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CLAUSE 11.—RIGHTS OF FREEDOM

***The Hon'ble Sardar Vallabbhai Patel :** Clause 11 is as regards forced labour and it reads :

"11. (*a*) Traffic in human beings, and

(*b*) Forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence."

Explanation—

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

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† **Dr. B. R. Ambedkar** (Bengal : General) : The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, none-the-less, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, *i.e.,* the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because '*begar*' is also something which is imposed by the State. So far as I know, in Bombay, '*begar*' is demanded by the State for certain public purpose, and if the State is prohibited from having 'begar' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory

*CAD, Vol. III, 1st May 1947, p. 478

†*Ibid.,* Vol. III, 1st May 1947, p. 480.

service either for military purposes or for social purposes for the State. My suggestion would be that at this stage we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered when the Provincial Constitution and the Federal Constitution are drafted in their final form.

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***Dr. B. R. Ambedkar :** May I make a suggestion ? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small Committee to have it further examined, it will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President : I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R. K. Sidhwa (C.P. and Berar : General) **:** The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the same committee to which the other clause has been remitted.

*CAD, Vol. III. 1st May 1947, pp. 483-84.

An Hon'ble Member : The whole clause 11.

Mr. President : Yes, the whole clause 11.

The clause was remitted.

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CLAUSE 17

***The Hon'ble Sardar Vallabhbhai Patel :** Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi : Sir, I beg to move the following amendment:

"That for clause 17 substitute the following clause:
Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law' "

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†Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans ? Are they not going to have any kind of religion ? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them ? It seems to me that, if the clause as

*CAD, Vol. III, 1st May 1947, p. 488.

†*Ibid.,* Vol. III, 1st May 1947, pp. 501-2

worded by Mr. Munshi was adopted, *viz.,* that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.,* children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately ; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children ? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law ? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage ? What is to be the effect of that marriage ? Is that marriage legal or not legal ?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

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[*The clause was referred back to the Advisory Committee.*—Ed.]

Clause 18—Cultural and Educational Rights

***The Hon'ble Sardar Vallabhbhai Patel :** I move clause 18 now.

"(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

*CAD, Vol. III, 1st May 1947, p. 503.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces : General) **:** Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President : Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

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***Mr. K. M. Munshi :** I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

†Dr. B. R. Ambedkar : Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi. They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference, I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgement and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter

*CAD, Vol. III. 1st May 1947, p. 504.

†*Ibid.,* pp. 507-8.