sup>

**Shrimati Hansa Mehta** (Bombay: General): Sir, I consider it a proud privilege to speak in support of this historic Resolution so ably moved by Pandit Jawahar Lal Nehru. I do not wish to refer to the issue raised by Dr. Jayakar or speak on the speeches made six thousand miles away by people who either mean mischief or are totally ignorant of the real situation. I wish to offer a few remarks on that of this Resolution, the fundamental rights which affect a section of the people, namely, women.

It will warm the heart of many a woman to know that free India will mean not only equality of status but equality of opportunity. It is true that a few women in the past and even today enjoy high status and have received the highest honour that any man can receive, like our friend, Mrs. Sarojini Naidu. But these women are few and far between. One swallow does not make a summer. These women do not give us a real picture of the position of Indian women in this country.

The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilisation of which we are all so proud, and in praise of which Dr. Sir S. Radhakrishnan has always spoken. There are thousands of women today who are denied the ordinary human rights. They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her, man will not only raise himself but raise the whole nation. Mahatma Gandhi's name has been invoked on the floor of this House. It would be ingratitude on my part if I do not acknowledge the great debt of gratitude that Indian women owe to Mahatma Gandhi for all that he has done for them. In spite of all these, we have never asked for privileges. The women's organisation to which I have the honour to belong has never asked for reserved seats, for quotas, or for separate electorates.

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<sup>39</sup>Debate over Pandit Jawaharlal Nehru's Resolution regarding Aims and Objectives, C.A.D., Vol. I, L.S.S., 19 December 1946, p. 138.

What we have asked for is social justice, economic justice, and political justice. We have asked for that equality which can alone be the basis of mutual respect and understanding and without which real co-operation is not possible between man and woman. Women form one half of the population of this country and, therefore, men cannot go very far without the co-operation of women. This ancient land cannot attain its rightful place, its honoured place in this world without the co-operation of women. I therefore welcome this Resolution for the great promise which it holds, and I hope that the objectives embodied in the Resolution will not remain on paper but will be translated into reality. (*cheers*).

### Presentation of the National Flag<sup>40</sup>

**Mr. President:** Shrimati Hansa Mehta will now present the National Flag on behalf of the women of India. (*cheers*)

**Shrimati Hansa Mehta** (Bombay: General): Mr. President, Sir, in the absence of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women of India, to present this flag to the Nation through you.

I have a list<sup>41</sup> here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from the women of India. (*cheers*) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the freedom that we have attained. We have great traditions to maintain, traditions that made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the bloom that threatens the world today. May it bring happiness to those who live under its protecting care. (*cheers*)

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<sup>40</sup> Presentation of the National Flag, C.A.D., Vol. V, L.S.S., 14 August 1947, pp. 10-11.

<sup>41</sup> For the list of Members of the Flag Presentation Committee See Annexure on next page.



*Annexure***MEMBERS OF THE FLAG PRESENTATION COMMITTEE**

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|-------------------------------------|-----------------------------|
| 1. Sarojini Naidu                   | 38. Janaki Amma             |
| 2. Amrit Kaur                       | 39. Leelavathi Munshi       |
| 3. Vijayalakshmi Pandit             | 40. Lavanya Prabha Dutt     |
| 4. Hansa Mehta                      | 41. Sophia Wadia            |
| 5. Ammu Swaminathan                 | 42. Mrinalini Chattopadhyay |
| 6. Sucheta Kripalani                | 43. Sarada Ben Mehta        |
| 7. Kudsia Aizaz Rasool              | 44. Zarina Currimbhoy       |
| 8. Durga Bai                        | 45. Prem Captain            |
| 9. Renuka Ray                       | 46. Hemaprabha Das Gupta    |
| 10. Dakshayani Velayudan            | 47. Premavati Thappar       |
| 11. Purnima Banerji                 | 48. Zora Ansari             |
| 12. Kamala Chaudhri                 | 49. Jaishri Raiji           |
| 13. Malati Chaudhary                | 50. Kitty Shiva Rao         |
| 14. Abala Bose                      | 51. Shanoodevi              |
| 15. Lakshmi Bai Rajwade             | 52. Violet Alva             |
| 16. Maitreyi Bose                   | 53. Susheela Ilukusing      |
| 17. Rameshwari Nehru                | 54. Bina Das                |
| 18. Sherifa Hamid Ali               | 55. Uma Nehru               |
| 19. Goshi Ben Captain               | 56. Iravati Karve           |
| 20. Dhanavanti Rama Rao             | 57. Raiban Tyabji           |
| 21. Anasuya Bai Kale                | 58. Asha Arvanayakam        |
| 22. Premleela Thakersy              | 59. Mridula Sarabhai        |
| 23. Mani Ben Patel                  | 60. Raksha Saran            |
| 24. Sarla Devi Sarabhai             | 61. Margaret Cousins        |
| 25. Avantikabai Gokhaley            | 62. Kamaladevi              |
| 26. Sakine Lukmani                  | 63. Lakshmi Menon           |
| 27. Jankiben Bajaj                  | 64. Lavanya Chanda          |
| 28. Muthulakshmi Reddy              | 65. Ayasha Ahmed            |
| 29. Charulata Mukerji               | 66. Krishna Hutheesingh     |
| 30. Rukamani Lakshmani Lakshmipathi | 67. Rajan Nehru             |
| 31. Mithan Tata Lam                 | 68. Indira Gandhi           |
| 32. Hannah Sen                      | 69. Suraya Tyabji           |
| 33. Aswah Hussain                   | 70. Memubai                 |
| 34. Radhabai Subbroyan              | 71. Padmaja Naidu           |
| 35. Tarabhai Premchand              | 72. Kiran Bose              |
| 36. Jethi Sipahimlani               | 73. Kusum Sayani            |
| 37. Ambuja Amma                     | 74. Lajjavati Devi          |

### Responsibility Lies with People to Make the Constitution Work<sup>42</sup>

**Shrimati Hansa Mehta** (Bombay: General): Mr. President, Sir, it is with a sigh of relief that we have come to our journey's end. I wish we had taken less time to cover this journey. Time is of the essence of things and once the psychological moment is past, the thing however good loses interest and so it has become with the Constitution. On the floor of this House and even outside questions have been asked whether the Constitution is good and how long it is going to last. It is very difficult to reply to this question. The goodness or badness of a Constitution depends on how it is going to work. If it works in the interests of the people, it will be a good Constitution; if it works otherwise, it will be a bad Constitution. It is for the future electors to elect the right kind of persons, who will work the Constitution in the interests of the people. The responsibility, therefore, lies with the people. One thing, however, I would like to observe and that is in the circumstances in which we were placed, we could not have produced anything better. With such divergent views in the Assembly, it is indeed a miracle that we have achieved this measure of agreement. At one extreme we had Seth Govind Das, the champion of the underdog, and in between we had many variations; the last speaker would supply a good example.

In spite of all that and in spite of all the many complicated problems that we had to tackle, I feel that we have not done badly. The most difficult problem that we had to tackle was the problem of minorities. Nowhere in the Constitution have we defined 'minorities'. We accepted the definition that was given to us by the last rulers. They created religious minorities, communal minorities in order to help their policy of divide and rule and that policy has culminated in the partition of this country. We do not want any more partitions. What do the minorities want? What can be their claims? The Constitution guarantees equal protection of law, equality of status, equality of opportunity, the Constitution guarantees religious rights. What more can the minorities ask for? If they want privileges, that is not in the spirit of democracy. They cannot ask for privileges. The only exception, however, I would like to make is in the case of the Scheduled Castes. They have suffered and suffered long at the hands of the Hindu society and any exception in their case would be making amends to what they have suffered. In this connection, the abolition of untouchability is the greatest thing that we have done and posterity will be very proud of this.

While discussing this question in the Fundamental Rights Committee, we also raised another point. We were anxious to consider the abolition of

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<sup>42</sup>Discussion on the Motion by Dr. B.R. Ambedkar to pass the Draft Constitution, C.A.D., L.S.S., Vol. XI, 22 November 1949, pp. 795-797.

pardah. It is an inhuman custom which still exists in parts of India. Unfortunately, we were told that raising this question will hurt the religious susceptibilities of some people. As far as the Hindu religion is concerned, it does not enjoin pardah. Islam does. But, I feel that Islam will be better rid of this evil. Any evil practiced in the name of religion cannot be guaranteed by the Constitution and I hope that our Muslim friends will remember that if not now, later on, this question is bound to come up before the legislatures. While the chapter on Fundamental Rights is a most important chapter, the chapter that follows, the chapter on Directive Principles of State Policy is, also to my mind a very important chapter. In this chapter, I would like to draw the attention of this House to two items. The first is prohibition. A reference was made the other day by the Premier of Bombay that what they are doing is according to the Constitution. I would like to draw a distinction here. Gandhiji's name has been associated with the policy of prohibition. But, what Gandhiji desired was that the State should not manufacture liquor, nor should the State sell it and that public bars should also be closed so that there may be no temptation for those who are susceptible to drinking. But, I do not think that Gandhiji ever desired that we should raise an army of police. Gandhiji never desired that we should spend good money on police. We are prepared to forego the tainted income; but is there any reason why lakhs and lakhs of good money should be spent on excise police? It will only add one more source of corruption, and we have enough of corruption in this country. Another thing, it will perpetuate the sales tax and people who are already burdened with taxes are groaning under the sales tax. I therefore wish to make this distinction that while endorsing the prohibition policy in this Constitution, it does not mean that we agree with the method of introducing prohibition in the various provinces today.

The other item to which I wish to draw the attention of the House is the Common Civil Code. To my mind this is much more important than even the national language. We have too many personal laws in this country and these personal laws are dividing the nation today. It is therefore very essential if we want to build up one nation to have one Civil Code. It must, however, be remembered that the Civil Code that we wish to have must be on a par with, or in advance of, the most progressive of the personal laws in the country. Otherwise, it will be a retrograde step and it will not be acceptable to all.

The world would have thought very little of the men if they had asked for protection against women in this Constitution; I am very happy to see that the Constitution does not include that provision. Otherwise men would have had to hide their faces before the world.

Sir, I have felt it a very great privilege to have been associated with the making of the Constitution of free India. I hope and pray that the Constitution fulfills the expectations raised by the Resolution moved in this House by our Prime Minister three years ago and passed, and which forms now the body of the preamble. It is only in the fulfilment of that promise that this country will rise to its pristine glory.

## VII.

### PURNIMA BANERJI

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#### State's Control over Religious Instruction in Schools<sup>43</sup>

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

That in Clause 16 the following new paragraph be added as an explanation—

“All religious education given in educational institutions receiving Statewide will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupils' mind rather than such as will foster sectarian exclusiveness.”

The object of the clause, Sir, is as the Mover of the Report has suggested, to prevent the students attending these schools being forced to attend the religious classes, if they do not wish to do so. With that I am in perfect agreement. But I know there are a large number of institutions which are run on religious lines and which came into the field of education much before the State came in. There are in my Province 'Maktabs' and 'Pathasalas' which perform the function of imparting education to children of school going age. But we have seen that the religious instructions given there are of such a nature that, instead of broadening the mind of the child, they mis-educate the mind and sometimes breed a certain type of fanaticism and religious bigotry as a result of receiving education in these 'Maktabs' and 'Pathasalas.' It is a controversial point as to whether we should give any aid to denominational schools at all. I do not wish to open that subject at all because there are experts appointed for this purpose and their report is awaited and I am sure after that the legislature will enter into that subject in fuller detail. My object in moving the amendment is that the education imparted in these institutions should be restricted or controlled by the Government without any fear of interfering with anybody's religion. The curriculum should be in the control of the Government and should be of such a nature that it broadens the mind rather than create an exclusiveness. When we were discussing the Minority Rights Report, we said that our aim should be to form a united nation and we have done away with separate electorate and agreed on fundamental rights and given each

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<sup>43</sup>Discussion on Clause 16 of Supplementary Report on Fundamental Rights on religious instructions in public funded schools, C.A.D., Vol. V, L.S.S., 30 August 1947, p. 350.

the right to follow his own religion. But I do believe that however secular a State you may wish to build up, unless one member of it appreciates the religion of another member of the State, it would be impossible for us to build up a united India. Therefore, without interfering with the religion of anybody, the State should be perfectly entitled to see that in the formative age of the child, when he is of the school-going age, the religious instruction is controlled and that the syllabus is of such a nature that the child will develop into a healthy citizen of India capable of appreciating each other's point of view. We may be united by political parties, but if we do not appreciate each other's religion, we shall find that instead of having really men of religion in our midst, we shall be breeding a type of exclusiveness which will be most harmful and on that type of mind, I am afraid, the future of the nation cannot be built up. With these few words, Sir, I move my amendment and I hope the House will agree with me and accept it.

### **Protection to Minorities Against Discrimination in Public Funded Educational Institutions<sup>44</sup>**

**Shrimati Purnima Banerji** (United Provinces : General): Sir, my amendment, is to clause 18 (2). It reads as follows:

“That after the word ‘State’, the words ‘and State-aided’ be inserted.”

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, e.g., U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community—even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools it was laid down that, though those schools were specifically intended for Anglo-Indians, 10 percent of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 percent I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retrace their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or

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<sup>44</sup>Discussion on Clause 18(2) of Supplementary Report on Fundamental Rights of the minorities against discrimination in education, C.A.D., Vol. V, L.S.S., 30 August 1947, p. 366.

refuse admission to members of other communities, then it should be followed. We know, Sir, that many a Provinces have got provincial feelings. If this provision is included as a fundamental right, I suggest it will be highly detrimental. The honourable Mover has not told us what was the reason, why he specifically excluded State-aided institutions from this Clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment.

### **Qualifying Age for the Membership of State Legislature<sup>45</sup>**

**Shrimati Purnima Banerji** (United Provinces: General): Sir, I beg to move amendment No. 38 of List I, Third Week, which is:

“That in amendment No. 2311 of the List of Amendments in Clause (b) of the proposed Article 152, for the word “thirty-five” the word “thirty” be substituted.”

This is in conformity with what we have already passed in regard to age qualification for the members of the Upper House in the Parliament, and therefore, there is not much to be said as to why this amendment is being moved here. But before I close I would like to clear a doubt regarding Clause (c) of this article which has been proposed by Dr. Ambedkar. It says, the person shall “possess such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State.”

Sir, my doubt-the doubt that I have in mind-is this. While we are wedded to the principle of adult franchise and hope that Members of both these Assemblies will be popularly elected persons, who will be entitled not only to send their representatives to sit in this House and also in the Upper House- whether of the Centre or the Provincial bodies-my fear is that according to this sub-clause as it stands it is quite possible that a property qualification or any other qualification may be introduced whereby Members may be debarred from offering themselves as candidates for either House of the Legislature.

Sir, in moving the constitution for the Upper House of the Provincial Legislature, that is of the State, reference has been made of the Constitutions of Canada and South Africa, where there is a property qualification prescribed for those who can be members of the Upper House. If that idea remains in our minds that this sub-clause can at any stage be introduced—and I am not even sure that this sub-clause is retained, members of the Lower House

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<sup>45</sup>Discussion on Article 152 of the Draft Constitution, C.A.D., Vol. VIII, L.S.S., 2 June 1949, p. 551.

or the Upper House may not have their qualifications restricted, and what you have granted by adult franchise namely that every adult can vote and every adult aged 25 or 30 can be a member of the Lower or Upper House - and if any other qualifications are prescribed, his right may be thereby taken away. My point is that either we draw our rights from the Constitution laid down in this House or they are drawn from the Parliament which may change those rights from time to time. We have no objection should a Parliament, which would be also a sovereign body, wish to change the constitution. There is a certain prescribed method and only by a certain number of votes can that constitution be changed. But suppose at any given time in a provincial Legislature or in a Parliament a motion is put and the qualification of the members is raised, then I am afraid that the safeguard or the provision we have placed that every adult, or every adult aged 25 or 30 shall be able to be a member of either House may be nullified. So I hope that Dr. Ambedkar will assure the House that that possibility is not in his mind because as far as disqualifications are concerned, there is a separate article disqualifying a member from appearing as or becoming a member of either of the two Houses. Here it is specifically mentioned that the qualifications of the members may be prescribed from time to time.

Sir, I move.

### Relevance of the Upper House<sup>46</sup>

**Shrimati Purnima Banerji** (United Provinces : General): Mr. President, Sir, I do confess that dealing with these Articles regarding the Upper House, not knowing as to what is going to be the composition of the Upper House does put us in some difficulty. We passed Article 148 as many of the provinces did agree to the creation of an Upper House mainly depending on the kind and nature of the House and we did it on the assumption that it would be something of the kind based upon the Irish model, a model which was supplied to us by the Secretariat of the Constituent Assembly. We were always of the opinion that an Upper House could perform the very good and useful function of being a revising body, and that, while its views may count but not its votes, it should not be a House of vested interests. It was felt that those who could not enter into the rough and tumble of active politics could by their good offices advise the Lower House. Such people could get an opportunity to revise or amend legislations of the Lower House and would thus be performing a useful function. But, now by

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<sup>46</sup>Discussion on insertion of the new Article 148-A in the Draft Constitution regarding Legislative Councils in States, C.A.D., Vol. IX, L.S.S., 30 July 1949, p. 33.



these Articles, when we leave the entire composition to the future Parliament and yet vote for an Upper House we are actually groping in the dark. I do not agree with my friend Mr. Brajeshwar Prasad that it is because we are afraid of adult franchise which we consider a leap in the dark that we want to provide for Upper Houses. It was our experience in the Legislative Assemblies that it was useful to have associated in our governmental activities and in our legislative activities such useful people as were doing useful work for the country, people doing social service, service among Harijans or backward classes, some representatives of labour who were not organised or were not to be found in such large numbers as to form a constituency by themselves or members of a co-operative association, men of letters or some such people whose advice would count, who would not be actuated by any motive to withhold any legislation which is good for the nation but whose voice may have a good effect upon us—it was for such an Upper House we voted and not for an Upper House whose nature and composition we do not know. For the moment we know that the present Upper Houses in the various Legislatures are Houses of vested interest as it is people having a certain amount of property qualification and people with large bank balances who are elected to the Upper Houses. Now, when we have left the entire qualifications to the future Parliament, we do find some difficulty when this Constitution-making body is yet required to vote these Articles. I do not know if Dr. Ambedkar can give an assurance, for what his assurance will count, that it will not be a House of vested interests or of people with large properties who would stay any legislation which is necessary in the interests of the country. With these words, I hope that our views expressed in this House will be taken into account in the future Parliament and that an Upper House which will be only of a revising nature, which would be neither pernicious nor useless would be brought into being and that the possession of large properties by persons will not be considered a qualification entitling them to membership of the Upper Houses.

### **Finances for Local Bodies<sup>47</sup>**

**Shrimati Purnima Banerji** (United Provinces : General): Mr. President, Sir, I am sure all of us agree with the amendment moved by Dr. Ambedkar to empower local bodies to levy taxes on professions. We also agree with the other amendment moved by Prof. Shibban Lal Saksena saying that the upper limit of the tax collected should not be fixed at Rs. 250 but should relate to the income of the person concerned. As you know, in our province of the U.P., we have by a recent Act established about twenty-two thousand Panchayats all over the Province. To these Panchayats such rights and

<sup>47</sup> Discussion on Article 256 of the Draft Constitution on powers of States and local bodies to levy certain taxes, C.A.D., Vol. IX, L.S.S., 9 August 1949, p. 300.

functions have been given which, if properly exercised, would really bring Swaraj to the people. As you know, our country is big and wide and medical amenities and educational facilities are all very sadly lacking. If these Panchayats or local bodies are to function properly, they must have adequate finances at their command. We have given them enough powers and we hope that, as time passes on, they will lay down roads and will foster such industries as will add to the prosperity of the villages and the localities. We fear that all these nation-building activities which are now allotted to them will not be able to reach their fruition unless we have enough finances. Therefore we agree with the amendment now placed before the House that the finances of the local bodies should draw some profit from the trades and professions in the area concerned and this income should bear some proportion to the income of the persons paying the tax. As I said, we hope that these Panchayats and local bodies will lay down roads and will pay their fullest attention to the development of such industries as will add to the general prosperity of the villages. With these words, I support the amendment moved by Dr. Ambedkar and also the amendment moved by my Friend, Mr. Shibban Lal Saksena, saying that the limit of Rs. 250 should not be fixed but rather it should be stated in this way that it should be at least one per cent of the income of the person taxed.

### **Electoral College for the Upper House of Provincial Legislature<sup>48</sup>**

**Shrimati Purnima Banerji** (United Provinces : General): Mr. President, Sir, Article 150 had come up for discussion before this House on a previous occasion and the question of who should form the Upper House was discussed at that stage. As the amendment now proposed as to who should elect these Members—Municipal Boards or the Provincial Assemblies—the electorate was mentioned but not the qualifications of those who are eligible for membership of the Upper House.

If we look into the reason why an Upper House is constituted, we all feel that the necessity of such an Upper House was that it should be a revising body, it should give the Assemblies an opportunity to include any small amendments or useful amendments and also that the Lower House should have the benefit of such Members of the society who could not stand for election in the adult franchise electorate. Such useful members of society should be associated in the work of legislation and government, at some stage or the other. Therefore, Sir, I feel that keeping this object in view, a certain kind of qualification for Members should have been laid

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<sup>48</sup>Discussion on Article 150 of the Draft Constitution, C.A.D., Vol. IX, 19 August 1949, pp. 483-484.

down even for those two categories, that is those who are to be elected by Municipalities and District Boards and those who are to be elected by Provincial Assemblies.

There is another point. I am glad that the teaching profession has also been associated. I would only emphasise that not only teachers of schools but also voluntary teachers, should be included in the new set up, if education is to make any great advancement, I am sure we shall need the help of able and qualified persons who will act as voluntary teachers. I would therefore, suggest that in the teaching profession one should include voluntary teachers also. From time to time our Ministers have been appealing to the public to come and help in this great work. I, therefore, feel that their association should be sought.

Thirdly, where you have asked for nomination of Members by Governors, the words used are "social services". In this connection, I had given notice of an amendment to the effect that "social service" should include "voluntary social service". The object with which I tabled that amendment was that by social services as we all know, or as the House is now passing the Article, I am sure they have in mind voluntary social service or social service done by such useful bodies as the Harijan Sevak Sangh, the Kasturba Memorial or any other similar organisations where the workers are paid undoubtedly but it is hardly a payment but more or less a stipend, and they give most of their time to this work. I emphasise the words 'voluntary social service', because lately provincial and other Governments have opened branches of studies in the subject and are giving diplomas for attending the social service camps which are organised. For women workers who wish to do such social service the provinces have not provided opportunities for opening such camps. Facilities are lacking for opening such social service institutions. Therefore, when I say that voluntary social service should be included I mean that women's organisations which are in the field and whose members are eligible for such nominations should not be left out by a narrow interpretation of the words 'social services'.

Another suggestion that I want to make is that a certain form of labour which is unorganised and which is not formed into a constituency may, as labour is allowed representation in the Lower House, be allowed representation also in the Upper House and the co-operation of those useful members of society secured.

### **A Case for Separate Educational Planning<sup>49</sup>**

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

"That for entry 34 of List III, the following be substituted:-

'34—Economic, educational and social planning.' "

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<sup>49</sup>Discussion on Entry 34 regarding Planning in the Concurrent List in the Draft Constitution, C.A.D., Vol. IX, L.S.S., 3 September 1949, pp. 949-950.

The reason why I have added the word "educational" is that, I think, most Members of this House would agree with me that social planning is something quite separate from educational planning and does not include the connotation of educational planning. Social planning means planning for society which may change the structure of society upon a completely different basis. It really relates to economic planning. I therefore hope that the Drafting Committee, particularly Dr. Ambedkar, will see the difficulty which I find. Under the Union List, the Centre has taken powers to lay down standards of education. By Entry 40 it has taken upon itself the task of running important educational institutions. By Entry 40A they are going to take over scientific and technical institutions. Under 57A they are taking over co-ordination and maintenance of educational standards in institutions for higher education. If all these the Union seeks to do, I am certain that the Union should also have powers for educational planning all over the provinces.

While discussing the Union List, some friends went to the extent of saying that university education should be entirely a Union subject. I do not agree with them to that extent, but I do think that the Centre should plan education for all the provinces, and because I feel that economic and social planning does not include educational planning specifically, I seek to move my amendment. I, therefore, suggest that either the word "educational" should be included in this Entry, or educational planning should be provided for in a separate Entry, whichever may be found convenient by Dr. Ambedkar. I hope Dr. Ambedkar will see our difficulty and tell us whether he does not agree that social and economic planning have got a particular meaning and actually educational planning does not form a major part of it even though it may be a minor part of it, or whether he considers that under this Entry the Union has got power to plan education throughout the country.

### **Ideal of Common Good must Prevail<sup>50</sup>**

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

"That in Amendment No. 369 of List VII (Seventh Week), in sub-Clause (b) of Clause (5) of the proposed Article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when

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<sup>50</sup>Discussion on acquisition of property and compensation thereon in respect of Article 24 of the Draft Constitution, C.A.D., Vol. IX, L.S.S., 10 September 1949, pp. 1238-1239.

laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these Clauses were under consideration we also felt and some of us felt very strongly that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this Article dealing with property rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these Articles which we have already passed.

Mention has been made of the U.P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U.P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the Clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U.P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command proper respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.

With these words I move.

### Rights of Detainee<sup>51</sup>

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

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

I further move:

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

I further move:

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

I also move:

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

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

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

<sup>51</sup> Discussion on protection against certain arrests and detentions in respect of new Article 15A of the Draft Constitution, C.A.D., Vol. IX, L.S.S., 15 September 1949, pp. 1510-1511.

is arrested and is placed before a Magistrate he should be given the charges for which he has been arrested, within fifteen days at the most if his presentation in twenty-four hours before a Magistrate does not involve such charge being framed within twenty-four hours.

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

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

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

With these words I commend my amendments to the House.

### **Protecting Rights of Individuals under Detention<sup>52</sup>**

**Shrimati Purnima Banerji** (United Provinces: General): Mr. President, Sir, I move:

"That in amendment No. 546 of List IV, the proposed Clause (7) of Article 22 be deleted."

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<sup>52</sup>Discussion on Article 22 of the Draft Constitution, C.A.D., Vol. XI, L.S.S., 15 November 1949, pp. 535-536.



And the Draft as it stands in Draft Constitution may stand. I mean the original one as circulated by the Drafting Committee and given in the new draft under italics – that should remain. Sir, most of us will agree with the new change made in Article 22 by amendment No. 545 providing the proviso that the Advisory Board would not be able to detain a person in spite of a revision of his case for more than the period prescribed by law, but however a change is now sought to be made in Clause (7). It raises a certain doubt in our minds. None of us at any stage believed that the Advisory Board would at any stage take the place of Parliament; it was only suggested that in the absence of any law if a person were to be detained for more than three months, then the matter would go before a judicial body which would look into the case and allow further detention if need be in the absence of any law prescribing detention for more than three months. The doubt we have in our minds today is that under this new amendment proposed by the Drafting Committee where it says in Clause (7) that Parliament may prescribe the circumstances of detention “without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-Clause (a) of Clause (4)” makes us feel that suppose if Parliament has got the power – and we do not content that it has not – of laying down a law by which a man can be detained for more than three months, even so, if any person came under the jurisdiction of that law, would it mean that the case of that person would not go for a judicial review before an Advisory Board? Could the Parliament dispense with the constitution of the Advisory Board itself? Sir, I suggest that that should not be and the process of review before an Advisory Board should be kept intact even if it may be perfectly legal for Parliament to enact a general law providing for detention beyond a period of three months. If in the Constitution you have statutorily provided for the detention of a man without trial for a period of three months you have taken away a part of the sting of that measure by providing an Advisory Board which would look into the matter and give a judicial review of the case and decide whether further detention was justifiable or not. If this is not done the man would be dealt with in accordance with the law of the land which Parliament may enact. In the new draft you have specifically said that the Advisory Board need not be consulted. If it means that in the making of the legislation that Board need not be consulted, we are in full agreement and possibly there can be no objection to it. But if it is meant that if a general law provides for the detention of persons for more than three months, and if after the general law has come into force a man innocently has got under the clutches of that law, it seems as the clause now reads in the Constitution that a detenu's case need not go to an Advisory Board at all. Parliament may be empowered not to constitute an Advisory Board at all for even the judicial review of individual cases and that you are going to leave the formation of such a Board to any



future law that Parliament may make. I therefore, suggest that the wording of Clause (7) of Article 22 should remain as it was stated by the Drafting Committee and this particular reference of not consulting the Advisory Board which raises that legitimate doubt in our minds be removed. At no stage we thought that the Advisory Board was to take the place of Parliament or was to be a law giving authoritative body. It was meant to be a judicial committee on which people of the stature of judges of the High Court would be sitting and would be a substitute for the ordinary channels of law denied to a detenu and therefore I would suggest in the drafting of this clause, the provision that such a Committee would be constituted in any case wherever a man is detained. That should be explicitly stated here and should not be left to an ambiguous interpretation. With these words, I move my amendment.

### **Return Women to the Seats Vacated by Women in Constituent Assembly<sup>53</sup>**

**Shrimati Purnima Banerji** (United Provinces: General): Mr. President, I move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to Clause (1) of the proposed new Article 312F, for the words ‘Muslim or the Sikh Community’ the words ‘Muslim, Christian, Sikh community or by a woman’ be substituted, and at the end of the said proviso the words ‘or sex as the case may be’ be added.”

Sir, I am conscious of a spirit of diffidence in moving this amendment and sometimes feel that in doing so I may be opening myself to a certain amount of ridicule. But, even at that cost, I feel, I should state my case. The proviso which we are now discussing provides that in respect of the casual vacancies which are to be filled hereafter for the provisional Parliament, those belonging to the Sikh or the Muslim community will be represented by persons of that community. My amendment seeks just to stretch that same provision for women. I wish to make it quite clear that women do not want any reserved seats for themselves, but nevertheless, I suggest to the House that in respect of the number of women who are now occupying seats in the Assembly, if any of them should vacate their seats they should be filled up by women themselves. We have had casual vacancies in this House before this. Three women have retired so far. One was our late lamented Shrimati Sarojini Naidu, the second was Mrs. Vijayalakshmi Pandit and the third was Shrimati Malati Chaudhuri.

<sup>53</sup>Discussion over amendment in the new Article 312F in the Draft Constitution in respect of positive discrimination in favour of certain groups, C.A.D., Vol. X, L.S.S., 11 October 1949, p. 113.

Three women Members for various reasons have had to leave this House. Mrs. Naidu who could never be replaced both from among men and women, Mrs. Vijayalakshmi Pandit who is so very highly talented and our friend Shrimati Malati Chaudhuri - all these three women have been replaced by men Members. I do not speak in disparagement of the honourable Members who may have been returned in their places and I am sure they are worthy and fit Members of this House. But I do hold that women could have also filled those places with equal merit and they should have been invited to do so. Since the entire basis of the State has changed and it is no longer a police state, certain social functions such as education and health now feature among the major items of the State's development. I feel, that not only is the association of women in the field of politics essential but it is indispensable, and therefore I feel that this indispensable section of the people should be amply represented in this House and therefore my amendment proposes that in the casual vacancies which will occur, women should at least be returned to the seats which they hold today, if not more. With these words, I move.

### **Ultimate Sovereignty Lies with People<sup>54</sup>**

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

That in amendment No. 2 of the List of amendments (Volume 1), for the first paragraph in the proposed Preamble, the following be substituted:-

"We on behalf of the people of India from whom is derived all power and authority of the Independent India,..."

With your permission, Sir, I would like to drop the word "sovereign" here:-

"its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens."

Sir, my honourable friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with, forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore, at this moment if Members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

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<sup>54</sup>Discussion on the Preamble to the Constitution, C.A.D., Vol. X, L.S.S., 17 October 1949, pp. 451.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from whom all power is derived and in whom all sovereign authority rests by merely believing that because they go to the polls once in five years their sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State Policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life-breath of the Constitution which we have here framed. I do not wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable friend Mr. Tyagi from the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borne my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

### **In Support of the Motion by Dr. B.R. Ambedkar to Pass the Draft Constitution<sup>55</sup>**

**Shrimati Purnima Banerji** (United Provinces: General): Sir, at the cost of a little repetition, I would at the outset like to associate myself with my colleagues in their expression of thanks to the Members of the Drafting Committee, to you and to all others who played such an important and necessary role in the various stages of this Constitution. Without being open to the charge of making any invidious distinction, I would like to add a special word of thanks to you on behalf of the back-benchers of this House. For, at various stages of the Constitution, when we were rightly or wrongly exercised by certain doubts in regard to certain Clauses of the Constitution, you used your good influence on our behalf with the Drafting Committee to clear these doubts.

Sir, the Constitution of a country always is a very important and precious document, because it gives us an idea of how the great people of a country fashion their institutions, how they want to live, what are the political arrangements under which they exercise their judgment and what

<sup>55</sup>Discussion on the Motion by Dr. B.R. Ambedkar on the Draft Constitution, C.A.D., Vol. XI, L.S.S., 24 November 1949, pp. 878-881.

are the hopes and aspirations which they entertain for the future. Sir, when we are considering the present Constitution, our minds involuntarily go back to the olden times and contemplates the stages through which India has passed and recalls those periods, the recent periods in the history of our political subjection, when we were told that we were hardly a nation, that we were divided among ourselves in mutually hostile groups, that democratic institutions were congenitally not suited to Indian conditions, etc. We were told in patronising and high sounding phrases that the goal of this country will be the increasing association of Indians in the governance of the country with a view to the gradual realisation of responsible self-government. There was a time when in any concessions in the form of liberty which were granted to us, words such as 'Our subjects of whatever race, creed or colour will be impartially admitted to office and service', or 'No native of India will in future be debarred from employment by reason of birth, descent or colour', or 'We shall respect the right and the dignity and honour of the native princes as our own' were used. These phrases, in short, summed up the conception that was before those who were in charge of our destiny, meant for the future of the country. From such a conception of things we know with what gesture of impatience of country turned away and took, in historical words, the Independence Pledge which other countries have also taken whenever freedom was denied to them. We pledged that: "We believe that it is the inalienable right of the people of India to get liberty and freedom." With these words we entered upon a new career and worked for the independence of this country. And today we find that in this Constitution are embodied those historical words which were again raised in some other corner of the world and have since then been making a circle round the world and will continue to circulate till it becomes a reality. These words are the call of Equality, Liberty and Fraternity which today find a place in our Constitution.

Judging from those days to this day it seems, that although we may not have arrived at a stage of our fulfilment and completion, we have progressed and surely at least the immediate requirements of a normal society have been today provided. We can no longer be told that we are a race apart and that we are unable to govern ourselves.

I feel, Sir, that in the debate that has been taking place in this House during the last few days, it is amply proven that this Constitution has received a very mixed reception. Perhaps the Constitution fully deserves a varied interpretation. The main foundation of the Constitution however rests on our common nationality and on democracy. In our Constitution we say that no matter in which part of the country we may reside, we are integral parts of a common Motherland, that we shall, wherever we may be, unite in working for the greatness of this country, that there shall be

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no distinction of caste, creed or colour or province and that no separatist tendencies will divide us and that whoever is an adult and fulfills the minimum qualifications laid down for candidature, can aspire to the highest office in this land. Therefore, at least one milestone we have reached and we have reached the stage when we no longer feel that the tallest amongst us must bow before any foreign ruler.

But, Sir, I still think that great as the change is, all these things provide only the minimum requirements of a society. We ourselves during our freedom movement said that it was not for the loaves and fishes of office that we were fighting but rather that we might have the political power in our hands with which we could fashion and remould and change the whole structure of society in such a manner that the grinding poverty of the masses may be removed, the living conditions of the people may improve and we could establish a society of equals in this great country of ours. To apply that test to this Constitution, Sir, I feel that it does provide those minimum necessities with which we can change things, and for this I take my clue from the Directive Principles of State Policy. We could not merely rest content with negative democracy, *i.e.*, the right to cast votes, the right to form a government and the right to change it. In passing I would pause and say that important as these rights are in themselves, I consider that Fundamental Rights that we have provided are absolutely necessary for the working of democracy. If we want to establish a democracy which should answer the needs of the growing pattern of society, we should place the means at the disposal of the people by which Governments can be established, which in its turn can be done by the right of free association and free expression of opinion, with the exercise of which institutions can be changed. I feel, Sir, that the Clauses restricting these Fundamental Rights should not have been in the Constitution and the impression should have been well founded so that one may change the Government of this country to the best interests of the people by peaceful means.

Sir, in the Directive Principles of State Policy we have said that although they may not be enforceable in a court of law, they are nevertheless fundamental for the governance of this country and we have in Articles 38 and 39 stated that the economic policy of the country will be worked in such a manner as would subserve the common good. To quote the exact words, we have said 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' These vital principles shall not be enforceable in a court of law but nevertheless they are fundamental in the governance of the country and all the future laws of this country shall have to take note of this. By the

inclusion of these Clauses I personally feel that this Constitution has provided us with the means for changing the structure of society. It will all depend on us whether we are able to establish that sovereign democratic republic, not for the hollow benefit of registering one's vote and passing legislation, not a democracy which will simply maintain the *status quo* or which will take upon itself the policy of *laissez faire*, but a democracy which will combine with it the healthy principle that the government governs the best which governs the least, with the principle that it should encourage the active citizenship of the country. The two Articles that I have read out are the cornerstone of this Constitution. If you want the people to meet peacefully and without resorting to violence, then we must give them the free exercise of their right to meet.

At least in one aspect of this Constitution, I most categorically hold that the Fundamental Rights of meeting and forming associations should under no circumstances have been circumscribed or limited by any provisos. I would rather take my inspiration from the American Constitution in this respect where they prescribe the Fundamental Rights boldly, and merely state that they will be subject to laws made by Parliament. I do not hold the fantastic theory that all rights are always absolute. They are relative, but when it comes to stating the rights, I should think, Sir, that they should not be burdened by giving the circumstances in which those rights cannot be exercised. If these circumscribing Clauses had not been stated in this Constitution the difference would have been psychologically great – the difference would be that the laws which circumscribe the right of free speech and impose other restrictions would have been repealed when the necessity for them was no longer there; they would not have been statutorily fixed by the Constitution. The complaint already is that this is a written Constitution and a bulky Constitution, and the more a Constitution is written, the more rigid it becomes. Considering this, Sir, I feel more so that in the Fundamental Rights these restrictive provisos to freedom should not have been there.

Sir, Article 21 guarantees personal liberty and Article 22 provides for preventive detention. In Article 21, I would have liked to include the safety of the person, his dwelling and his personal property from being searched or confiscated, because the powers of search and detention by Governments have played a disastrous part in our own political history, and we would not like these powers to hamper the growth of healthy political movements in future.

Then, Sir, in the Directive Principles of State Policy, under Article 39, we have provided that while we may change the whole structure of society in such a way as will subserve the general good of the country, there is no categorical statement that any industry might be taken over by the State

should that be necessary for the general good. In the Karachi Resolution of the Congress where most of these Fundamental Rights were incorporated for the first time in a political document, there was a provision that key industries and all the mineral resources of the country shall be State-controlled. That, I think, should have found a specific place in the Directive Principles of State Policy.

If the powers of government for protecting the State against foreign aggression are considered necessary, then I hold that key industries and mineral resources of the country should have been taken over from the hands of private enterprise, and these should also be exempt from justiciability or property compensation which we have dealt with elsewhere.

Another thing which I would like to mention and I think I will be voicing the views of most of my colleagues in this, is on the subject of salt. Salt has a big history in this country like the Boston tea of the Americans. Even though, I understand that the intention of the Government is not to levy any duty on salt, I feel that it should have been a gift of free India to the people of this country and Constitution should have specifically provided that salt manufactured in India would be free of duty. That also finds a place in our Karachi Resolution on Fundamental Rights.

In the Preamble, Sir, I find the absence of the word which was dear to us and therefore should have found a place there, and that word is "*Purna Swaraj*". I would have wished that the Drafting Committee had said that "We, the People of India, having attained *Purna Swaraj*, now constitute ourselves into a Democratic Republic". That, I think, would have been a happy thing.

There is another point regarding the services. Many friends have dealt with that subject. I personally think that even from the point of maintaining a healthy spirit of permanency in services, I do not think they should have been statutorily safeguarded thereby bringing in another difference between themselves and the people. The services are usually guided in respect of the manner in which a man should be engaged and the manner in which a man should be dismissed by Service Manuals providing these rules and if that is good enough for the rest of the services of the country, it should be good enough for the higher services of this land.

With your permission I would add another point. We have in this Constitution some references to women. I would beg my colleagues in this House particularly Rohini Babu not to deal with the subject with any levity or any lightness of spirit because we have to realize that women also as the rest of India are standing upon a new threshold of life. As between the purdah-system and the new life which awaits the development of her personality, she is finding a new place in her home and her country and it

is difficult enough. The part she has played in the building up of her home where she has been described as *Sahadharmini* has to be extended and she has to receive that recognition in the national sphere also. She is also man's equal partner and help-mate and in the nation-building activities of the country she has much to do. That position still is to come into being, and therefore I would request my honourable friend Mr. Rohini Kumar Chaudhuri and others who are present here to look upon this problem with the gravest possible thoughts and to give it their best help and assistance. I hope that as in the freedom of the country the women of India did not fail this land so in the preservation of this freedom she shall not fail.

Sir, with these words I would conclude with the words employed on the 14th of August by Pandit Jawaharlal Nehru when moving here a resolution, he said that it may not be given to all of us to fulfil the ambition of the greatest man of our age which was to wipe every tear from every eye but till the poverty of the masses has not been relieved and suffering remains, we pledge ourselves to the service of this country. I hope that in the short span which is allotted to us, you and I as colleagues and comrades will work hand in hand for the greatness of our country.



## VIII. RENUKA RAY

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### Equality of Status and Justice for Women<sup>56</sup>

**Shrimati Renuka Ray** (West Bengal: General): Mr. President, Sir, I rise to support Clause 19 and in particular Section (2) of this Clause which provides for territorial representation without reservation of seats. We are particularly opposed to the reservation of seats for women. Ever since the start of the Womens' Movement in this country, women have been fundamentally opposed to special privileges and reservations (*hear, hear*). Through the centuries of our decadence, subjection and degradation, the position of women too has gone down until she has gradually lost all her rights both in law and in society. Nonetheless, with the first stirrings of consciousness amongst women, there never arose any narrow suffragist movement that has been so common in so many so-called enlightened nations. Women in this country have striven for their rights, for equality of status, for justice and fairplay and most of all to be able to take their part in responsible work in the service of their country. The social backwardness of women has been sought to be exploited in the same manner as backwardness of so many sections in this country by those who wanted to deny the country its freedom.

Before the 1935 Act came in, the representatives of India's women made it very clear that they were against the reservation of seats or any special privileges for women. They made this clear through the All India Women's Conference. Our representatives, the three women who gave evidence before the Joint Parliamentary Committee, made it clear in unequivocal terms – (I may say that Rajkumari Amrit Kaur was one of the three women) – that we did not want reservation, but in spite of our protests, and in direct contravention to our desires, reservation of seats was brought into the 1935 Act. This Act has been so great a factor in bringing dissensions in our fold and has at last divided the country. But where the heart is strong, where there is sound judgment, no machinations can divide and the women did not allow themselves to be caught in the trap. It would be wrong to say that all the credit for our attitude goes to women. From the very start of our national awakening in this country, enlightened men have encouraged women to come forward as equal partners

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<sup>56</sup>Consideration of Report on the Principles of a Model Provincial Constitution, C.A.D., Vol. IV, L.S.S., 18 July 1947, pp. 668-669.

in the struggle for freedom and to do service for national regeneration in the different walks of life. When Mahatma Gandhi gave his call so specifically to the women of this country to take part in the national movement, all the social barriers of centuries broke down. There are no words to convey the gratitude of the women of this country to this great man – who has today brought the country to the very threshold of freedom (*hear, hear*). So, it is not only the inherent qualities of women but more particularly I should say the qualities of our men that is responsible for the fact that in our country, there has never been any strife between men and women.

When the Hindu Law Reform Bills were put in the Central Assembly, women were naturally anxious that these Bills which conceded certain rights to them should be adopted, but we found an opposition which was not so great in numerical strength but which was very formidable because of the fact that it was from a reactionary group who were the erstwhile supporters of the then Government and who were also betraying the country at every turn. The alien Government could not afford to displease them, and unless we too were willing to barter away our souls and our birthright, we could not fight that opposition.

Sir, what we have upheld so long has come to pass today. We always held that when the men who have fought and struggled for their country's freedom came to power, the rights and liberties of women too would be guaranteed. We already see the evidence of this today. No reservation of seats was required to induce the men who are today in power to select a woman as Ambassador, the second in the history of any nation. Vijayalakshmi Pandit has not been selected because she is a woman nor was sex made a bar to the appointment. It is her proven worth that has been responsible for her appointment to the high office of ambassador to a land which is admittedly one of the greatest forces in the world today. This has vindicated our position and women are indeed proud of this. I am confident that it will not be only women of exceptional ability who in future will be called upon to occupy positions of responsibility, but all women who are equally capable, equally able as men will be considered irrespective of sex.

In the legislatures of India, we have some women, but there are few women who have come from general constituencies. I think that the psychological factor comes into play when there is reservation of seats for women. When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances in the future to come forward and work in the free India, if the consideration is of ability alone.

With these words, Sir, I should like to support this Clause which has done away once and for all with reservation of seats for women, which we consider to be an impediment to our growth and an insult to our very intelligence and capacity.

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### Question of Religious Minorities and Majorities in a Secular State<sup>57</sup>

**Shrimati Renuka Ray** (West Bengal: General): Sir, I rise to oppose this last amendment. The report of the Advisory Committee shows very clearly that its authors have done their utmost to satisfy all elements in the country. In fact, Sir, if the report has erred it has erred in the direction of over generosity to the so-called minorities. In order to allay suspicion and distrust and to come to an agreed solution it has given every consideration to those who are swayed by communal and religious considerations even to the sacrifice of national interests. After all Sir, it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State. We have agreed to the reservation of seats just for the time being for the next ten years to allow those who cannot think of themselves in terms of "Indians" to adjust themselves over this period. I am surprised that the Mover of this amendment should have persisted today in bringing it forward. After the stirring appeal that was made by Sardar Patel and the very cogent and comprehensive arguments put forward by Pandit Pant to show that separate electorates are not only discordant and jarring to national interests but against the interests of the very communities for which they are intended, I thought he would not have pressed this amendment.

It is a back door method of bringing in separate electorates, which the House did not accept yesterday. Sir, we have stood aside helplessly while artificially this problem of religious differences — an echo of medieval times, has been fostered and nurtured and enhanced by the method of political devices such as separate electorates in order to serve the interests of our alien rulers. Today we see as a result our country divided and provinces like my own dismembered. We see that many who have made sacrifices, in the struggle for the freedom of India cannot be citizens of India today. We have learnt indeed a bitter lesson. We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue. Religion is a personal matter. Religious differences might have been exploited as a political expedient by the British but there is no room for that in the India of today. Sir, the problem, that faces us is not a problem of minorities or of majorities on a religious basis. The problem that faces us is the problem of the vast majority in the country irrespective of religion, the majority who today are surrounded by ignorance and ill-health, hunger and want. It is they who are the backward sections

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<sup>57</sup> Discussion on the Report of Minority Rights, C.A.D., Vol. V, L.S.S., 28 August 1947, pp. 268-269.

of the community and who are the majority at the same time. It is their problem that we have to take up. If we want to make the Objectives Resolution that this House has passed and the Fundamental Rights that have been laid down, a living reality, it is this problem that we have got to tackle. We cannot allow any subtle devices by the back door such as restricted separate electorates to sidetrack us now from the main issue. We cannot expect those who are backward to function and participate as citizens with equal rights unless we take steps to make them conscious of their rights. By all means let us do all that we can to help their development through every means in our power, and make such provision in the Constitution. But a separatist tendency on the basis of religion is something that I do not think we can tolerate any longer. We have never stood nor do we stand today for Hindu domination; we do not want that Hindus as such as a religious community shall override any other interests. But we do want that India's interests shall be paramount, that the interests of no special community shall stand in the way, whether it is a majority or a minority religious community. Sir, I hope that this House will throw out this amendment and that we shall be able to go ahead until we are able to find a solution for the real problems that confront us, so that India can take her proper place in the comity of nations; so that in accordance with the cultural heritage which is ours, enriched by the variety of the cultures, that have found a home in this country, we will be enabled to play an effective part in the harmonious development of the world as a whole.

### **Against Religious Instructions in Public Funded Schools<sup>58</sup>**

**Shrimati Renuka Ray** (West Bengal: General): Mr. President, Sir, I move my amendment leaving out the first part, namely—

That for Clause 16, the following be substituted:-

“No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction.”

Sir, I feel that the framers of the Report did not intend to imply what this Clause does imply, namely, that instruction given in schools maintained by the State of out of public funds may be of a denominational character. Surely denominational schools cannot be run by a democratic secular State. Such schools may be recognised or even aided, but as the State, we envisage under the new Constitution, will be secular having no State religion as such, it cannot set up denominational religious institutions as State schools.

<sup>58</sup>Discussion on Clause 16 of Supplementary Report on Fundamental Rights, C.A.D., Vol. V, L.S.S., 30 August 1947, pp. 350-351.

I do not want to make a long speech; I merely want to point out that if my amendment is substituted for Clause 16, then this interpretation will not be possible and what this Clause is intended to convey, will be brought out better. I hope the House will realise the necessity of making this substitution.

Sir, even before we have freedom, the Central Advisory Board of Education decided that the education that was to be given by the State in this country should not be of a denominational character and that religious education of a denomination character was the responsibility of the community and the home to which the child belongs and not of the State. I am sure that now that we have to fashion our own destinies and we are in a position to usher in that free and democratic State for which we have striven and for which so many have sacrificed and died, it is open to us to say that we do not want to be inconsistent. We do not want to bring in an educational system whereby the education given by the State will be in direct contravention to the ideals and the interests of the State itself. I do not say that denominational religious education should not be allowed. But education given by the State should have the teaching of moral and spiritual values; it cannot by the very nature of the State be of a denominational religious character. I hope that Sardar Patel will accept this amendment, because it is not in contravention to the desire of the Committee. It merely tries to clarify the issue. The Clause as it now stands may be misunderstood to mean that we are submitting to the State having denominational educational institutions as a part of its educational programme of policy.

### A Critique of the Draft Constitution<sup>59</sup>

**Shrimati Renuka Ray** (West Bengal: General): Sir, the main features of the Draft Constitution embody the principles of a democratic federation and as such should win the approbation of all. At the same time there are certain matters which I feel are not quite explicit or in which changes are required, if this constitution is to conform to those ideals which actuated India during its many years of struggle and which are embodied in the Objectives Resolution to which our Prime Minister referred yesterday. Sir, I agree with my Honourable friend Dr. Ambedkar that it is the spirit in which the Constitution is worked that really counts. I feel that whatever the paper Constitution may be, it is the spirit in which we are able to work it, that will make all the difference. Again, whatever Constitution we may draw up today, it will not be possible for us to foretell how it will fit in with our requirements in its actual working and with the inherent genius of our

<sup>59</sup>Debate on Motion regarding Draft Constitution, C.A.D., Vol. VII, L.S.S., 9 November 1948, pp. 356-358.

race. It is, therefore, quite essential, as the Prime Minister said yesterday, that the Constitution at present should be flexible. I think amendments of the Constitution should be by simple majority for the next ten years so that there may be opportunities for adaptations and modifications in the light of experience.

Turning to the citizenship Clause, I think there should be a categorical statement in it about a single uniform citizenship with equal rights and privileges. As rights involve responsibilities, so it is necessary that the obligations of citizenship should also be enumerated in this Clause.

With regard to Fundamental Rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country and in view of some of the opinions expressed by the public – and the last speaker's chivalry touched us deeply – I think it is necessary to have an explicit provision that social laws of marriage and inheritance of the different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is, of course, true that the right of equality includes this but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.

I will not repeat what my honourable friend Shri Ananthasayanam Ayyangar said but I do feel that in regard to the economic rights of the common man there is a lacuna. Although I agree that the provision "that no person shall be deprived of his property save by the authority of the law" is alright, I do not, at the same time, see why under justiciable rights one should have the second part of this Clause which goes into details about compensations when property is taken by the State for public purposes in accordance with law. Surely if there is any need for putting this into the Constitution it should be under directives and not under rights which are justiciable and enforceable in courts of law. It is not right that we should commit the future to the economic structure of the present. Turning to education, which I consider to be one of the most fundamental of rights, I feel there is a great inadequacy. I do not want to repeat what other speakers have said, but I would appeal to the House to include a proviso whereby a definite proportion of the budget is allotted for this purpose. This is nothing very new; it is already there in the Constitution of China which says:

"Educational appropriations shall set apart not less than 15 per cent of the total amount of the budget of the Central Government and not less than 30 per cent of the total amount of the provincial, district and municipal budgets respectively."

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If we are to progress and prosper I suggest that in the matter of the two nation-building services of education and public health there should be some provision in the Constitution of the type that is there in the Chinese Constitution.

With regard to the reservation of seats for minorities we have not, of course, in a secular State provided for separate electorates, but I do not see why we should have reservation of seats for minorities. It is psychologically wrong to lay down, as it has been laid down, that after ten years the right shall lapse unless extended by amendment. I am sure that if this privilege is conceded now there will be a clamour for its extension. It is not fair to these minorities; it is not self-respecting for them. If the House wants to ensure representation for minorities I would suggest multiple constituencies with cumulative voting. Some speakers have suggested proportional representation by single transferable vote. I think that is a difficult procedure particularly for India and I would not recommend it. But I think that multiple constituencies with cumulative voting has a great deal to recommend it. In the first place, it will give much better representation not only to these minorities but to others; and it will also be a method of ensuring representation to the minorities without creating a separatist tendency. The last speaker Shri Rohini Chaudhari the erstwhile champion and defender of women who is against removing their social disabilities spoke about special electorates for women. All along the women of India have been against reservation of seats or special electorates. Before the 1935 Act came in we were against it and put forward our views in no uncertain terms, but it was forced upon us; and today, in spite of the chivalry of the previous speaker, Indian women will not tolerate any such reservations in the Constitution. I will not repeat what others have said about village panchayats. I feel that freed from the shackles of ignorance and superstition, the panchayat of the Gandhian village will certainly be the backbone of the structure of this country's Constitution. I do not think there is anything in the Constitution that can bar it.

Coming to the allocation of powers between the units and the Centre, I think we must approach this subject dispassionately. There is a great deal to be said for giving as much provincial autonomy as possible. At the same time, where a country has a tremendous leeway to make up, particularly in the nation-building services, the unifying force must be strong and the Centre should be given some power of a supervisory and co-ordinating character, in regard to both education and health. I do not think the provinces should be crippled by taking away from them certain financial securities. They should at least be given 60 percent of the income-tax according to the recommendations of the expert committee, 35 percent on the basis of collection, 20 percent on the basis of population and























































