

Thursday, 4th August, 1949

Volume IX

30-7-1949
to
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 4th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—*contd.*

Articles 188, 277-A and 278—*contd.*

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President. Sir. I was dealing with clause (2) of the proposed-article 278. There the wording is “Any such Proclamation may be revoked or *varied* by a subsequent Proclamation.” The words “or varied” were proposed to be inserted in a similar context by an amendment by Mr. Kamath. But that was rejected. In the new article 275, clause 2(a), the wording is : “may be revoked by a subsequent Proclamation.” Mr. Kamath by his amendment No. 111 of List No. 1 of this week, wanted to amend it by inserting the words “may be revoked *or varied* by subsequent Proclamation.” The same words have been officially accepted in the present, article namely, “may be revoked *or varied* by a subsequent Proclamation.” I think this want of uniformity is due to the haste and rapidity with which the Drafting Committee has to keep pace with varying directions.

Then coming to proposed article 278-A sub-clause (a) and (b) of clause (1) are new. Clause (a) is new and (b) is consequential. The new point which has been introduced is also revolutionary. Instead of allowing the Provincial Legislatures to have their say on the emergency legislation and thereby giving the Provincial Assemblies an opportunity to assess the guilt or innocence of the Ministers or other person or to give a verdict, the responsibility is thrown on the Parliament. That would again, as I submitted yesterday, go to make the Central Government and the Parliament unpopular in the State concerned. It may happen that Provincial Ministers and others are guilty of mismanagement and misgovernment; but if we, do not allow the Provincial Assemblies to sit in judgment over them, the result would be that guilty or innocent persons, lawbreakers and law-abiding persons, good or bad people in the State should all be combined. The result would be that those for whose misdeeds the Emergency Powers would be necessary, would be made so many heroes; they would be lionised, and the object of teaching them a lesson would be frustrated. The Centre would be unpopular on the ground that it is poking its nose unnecessarily and mischievously into their domestic affairs.

Then, Sir, in sub-clause (c) of clause (1) of this article 278-A, the President is expected to authorize and sanction the Budget as the head of the Parliament. This would be an encroachment on the domestic budget of the Provinces and the States. That would be regarded with a great deal of disfavour. It would have been better to allow the Governor or the Ruler to function and allow their own budget to be managed in their own way. Subventions may be granted but that expenditure should not be directly managed by the President.

Coming to clause (d) there is an exception in favour of Ordinances under article 102 to the effect that “the President may issue Ordinances except when the Houses of Parliament are in session”. The sub-clause is misplaced in the

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present article. There is an appropriate place where Ordinances are dealt with. Sub-clause (d) should find a place among the group of articles dealing with Ordinances and not here. This is again the result of hasty drafting.

These are some of the difficulties that have been created. It is not here necessary to deal with them in detail. The most important consequence of this encroachment on the States sphere would be that we would be helping the communist techniques. Their technique is that by creating trouble in a Province or a State, they would partially paralyse the administration and thereby force the Emergency Powers. Then, they will try to make those drastic powers unpopular. What is more, they will make the guilty Ministers and guilty officers heroes. The legislature of the State would, as I have submitted, be deprived of the right of discussion. If the President takes upon himself the responsibility of emergency powers, then his action, I suppose, cannot be discussed in the States legislatures. The only way of ventilating Provincial and States grievances is to allow the Provinces and the States to find out the guilty persons and hold them up to ridicule and contempt and that would be entirely lost. This would have the effect of bringing all sorts of people, good and bad, law-breaking and law-abiding persons into one congregation. The Centre will be unpopular and the guilty States would be regarded as so many martyrs and the Centre would be flouted and would be forced to use more and more Emergency Powers and would be caught in a vicious circle. Then, the States will gradually get dissatisfied and they will show centrifugal tendencies and this will be reflected in the general elections to the House of the People at the Centre. The result would be that very soon these very drastic powers calculated to strengthen the hands of the Centre will be rather a source of weakness in no distant time. I have a fear which is not based without sufficient consideration and thought that we are gradually, but perhaps unconsciously, drifting towards dictatorship. It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet, it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts. The fear of the Communists is at the back of these emergency powers being centralised. This was the very reason which led Hitler to establish his dictatorship. In fact, his object was to get rid of the Communists in Germany. Having successfully suppressed the legislature and successfully suppressed expression of public opinion, Hitler produced a big fighting machine and then he felt the desire to have territorial expansion which led to the last war which led to his downfall. Mussolini also built a dictatorship by similar process, and both of them had to share the same fate. I only hope that we are not drifting towards that end. I have, however, a suspicion that the very steps which the various modern dictators have taken, perhaps unconsciously taken, with the *bona fide* belief of doing good to the country, we are unconsciously following the same road to lead to a dictatorship. There is a feeling in the House, especially among the younger sections that dictatorship of some kind is a great necessity in India. I submit that though that is a very natural feeling, dictatorships have only one end and that is failure. In fact, they get into a vicious circle; they create opposition by dictatorship; that opposition is checked by further acts of dictatorship; the opposition secretly grows and ultimately is enough to set aside the very power which created it. On the other hand, the best thing is to allow the natural democratic forces to work. As everyone knows, even here, newspapers are not free and there is a feeling amongst the newspapers that they cannot freely publish facts if they go against the Government or in any way put the Government in an unfavourable light. I think these are bad signs. This series of articles will accentuate an unhealthy opposition without any doubt. I hope that every law-

abiding, citizen, every man who has faith in the Constitution and in democratic method should rise and oppose this tendency. In fact, this is a Symptom of a deep-seated disease, namely, to acquire power and to concentrate power in the hands of the Centre. As I have submitted, this will react on the very persons who want dictatorship. The best thing is to allow free scope for public opinion. This result has unfortunately been hastened by the fact that throughout the country, in the States and in the Provinces and in the Centre, there is no regular, organised opposition. There is irregular, disorganised, unorganised. opposition in the country which in the absence of legitimate vent, expresses itself, in general dissatisfaction and law-breaking tendency on a large scale. In fact, the habitual law-breakers and honest citizens are brought together on the same platform on account of repressive measures. I hope that my warnings would prove false; nobody would be more glad than myself to find in the long run that I am wrong. But, I have a fear that we are marching towards a dictatorship and we might go the same way as the two latest dictatorships went.

Mr. President : Pandit Thakur Das Bhargava.

I hope Members will have an eye on the clock. We have been on this article for four hours and twenty minutes now.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the provisions of the Constitution relating to emergency powers are really very important and my apology for coming before this House and taking its time is that I feel that the Drafting Committee has to be congratulated in tackling the question in a very able and a very adroit manner. Sir, it is very easy to criticise any proposal which comes from the Drafting Committee. If the Drafting Committee had kept article 188 intact, I have no doubt that the very Members who have now criticised would have come forward in no less strong language to criticise the keeping intact of 188 also. What we have to see is whether on a balance of advantages and disadvantages the present position is better or not. From this point of view my humble submission is that the retention of 188 would have been a great mistake. After all this taking away of 188 and substitution thereof by articles 278 and 277-A predicate that the Governor will have no emergency powers, and instead of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.

Secondly, I am very glad that article 277-A is being enacted. This was a great lacuna in the whole Constitution. I cannot understand how the provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing by itself. Now we have already provided fundamental rights and we have provided the Powers of the Supreme Court. We know that the army and navy are all under the Centre. How can Provincial autonomy remain totally unrelated and the State can have absolute rights ? Supposing the Constitution fails, how can a State guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a province by itself be able to meet the situation when the use of army and other forces are required by the State ? It is, therefore, but proper that in regard to provincial autonomy also we must realise that the Centre has got a duty to discharge and a very great duty to discharge. My only complaint is that when we enact 277-A we only enacted a pious wish. I wanted and I put in an amendment that to be more logical we should have also enacted a further provision that for discharge of the duties by 277-A, it was the duty of the Central Government to take such measures as they

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require to ensure the discharge of the proper functions. In a given situation when there was no breakdown of the Constitution but there was a danger of its breaking down, even then the Centre has a duty to discharge and the Centre should have been given powers to discharge it. It is not enough to say that it is the duty of the Centre to see that the Constitution is worked. Therefore, when there is a duty for the Centre there should be means enough to see that the Centre comes forward and does its duty under a given set of circumstances. Therefore, I wanted to see that the Centre was given powers even when there was no breakdown of the Constitution.

Now I must admit that in regard to 278 and 277-A some criticism has been made. The first criticism that I wish to dispose is about the word 'otherwise'. There was a complaint to start with when the Governors' post was declared to be non-elected and he must be appointed by the Centre. Then there was a complaint that this was a retrograde measure. Now those who oppose this article say that the report of the Governor is the sole thing which ought to be considered. If the Governor is not independent and is only an agent of the Central Government, what is the use of his report. When you confess that the Governor is an individual person and he does not represent the people of the province, how can you rely on his report? The words 'on report or otherwise' do denote a state of things in which the Governor may not be doing his duties, or may give a wrong report. Suppose there is a conflict between the Governor and the Ministers, and the Ministers and the Houses pass a resolution to the effect that the Centre should intervene, and there is conspiracy and the whole State is seething with strife and this state is not reported by the Governor, what would happen? Under these circumstances it is fair that the words 'or otherwise' should be there. They provide for such contingencies. After all, the Centre or the President has to save the situation and see that, in case of failure of Constitution, conditions do not deteriorate into chaos. If that premise is correct, in whatever manner the President may come to know or the Centre may come to know, it is the duty of the Centre to interfere. Therefore these words 'or otherwise' do not mean, as one of my friends suggested, that report of the C.I.D. would be enough. It is a more serious thing. How could the President or the whole Cabinet act in such an irresponsible and rash manner? I understand the fear of those who think that these words now given in article 278 are too wide. They are too wide. There is no doubt that an irresponsible Cabinet or a President can certainly act rashly. Now what is the failure of machinery is the question of questions. Supposing the constitutional machinery does not work well—it works 2 per cent. well and 98 per cent. wrong or it works 98 per cent. well and 2 percent. wrong the question of questions is if there is a deadlock in a very small particular, can it be said that the Constitution is not carried on as it ought to be? But I do not think that any person will contend that on an occasion like this the Centre will take up the responsibility which is a responsibility very hard to discharge. After all, no Central Government would like that there should be conflict between the Centre and the State. Why should we assume that the Cabinet will act rashly or wrongly? I do not know of any provision in which some defect cannot be found. Only when this Constitution is not honestly worked in the right spirit, it is capable of creating mischief. Otherwise there is no provision in any constitution which cannot be abused. Why should we assume that this will be abused? After all, what is the difference? Even if action is taken by the Centre how would the Centre proceed. Does it mean that the whole thing will become topsy turvy? It is not likely to work that way. Even if the Centre takes into its hands the administration of the province, the State provincial machinery will, not go to dogs. The Centre will not send thousands of persons to administer. the State and function differently from before. We can imagine what will take place in such a situation.

In India there are many provinces which have been working democracy for a very long time. There are many States in which these democratic institutions are being planted to day. For centuries they have been under a feudal system. Therefore, my submission is that unless you make provision like this, the Centre will not be doing its duty. It is the duty of the Centre to see that the Constitution is worked rightly and well.

I know the criticism has been expressed that articles 277-A and 278 take away the powers of the State and they will therefore reduce them to subservience. Some critics have in fact, said that provincial autonomy will be a mere farce, and that the proper action which under those circumstances ought to have been undertaken by the Provincial Governor would not be taken by the Central Government. But this is not the case. These critics seem to have failed to see that no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted. In my humble opinion as soon as such a situation arises, the first duty that the Governor will perform will be to dissolve the House. Unless and until every attempt has been made, and unless he finds that even the ordinary liberties cannot be enjoyed by the people, he will not come to the conclusion that the Constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law, to arrange in such a way that the Constitution is worked. When the entire thing has failed, then there is nothing but confusion and chaos. At that time what is the choice? Mr. Naziruddin Ahmad said that in that case, the Centre takes up the whole administration in its own hands, and so there will be confusion. But I say that it is just to avoid such confusion and chaos that the Centre takes on the administration. Are we to continue that confusion and chaos which have resulted from the failure of the constitutional machinery? of the two, I am sure every one will admit the better thing is for the Centre to interfere and take over the administration.

Dr. P. S. Deshmukh (C.P. & Berar: General) : On a point of information, Sir, may I ask the honourable Member to tell us where is the provision in the sections that we have agreed to for the dissolution of the House by the Governor, in an emergency.

Pandit Thakur Das Bhargava : May I put a counter question to my honourable Friend and ask him where is the provision to say that the Governor shall not act, under article 153? I also understand that the Constitution requires that the Governor shall act in this respect, in his discretion, and so as soon as he finds that the situation is such that the dissolution of the House is necessary, then it is his duty to act in such a manner. The Central Government also will look into the matter, and will not take up the administration of the State lightly, because it is a very hard task. Why do you think that the Governor will not act? That is the question which my Friend has to answer before he puts the question to me.

Now, let us anticipate the situation. If there is failure of the constitutional machinery of the State, only for two months the Cabinet is entitled to take the entire administration in its own hands. And for those two months, how will the Centre be benefited? Parliament will decide whether the action of the Cabinet was correct or not, and if Parliament agrees, then it means that the representatives of the particular State are there, the representatives of all the other States also are there, and if they approve of the action of the Cabinet, I do not see what possible objection can be taken. Moreover, there are all these safeguards. There is the question of two months, then there is question of the Cabinet deciding the question, and then the provision of six months period. All these are, no doubt, very good safeguards, and I do not see how the critics are justified in calling this article "dishonest, criminal" and use all the other epithets in their vocabulary. My humble submission is that, in the growing

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conditions of India when we see so many fissiparous tendencies working in the country it was very right for the Drafting Committee to have brought forward a provision like this. It is only a cementing measure. It gives responsibility to the 'Centre to see that the provinces proceed with their administration in a business-like and constitutional manner.

It has been argued that article 275 is there and that is quite sufficient and that there is no need for enacting a measure like article 278. And it is further said that in article 278, no question of peace and tranquillity and internal commotion arises. May I point out that the situation is one in which the entire machinery has failed, and ordinary people do not enjoy the common liberties? Internal disturbance to peace and tranquillity are all covered by this. There may not be internal disturbance, but there may be imminent danger to peace: and tranquillity being broken by the people at large. In those circumstances, I do not think the State is justified in saying that there is no insurrection, and no internal disturbance. It is much better to have a preventive measure than a cure after the insurrection takes place. From all these points, I think, the enactment of article 277-A and article 278 are perfectly justified. I only wish that the logical conclusion of 277-A should have been enacted and the Centre should have been given more power to see that before the constitutional machinery fails the Centre discharges its duty in seeing that it does not fail.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the article 278 as moved by Dr. Ambedkar. But there are certain provisions in this article to which I would like to raise some objections. I am not in favour of the provision that the President can exercise legislative powers on behalf of the State only if Parliament so agrees. I am not in favour of this, because of two reasons. Firstly, it will mean delay. If the President wants a particular legislation to be passed at once, under this provision, he will be handicapped, because it will take time for the measure to go through Parliament. But time is of the very essence of the situation. In an emergency the President must be in a position to act swiftly and rapidly. If his legislative power is handicapped in this fashion then there will be difficulty. Secondly, I am opposed to this because of another reason. Suppose Parliament refuses to give its sanction. Suppose Parliament refuses to pass a law which the President considers to be necessary to meet the exigencies of the hour. In that situation, what will happen ? There will be difficulty. Therefore, I am in favour of the President having all legislative powers. If there is a grave emergency, and if the machinery of law and order has broken down in any province, then the President should be vested with all legislative powers. He has already been vested with executive powers. I see no harm, no irreparable damage will-be done, no wrong done to the people of the country or to the Constitution, if for a shod time, for a limited period, the legislative powers as well are vested in the bands of, the President.

Sir, I am opposed to another provision in this article, that the powers and functions of the High Court will not be abrogated during a period of emergency. I would like to know why. Do you disturb your President ? Do you think he will go out of his way to indulge in acts of personal tyranny in order to feed fat his grudge against some political opponents ? In a period of emergency all the energies of the President, all the attention of Government and of the Council of Ministers would be diverted towards one goal, *i.e.*, how to maintain law and order and bring about peace in an afflicted part of the country. Sir, a few months ago there was a hot debate in the house on the question as to whether the words "due process of law" should be incorporated in this constitution. We felt that if these words were there, the hands of the executive would be fettered and so we dropped those words. The danger of a grave emergency arising in this country is not merely theoretical; it is very real. And

I should like to know whether it is possible for the President to function and meet a crisis without abrogating, if he feel necessary to do so, some of the fundamental rights of the citizen. After all, it is for a temporary period for which we are asking these powers for the President; it is not a permanent provision which would remain in operation for all time. Therefore I feel that the powers of the High Court should be abrogated, if the President so thinks. I am not saying that as soon as article 278 comes into operation all powers of the High Court should be abrogated at once. I only want that if the President feels that he cannot meet the emergency without abrogating some of the fundamental rights of the citizen he must be empowered to do so. And there are reasons behind it. I feel that if there is a conflict between the security of the State and the personal liberty of the individual I will choose the former and lay stress on the security of the State. For the first time in the chequered history of India we have got an independent State of our own; are we going to barter it away in the name of some new-fangled notions which have been discredited in their own homelands ? The best thing of course is to have both security of the State and personal liberty of the individual. But the ideal thing is not always possible; and when there is a conflict between these two, my friends will have to make a choice; I would choose the security of the State.

There is an implication in article 278 which is something like saying that you must overcome evil by good and meet lawlessness with law. The President has no powers to meet undemocratic forces in the country except in a democratic manner. It is like saying that the forces of evil must be overcome by the forces of non-violence and good Practical statesmen and law-makers will not accept this proposition easily.

I am also not in favour of the provision that the period of emergency shall not last beyond a period of three years. This is like King Canute telling the tides not to touch his royal feet. How can you lay down in advance that the period of emergency shall not extend beyond three years? The forces of disorder and lawlessness, are increasing, and spreading fast in this country; and we do not want this article to be used as a cloak for other activities. I ask my honourable Friends to calmly consider the dangers and the threat to which our attention has been drawn by Mr. Kamath,—the danger of dictatorship arising in this country. I will say that the question of success of democracy in this country does not depend on the sort of Constitution that we make here; it is vitally related to our economic set-up and our social institutions. A mere democratic Constitution will not save us unless we reform our social and economic institutions.

Sir, we have been told that the Weimar Constitution came, to an end because of some provision in the constitution. I do not accept this. It is a matter of surprise that a person of the intellectual eminence of Mr. Kamath should have advanced such a shallow argument. It was not because of any article that Hitlerism came into power. It would have come in any case, whether that article was there or not. Hitlerism came because of the defeat of Germany in the first war. I am doubtful whether democracy can succeed in Germany. The Prussian traditions of war and conquest are so much imbedded in the German soil that it is not possible for a democratic constitution to succeed in Germany.

Sir, a charge has been brought against me that I lack a sense of constitutional propriety. As a humble student of political science I had the privilege of reading almost all the constitutions of the world under some of the ablest Professors of this land; but I have come to the conclusion that there are no fundamental laws in politics, no eternal truths which are applicable to all people for all time. A provision that is found suitable for Canada may be thoroughly disastrous for us because the course of evolution is not similar in any two countries. What is happening in Canada or has happened there may not

[Shri Brajeshwar Prasad]

happen in our country. Therefore I see no sense in saying that merely for the sake of constitutional propriety we must create a number of institutions, one opposed to the other.

I will say one more thing. It is not a pleasure for me to say things which do not find favour with the gods. But I have a duty to perform. I love this country and am not prepared to sacrifice its interests at the altar of any ideology. I am prepared to accept communism or socialism, or any other kind of ism, provided I am convinced that it would strengthen the foundations of our State. If I do not feel like that I will not support it merely because it is fashionable to applaud democracy. I am a democrat to the core of my being, but I feel that unrestricted and unregulated democracy at this moment will bring about disaster. I have nothing to say against any one; Members are free to express their opinions; I run a personal risk in talking in the way I have done.

Shri Algu Rai Shastri (United Provinces : General) : * [Mr. President, I beg to submit that the articles under discussion at present, I mean article 188 embodied in the fourth part of the Draft Constitutions and article 275 embodied in the 11th part, should be retained as they are in the Draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration I may make mention of the difficult situation existing in Bengal and Madras today. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this article, by Proclamation, take the constitutional machinery of the province in their own hands.

Article 275 relates to the emergency power vested in the President of Indian Union. The situations in which a Governor and the President may exercise the emergency powers vested in them may be quite different. There may arise a situation like the one that arose during the last Great War when, as a result of the German invasion of Poland, the whole world was plunged into war. When the last world war broke out, the then Government of India found it necessary to proclaim an emergency. Such situation or emergency is caused by a problem that concerns the whole world. On account of such a situation the whole country may be threatened with disaster. In the circumstances the President of the Indian Union has to exercise his own discretion and declare an emergency. But the State Governors may be faced with a situation that concerns only their State; and under such circumstances, they will have to exercise their own discretion and issue a Proclamation of Emergency. We, therefore, must vest them with emergency powers. The powers that were vested in the Central Government under the provisions of Section 93 of the Government of India Act, 1935 are now being tried to be retained under different articles of the Draft Constitution. The British have, no doubt, left the country, but their mentality of distrust is still lingering here. Whatever they gave us with one hand, they tried to snatch away with the other. The British rulers used to run the Government from Delhi. Forced by the growing agitation and compelled by circumstances, they gave some power to the people with the sole object of appeasing them. Even after granting Provincial autonomy they were not sure that the provinces would cooperate with them sincerely if a situation arose which required their co-operation, and it was only out of this distrust that they wanted to make some provisions to enable them to take up the Government of the province in their own hands in times of emergency. They did not want sincerely to hand over the provincial Governments to us. In 1939 after the

* [] Translation of Hindustani Speech.

world war broke out, we protested against the emergency powers of the Governors and the Provincial Governments passed resolutions in their Legislatures against these powers being exercised by Governors. The fact is that we were not one with the Government that was then ruling over us against our wishes. It wanted our country and our people to participate in the war but people were against this; Mahatma Gandhi also advised the nation that it was immoral on our part to participate in the war. There were two trends then working in the country. The Central Government was forcing us to join the war while the different organisations that were fighting for freedom and had the independence of the country at heart were opposed to this, and they wanted to defeat the Government on that issue. They asked the Government to state the cause that warranted their participation in the war and for this purpose a meeting of the All India Congress Committee was also held. There ensued a grave struggle on account of this and the movement of 1942 was started. All this was the result of the second great war. It is, therefore, not proper for us to follow the Government of India Act, 1935, or take it as a Bible. But we find today that it is now actually being followed, as a Bible. There is a saying in Sanskrit

श्रुत्या एक वाक्यत्वात् अनर्थक्यम् तदर्थानम्।

“Shrutya Eka Vakyatwat Anarthakyam Ththarthanam”

It means, what is consistent with Shrutu should be taken as right. Our Drafting Committee is also practically working on this assumption that whatever is consistent with the Act of 1935 is right and thus they are going on retaining in the Draft Constitution the various provisions embodied in the Act of 1935. The alien Government that was functioning here under the Government of India Act, 1935, embodied, in the said Act Section 299 which lays down that no property shall be acquired without making due compensation for it. This provision was made only for safeguarding the English companies operating in India. They had apprehensions that in Free India they would be disposed of their properties. Today we are actually following in their footsteps in providing article 24 in the Draft Constitution. Section 93 has now been put before us in this form. We are happy with article 93 as contained in the Draft Constitution. Articles 188, 275, 276 and 278 of the Draft Constitution are exactly on the lines of Section 93 of the Government of India Act 1935. They are essential and imperative. Keeping in view the fact that the Provincial Governments may have to face internal disturbances Governors of the States are vested with emergency powers under article 188 and no doubt it is a proper provision. Freedom brings in its wake various problems and difficulties which have to be faced by a nation. Anti-social elements are very active in Bengal today. They want to uproot the Government of the Province. The same thing is happening in Madras. Hyderabad too has been the scene of these activities. All these disturbances that we are witnessing today are no doubt local in character but they may create a grave situation necessitating immediate intervention. Now the question arises as to who should intervene immediately. Naturally the man on the spot must be trusted as was observed by the late Lala Lajpat Rai. Distrust begets distrust and trust begets trust. We must trust the authority on the spot. We have provided for a Governor for each province. We are going to pay him a very high salary and provide him with all material comforts; we are going to give him a supreme status in the Constitutional structure of the States, but despite all this, if we do not vest in him the emergency powers, we are in reality making him only a nominal figurehead. In that case we should not call him a Governor; rather make a little change in his designation and put it as GOBAR NAR—a dummy. Bharat had installed the wooden sandal of Ram on the throne and ruled the kingdom on behalf of the sandal. He used to offer worship to it daily but our Governors whom we are going to instal in an exalted office will not be Governors in the real sense of the term; they are going to be only show-boys. What is the sense, after all, in having a nominal figure

[Shri Algu Rai Shastri]

head ? Why then pay him such a huge salary ? Well, it would be better not to appoint them at all. It is better if the huge amount to be incurred on account of their salary and other allowances is saved and utilised for the benefit of the poor people. You are going to appoint him as Governor and ruler of a province, but you are not prepared to vest in him the power of exercising his own discretion at a time when a grave situation has arisen. Under article 188 as contained in the Draft Constitution a Governor can, if he is satisfied that grave emergency has arisen, make a declaration to that effect. When he has made such a declaration, he has, as is laid down in the article, to forthwith communicate the Proclamation to the President of the Union. Now, it is for the President to study and consider over the situation. He may consult the Parliament and revoke the Proclamation if he so deems necessary or may extend it for a further period. Article 278 empowers him to take any of these courses which he deems proper.

Dr. Ambedkar thinks that the Drafting Committee is being charged with not being firm in its ideas. We have great respect for Dr. Ambedkar. We all praise the wisdom of the Drafting Committee. These articles have been drafted by the Drafting Committee. We have had no hand in preparing these articles. We beg to request him to retain articles 188 and 275 as contained in the Draft Constitution and submit that they are complete and would amply serve the purpose. Article 277-A is intended to point out to the Union Government their responsibility in respect of maintaining the governmental machinery in the States. Their responsibility in this respect is self-evident; it is implicit. Under article 188 the Governor of a State may declare that a grave emergency has arisen. After issuing such a declaration he is bound, under the article, to communicate the declaration to the Union Government. This information is given so that the necessary action consequential to the information may be taken. Steps may be taken to maintain regional tranquillity and order. After this, the duty of the Centre regarding regional order under article 278 read with article 188 is over. Articles 277-A and 278-A are redundant, are unnecessary. I would submit that if fresh amendments received daily are tabled after considerable consideration, the amendments tabled by Shri Kamath and Prof. Shibban Lal Saksena would become unnecessary, and we can pass this Draft easily and devote ourselves to other important business.

I would also like to mention another matter. The previous British regime had issued various Ordinances after 1939. An ordinary constable was authorised to detain anybody in prison for fifteen days. Later on the period could be extended to six months. So a constable was authorised to detain for fifteen days. We are not prepared to give this right to even the Governor. In this manner the mania of centralisation, *i.e.*, the notion, that everything should be done by the Centre itself and that the regional administration should not continue to be free, is creating distrust. In this way the creation of distrust will beget more distrust and this will grow in the posterity and in the future generation. Besides this, local initiative will be suppressed. The capacity to work on one's own initiative will be destroyed.

I would congratulate Dr. Ambedkar for his imagining a contingency when the whole of the Cabinet and the Governor of our border province of East Punjab may form a clique and possibly line up with Pakistan or possibly some other country. Assam may join Burma and in this way strange things may happen. A ruler must be suspicious, for it is written that a ruler should be suspicious even of his wife and son. On the basis of that principle, this Idea of strengthening, the Centre can arise and from this point of view the new amendments being moved now may have their significance. But we should also see the other side of the case. These Governors are also the strong pillars of the Centre. It is improper to distrust them. I would therefore say that though

I have not come forward to oppose strongly these amendments, for I do not think that I am wiser than Dr. Ambedkar and the Drafting Committee, yet I would humbly submit that Dr. Ambedkar and the Drafting Committee should seriously consider whether our original Draft cannot serve the purpose, so that you may withdraw your fresh amendments and the other Members may also do likewise. With these words I make the above submission.

Mr. President : I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honourable Members : The question be put, the question be put.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word "and" should be substituted by the word "or". I do not think that that is necessary, because the word "and" in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, "and" or "or", as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278, because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes these powers under sub-clause (a), that power of dissolving the legislature and holding a new election will be automatically transferred to the President which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in

[The Honourable Dr. B. R. Ambedkar]

this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary in view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in articles 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province. All that happens under article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask my honourable Friend to make one point clear? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honourable Dr. B. R. Ambedkar: No, no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such misgovernment in the province as to endanger the public peace ?

The Honourable Dr. B. R. Ambedkar: Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of "the provisions, of the Constitution" taken as a whole? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution'.

The Honorable Dr. B. R. Ambedkar : It would take me very long now to go into a detailed examination of the whole thing and, referring to each articles say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression “failure of machinery” I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath (C.P. & Berar : General) : What about the other amendments moved by Professor Saksena and myself ? Is not Dr. Ambedkar replying to them?

The Honourable Dr. B. R. Ambedkar : I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath: Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President : I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

The Honourable Dr. B. R. Ambedkar : In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening, in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President : I will now put the amendment to vote one after another.

The question is :

“That article 188 be deleted.”

The motion was adopted.

Article 188 was deleted from the Constitution.

Mr. President: Then I will take up article 277-A.

The question is :

“That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word ‘Union’ the words ‘Union Government’ be substituted.”

The amendment was negatived.

Mr. President : Now I will put amendment No. 221.

The question is :

“That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word ‘and’ where it occurs for the first time, the word ‘or’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in Amendment No. 121 of List I (Second Week) of Amendments to Amendments, for the words ‘internal disturbance’ the words ‘internal insurrection or chaos’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That after article 277 the following new article be inserted:—

‘277-A. It shall be the duty of the Union to protect every State against external, aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.’

Duty of the Union to protect States against external aggression and internal disturbance.

The motion was adopted.

Mr. President : The question is :

“That article 277-A stand part of the Constitution.”

The motion was adopted.

Article 277-A was added to the Constitution.

Mr. President : The question is:

“That in amendment No. 160 of List II. (Second Week), of Amendments to Amendments, in clause (1) of the proposed article 278, for the word ‘Ruler’ the words the ‘Rajpramukh’ be substituted.”

The amendment was negatived.

Mr. President: The question is:

“That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, the words ‘or otherwise’ be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 160 of List II (Second Week): of Amendments to Amendments, in clause (1) of the proposed article 278, after the words ‘is satisfied that the words ‘a grave emergency has arisen which threatens the peace and tranquillity of the State and that’ be added.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 160 of List II (Second Week) of Amendments to Amendments for the first proviso to clause (4) of the proposed article 278, the following be substituted:—

‘Provided that the President may if he so thinks fit order at any time, during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session.’”

The amendment was negatived.

Mr. President: The question is :

“That for article 278, the following articles be substituted :—

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation—

Provisions in case of failure of constitutional machinery in States.

- (a) assume to himself all or any of the functions of the Government of the State and all or any, of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

278-A. (1) Where by, a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by—

Exercise of legislative powers under proclamation issued under article 278.

- (a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;
- (b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India;
- (c) for the President to authorise when the House of the People is not in session expenditure, from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

[Mr. President]

- (d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.
- (2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

The amendment was adopted.

Mr. President : The question is:

"That the proposed article 278 stand part of the Constitution."

The motion was adopted.

Article 278 was added to the Constitution.

Mr. President : The question is:

"That proposed article 278-A stand part of the Constitution."

The motion was adopted.

Article 278-A was added to the Constitution.

Article 279

(Amendments Nos. 3026 and 3027 were not moved)

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, this article takes away the Fundamental Rights contained in article 13 in an emergency. If it is the desire that these rights should be abrogated, it should be done by Parliament by law during that period and it should not be left merely to the executive authority to do so. It is quite conceivable that a war may break out and may last for a fairly long time. The last war lasted for six years and I cannot conceive that for six years the Fundamental Rights granted under article 13 should remain suspended all over the country. It is a most extraordinary state of affairs and I do not know of any Constitution in the world where the fundamental rights would remain suspended for six years. I therefore move the following amendments :—

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words 'or to take any executive action' and the words 'or to take' occurring at the end be deleted."

The article will read as follows after that:—

"While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the Parliament to make any law which the Parliament would otherwise be competent to make."

My amendments come to this, that during an emergency the Parliament alone will have the power to suspend the Fundamental Rights given under article 13. Otherwise, if the rights become automatically suspended and the executive authority can do what it likes in this regard, it would be an extraordinary state of affairs. This is a matter of fundamental importance and I would like honourable Members to ponder over this question. The rights that we propose to give

under article 13—are they such rights. The results of which will threaten the security of the State in an emergency ? I do not agree. Article 13 itself: has taken care to see that in an emergency these rights should be exercised only in such a manner as will not endanger the security of the State. I would like honourable Members to read article 13. There are seven fundamental rights guaranteed under this article. The first is that all citizens shall have the right to freedom of speech and expression. Now, this fundamental right is not absolute. We have clause(2) where it is stated—

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

So, that freedom of speech and expression can be exercised only subject to this last clause. This means that the State can make any law to restrict freedom of speech and expression to prevent the undermining and overthrow of the State. The Fundamental Right itself prescribes the limitation to that right in an emergency. I do not see the necessity for article 279 to suspend the provisions of article 13. In an emergency, of course, the State has the right to restrict freedom of speech and expression because the right says that nothing shall prevent the State from making a law in case the situation is such that the security of the State is liable to be undermined. I therefore do not see any reason why this fundamental right of freedom of speech and expression should remain suspended for an indefinite period, during a war, when the right itself says that it shall give the State authority to restrict that freedom if it is so necessary for the security of the State. The second right is that the citizens shall have the right to assemble peaceably and without arms. Then this right is not absolute. It is said in clause (3) “Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause.” So in the interest of public order nothing can restrain the State from making any law. When, therefore, Sir, there is an emergency, nothing will stop the State from making a law because it is necessary to maintain the safety of the State. I, therefore, think that this right to assemble peaceably and without arms should not be denied for an indefinite period or the war merely because there is an emergency. I think the right itself is limited and the State can make any law if it is necessary in the interests of public order. Therefore, Sir, I think the right should be guaranteed and should not be abrogated and suspended during the war.

Then the third freedom is the freedom to form associations or unions. That is limited by proviso (4) which says : “Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause.” Here also in the interest of public order reasonable restrictions can be imposed on the right to form associations or Unions. Why then for long years, six or seven or eight years during which a war lasts, should this right remain suspended ? Again, Sir, there are the rights (d), (e) and (f) to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to acquire, hold and dispose of property and all these three rights are again qualified by clause (5) which says “nothing in sub-clause (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any aboriginal tribe.” Here also in the public interest, the State can make any law which goes against these rights. I therefore think, Sir that the Fundamental Rights are sufficient in themselves and it is not necessary to abrogate them during in emergency. If this article is passed, what will

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happen is this : The fundamental rights of the people will be suspended. There is no limit to the period of war and it may last five or six or ten years and throughout that period people all over the country shall be deprived of the fundamental rights. I apprehend there is danger and I would invite the attention of Dr. Ambedkar to consider this clause properly and calmly. If you cannot delete this clause, then at least accept my amendment. I only want that this power should be given to the Parliament for exercise if it is found necessary. If the limitations imposed upon fundamental rights are not sufficient, then let the Parliament declare by law that in the interests of emergency they shall increase these restrictions. There should be no objection whatsoever to my amendment which provides for the emergency and at the same time retains to the people the liberties which have been guaranteed by the Constitution. Otherwise, people will laugh at our Constitution and they will say "on the one hand you give them liberty in the fundamental rights and on the other you take them a way". Do we not trust our own Parliament ? If Parliament is not trusted in an emergency, whom else shall we trust? I therefore think that we must amend this article if we cannot delete it altogether. The power to interfere with fundamental rights should be vested in the Parliament and not in any other authority.

Shri H. V. Kamath : Mr. President, while according general support and wholehearted support to the amendment just now moved by my honourable Friend, Prof. Shibban Lal Saksena to the effect that the power in the event of a Proclamation of Emergency to suspend the fundamental rights guaranteed by article 13 of the Constitution should be vested in Parliament and not in the President, I would go a step further and would like to plead with the House that in view of the new draft of article 280 which will shortly come before the House, there is no need whatsoever to retain article 279 as well. If the House will with patience compare the original draft of article 280, and the present draft of article 280, they will find that the new draft refers to the suspension of all the rights conferred by part III of the Constitution. Article 13 is only one of the articles comprised in Part III of the Draft Constitution. Therefore I see no reason whatever no reason *d'etre* for the retention of article 279, and in my humble judgment there is no need now for this article 279 in this Constitution in view of article 280 which follows.

As regards the point made out by my honourable Friend, Mr. Saksena, that the Proclamation of Emergency once issued, the President under articles 275 or 278 as assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler so far as the constituent State is concerned; and also he is empowered to declare in so far as that State is concerned, that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament. Therefore, it is very necessary to make a distinction here and to be clear in our minds, in case article 279 is going to be adopted by the House as it is; as to what the "State" as, specified in that article actually means. Article 279 as moved by Dr. Ambedkar provides that while a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take etc., etc..... We shall now turn to Part III and find out how 'State' has been defined in that Part. The opening article of Part III defines the State as follows : "State includes the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." I need not labour the obvious. We have already adopted articles which provide that once an Emergency Proclamation is issued, the State legislatures and the Governor or Ruler of the State become, more or less *funotus officio*. The President may assume to himself all powers. To my mind the Ruler or Governor of the State

or the State legislature will not be competent to take such action as may be required to further restrict Or annual the rights conferred by article 13. Parliament alone, or the President alone can do it. I would prefer if action in this regard is taken by Parliament; that would be a much wiser provision. If we are wise, we will do so; if we are otherwise, we may not do it. In any case, I think, considering that 'State' is defined in article 7 in Part III so as to include all local or other authorities within the territory of India or under the control of the Government of India, I think it is much wiser to define here exactly what is meant by 'State' to obviate all doubts and difficulties and I think it would be much wiser to provide that not the President, but Parliament alone can legislate in this regard.

One other point, and it is this. Is there really any need for this article specifically relating to article 13 of Part III? I urge my honourable colleagues here to study carefully article 13. Article 13 is already laden with five provisos. Everyone of these provisos provides that in no event, in no contingency, in no emergency, in no case shall the security of the State, or public order or public interest be jeopardised. This article, as was remarked in the course of the debate thereon in this House, as a matter of fact, confers rights, and then abridges them, if not abrogates them, at one and the same time. In view of this consideration that the article as it stands, as we have adopted it, has got safeguards in the interests of the safety of the State, in the interests of public order, safeguards against the exercise of the fundamental rights comprised in, the sub-clauses (a) to (g) of clause (I), I feel that there is absolutely no necessity whatever for incorporating article 279 here. Because, article 279 has got relation to the situation where the security of the State, the security of the country or any part thereof is endangered and we have already made provision for that through the provisos (2) to (6) suffixed to article 13. All these provisos have one meaning; though they may be couched in different language they all bear the same significance, that is, in the exercise of the fundamental rights guaranteed by this article, public order, public peace and the safety of the State shall not be jeopardised. If that stands in danger, this article lays down specifically that nothing shall affect the operation of any existing law in so far as it relates to, or,—this is important, in view of the article that we are now considering—prevent the State from making any law, so on and so forth with regard to the different rights comprised in the article. What do we find here in article 279? "Nothing shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take." This is already provided for in article 13 and this would be merely an overlapping, if not a cumbersome repetition of what we have already adopted in article 13.

I may, firstly, That this article 279 should be deleted; not that I do not want such a provision, but it is unnecessary because of article 13, adopted by the House already. If that does not find acceptance, I would welcome the acceptance of the amendment of my honourable Friend Prof. Shibban Lal Saxena to the effect that Parliament and not the President may be empowered in this regard.

Dr. P. S. Deshmukh : Mr. President. Sir, I think the provision of article 279 is unnecessary from many points of view. I would like to urge that we ought not to make any provisions which detract from the fundamental nature of our fundamental rights. Even if in an emergency it was necessary to suspend any fundamental rights, there is ample provision already existing in the clause that we have passed so as to make it unnecessary to have an article like this, where we specifically say that laws will be promulgated irrespective of the fact that they nullify or abrogate fundamental rights provided in article 13, Part III. I would like to refer to article 13 and point out what a number of important rights are likely to be affected by the passing of the present article 279. It is not merely

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prevention of association of people, or prevention of people from inciting other people to violence and utilising the right of speech and expression. It also refers to free movement throughout the territory of India, refers to the residence and settling down in any part of the territory of India, to acquisition of land and disposal of property, to the practising of any profession or carrying on of any occupation, trade or business. So, to infringe in any way these rights is to declare martial law, and even that is unnecessary because both by the second sub-clause in article 13 there is provision which will give sufficient power both to President as well as Parliament to intervene. This has been pointed out by Mr. Kamath. It has been laid down for instance in article 13 (2):

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State *from making any law*, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or *undermines the authority or foundation of the State*.”

There is therefore sufficient provision recourse to which could be had in an emergency of the type which has been described under article 279. Then, if we refer to the new article which we have just passed *viz.*, article 278, as I pointed out yesterday—there is also another wide provision for setting aside the provisions of the Constitution and I do not think there is anything to suggest that the article referring to the Fundamental Rights are excluded from the operation of those sub-clauses. It has been stated in article 278 (1)(c)—

“make such incidental and consequential provisions as appear to the President to be necessary or desirable etc. etc. in the State”.

In view of these provisions, I do not think there is any necessity to have this article 279 and I therefore urge reconsideration of the position and if possible withdrawal of this article altogether.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir, this is a very simple article that has been provided under the emergency causes. It is true that under article 13 provisions have been made to enact Acts as stated by my friends just now but I do feel that when the emergency arises, it should not be understood that the whole administration would be at a standstill, and therefore this article particularly defines that despite the emergency the State shall not be prevented from making any law under article 13. It is helpful and it is neither superfluous nor redundant. In my opinion the Drafting Committee has taken precaution to state that even in the, event of emergency the States will function, if they so desire, by administering laws as defined in article 13 and nothing would prevent the state from making any laws. It is a very helpful provision lest generally in a state of emergency people feel that emergency is there and therefore all ordinary laws should come to a standstill and no more laws would be enacted. Here we have been told that despite the emergency the State can function if it so desires under article 13. Under these circumstances I feel it is a very happy and necessary article which is desirable under an emergency which may prevail in the States. Under these circumstances, I support this article.

Shri Brajeshwar Prasad : Mr. President, I had no inclination to take part in this, debate but my Friend Mr. Sidhwa has not, if I may be excused for saying so understood the implications of this article. It means suspension of provisions of article 13 during emergency. There is no meaning in saying that the article vest-, the State with powers, in conformity with article 13. It means there may be suspension of freedoms of speech and association. If this article 13 would not have been present in the Constitution, the States could have taken powers in their own hands and restrict the freedoms of speech and other freedoms. So irrespective of the presence of article 13, the State Legislature can

do anything restricting the liberty of the individuals. That is the meaning of article 279.

Shri R. K. Sidhwa : No.

Shri Brajeshwar Prasad : I do not know. Let the Drafting Committee explain the provisions of article 279, but I am quite clear in my mind that, article 279 means that the State Legislature can make laws during an emergency restricting freedom of speech irrespective of article 13. This is my interpretation. I do not know if it is correct. If we do any act in politics, it results in either of two ways. Either we expand man's liberty or restrict it. There is no third possibility. I feel that during a period of emergency the executive and the legislature should have the power to restrict man's liberty.

The Honourable Dr. B. R. Ambedkar : Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental Rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

Prof. Shibban Lal Saksena : During emergency ?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article 280 was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President : I will put the amendments to vote.

Amendment No. 235, moved by Prof. Saksena.

The question is:

“That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words ‘the State as defined in that Part’ the word ‘Parliament’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word ‘State’ where it occurs for the second time, the word ‘Parliament be substituted.”

The amendment was negatived.

Mr. President: The question is :

“That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words ‘or to take any executive action’ and the words ‘or to take’ occurring at end be deleted.”

The amendment was negatived.

Mr. President : Then I put article 279 to vote.

The question is :

“That article 279 stand part of the Constitution.”

The motion was adopted.

Article 279 was added to the Constitution.

Article 280

Mr. President : Then we take up article 280.

Amendment No. 3028—Dr. Ambedkar.

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

“That for the existing article 280, the following article be substituted:—

‘280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order.’

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the Proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus*, writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to Permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

Mr. President : Mr. Kamath, do you wish to move amendment No. 3030 ?

Shri H. V. Kamath : Sir I shall move the alternative in No. 3030. I move:

“That in article 280, after the words ‘by order’ the words ‘and subject to the approval of a majority of the total membership of each House of Parliament’ be inserted.”

Shall I move my other amendments now and speak on them later? Prof. Saksena has an amendment also.

Mr. President : You may move your amendments.

Shri H. V. Kamath : I also move Sir, by your leave, the three other amendments. The first one reads as follows :

“That in amendment No. 3028 of the List of Amendments proposed to article 280 for the words ‘enforcement of the rights conferred by Part III of this Constitution’ the words ‘enforcement of such of the rights conferred by Part III of this Constitution as may be specified in that Order’ be substituted.”

The next one is—

“That in 3028 of the List of Amendments in the proposal article 280, for the words ‘any right’ the words ‘any such right’ be substituted.”

And lastly,

“That in 3028 of the List of Amendments in the proposed article 280, for the words ‘the order’ occurring at the end, the words ‘that order’ be substituted.”

Sir, if these amendments were accepted by the House, the proposed article, would read as follows:—

“Where a Proclamation of Emergency is in operation, the President may, by order and subject to the approval of a majority of the total membership of each House of Parliament, declare that the right to move any Court for the enforcement of such of the rights conferred by Part III of the Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of any such right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in that order.”

Sir, shall I take my turn to speak after Prof. Saksena has moved his amendment ?

Mr. President: You may speak now. Prof. Saksena has only one amendment. You may finish your speech first.

Shri H. V. Kamath : All right Sir, thank you very much. While considering this article, the House has to view it from more than one angle. The fundamental question, the question which goes to the root of the matter, is the suspension of all the Fundamental Rights guaranteed under Part III of this constitution. What are Fundamental Rights as envisaged in this Part III ? They are, as far as I have understood them rights of the subject or individual as against another individual, and also the rights of the individual as against the State. And we wholly justified in suspending the exercise of these fundamental rights during the period when the Proclamation of Emergency is in operation ? I have studied the major constitutions of the world though not as carefully as Dr. Ambedkar might have done, but to my regret I have not come across any such wide and sweeping provision in any of the other constitutions. Turning to the U.K.—there is no need to harp on it overmuch, as it is an unwritten constitution—the other day Dr. Ambedkar or Mr. Krishnamachari referred to DORA (Defence of the Realm Act) which was passed by the British Parliament in 1919 or 1920. It is true that under that Act some of the rights of personal liberty and so on were suspended, but there was a very wholesome provision made in that Act against the abuse of power conferred on the executive. The Emergency Powers Bill of 1920 was condemned in England as the, first coercion Bill since the days of Castlereagh. But even that black Bill—as it was then called contained many safeguards which toned down the harshness and tyranny that might have resulted from the operation of that Act. I shall read some of these safeguards :

“Where a proclamation of emergency has been made by His Majesty the occasion thereof shall forthwith be communicated to Parliament and if Parliament is then separated by such adjournment or prorogation as do not expire within five days a proclamation shall be issued for the meeting of Parliament within, five days; and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.

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Any regulations so made shall be laid before Parliament as soon as may be, after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof.”

That is so far as England is concerned. In the U.S.A., from which we are proud to have borrowed much—there is, provision for the suspension of only one fundamental Right though it is of the highest importance, namely, right to

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the writ of *habeas corpus*. The U.S.A. constitution provides that this right shall not be suspended unless in cases of rebellion or invasion, when the public safety may require it. But there are adequate safeguards in that regard, namely, the suspension can be authorised only by Congress, *i.e.*, by the Senate and the House of Representatives combined. But it is for the Supreme Court to say whether conditions existed which would justify the suspension of that right. In the well known Milligan case the Supreme Court stated that martial law cannot arise from a threatened invasion; the necessity must be actual and present and the invasion real. The point I sought to make out yesterday was that there should not merely be an imminent danger of external aggression or internal rebellion. The U.S.A. Constitution provides that. Further, the Supreme Court observed that what is true of invasion is true of rebellion also. It said that in order to meet the constitutional requirements the privilege of the writ of *habeas corpus* shall not be suspended unless in cases of rebellion or invasion the safety of the State requires it actually—and not simply a constructive necessity, made by a declaration of the legislature,—and the court will be the judge. I am sorry to say that though Dr. Ambedkar and others of his way of thinking proudly claim that they have borrowed so much from the U.K. and the U.S.A. some of the safeguards, obtaining there have not been incorporated in our Constitution. Even now if it is not too late I would appeal to Dr. Ambedkar and his team of wise men to look this matter closely and see whether some safeguards could not be provided against the abuse of the power vested in the executive by virtue of this article 280.

Then, Sir, coming to details, the article refers to fundamental rights guaranteed by article 13. The House will see in Part III that the fundamental rights are of various kinds; they are not of a uniform character. They are different in nature and in conception and they comprise various matters which are not interconnected with each other. Article 11 for instance.....

Mr. President : Does the honourable Member propose to go through the whole part, section by section, and sub-clause by sub-clause?

Shri H. V. Kamath : No, no : in so far only as they are relevant to any argument.

Mr. President : I think the Members are familiar with the fundamental rights and any general remarks the honourable Member may wish to make he may do so without going into details of each such fundamental right.

Shri H.V. Kamath : I shall abide by your ruling. I am referring to such articles as are relevant to my amendments. The amendment moved today is amendment No. 1, the new one where I have said that the enforcement “of the rights” should be substituted by “such of the rights conferred by Part III of the Constitution as may be specified in that order.”

The point of my amendment is that there are certain rights guaranteed by article 13 which cannot be abrogated in any eventuality, not even in case of the gravest emergency. There are some rights given by article 13 which cannot be abridged, abrogated or annulled. *e.g.*, article 11 abolishing untouchability. It is a very vital right. Do you mean to say that when there is an emergency we can permit the observance of these taboos and will not take any action those who enforce untouchability in any form on anyone else? Then there are the cultural rights and educational rights, but as I have just remarked, I do not wish to transgress your ruling and go into details. I shall only refer to untouchability, educational and cultural rights. If the House will study them closely and Dr. Ambedkar will give thought to the matter, he will find that there are certain rights

which cannot be suspended in any case, however grave the state of emergency may be. Therefore, I have sought to amend this article in this fashion—that the order must specify those rights which are sought to be annulled or abridged, or curtailed or suspended.

The other two amendments are merely verbal and I do not wish to speak on them. I leave them to the wisdom of the Drafting Committee to which mine is no match at all.

Amendment No. 3030 of the printed List of Amendments is a vital amendment, which is to the effect that the President's order declaring that the fundamental rights or any of them shall remain suspended—that order shall be subject to the approval of Parliament. We have already provided for that in articles 275 and 278. In 278 it is laid down that any proclamation made shall be laid before Parliament for its approval. In article 275, clause (2) (b) and (c), it is specifically laid down that the proclamation shall be laid before Parliament for its approval. Does this mean that once this proclamation is approved by Parliament the President is free to do by order as he likes? If that be so, it is a pernicious article. The suspension of fundamental rights is not an ordinary matter. It is a very grave matter. I will go so far as to say that it is even graver than the gravest emergency with which the State may be confronted. Do we in that eventuality empower the President to declare by order that these fundamental rights, conferred by article 13 shall be suspended? I hope that will not be done. I hope that is not the intention of this House. In whatever form this article may have been brought before the House today. I hope that the House will not adopt this in a hurry : on the contrary, that it will give it mature consideration. I trust that the House will consider this matter in greater detail and will amend it suitably so as to provide more safeguards. I only wish through my amendment to see that any order made by the President in this regard—namely with regard to the suspension of, fundamental rights shall, similarly to an emergency Proclamation, be laid before Parliament and if Parliament approves, well and good : if Parliament rejects it, then that order should not have any force. As I have stated, though we hope and pray that the President may be a wise man, there is no guarantee in the Constitution that a philosopher-king—whom my honourable Friend Mr. Brajeshwar Prasad wants to be in the highest office of the State—will be elected. Human failings and human imperfections there will be. If the President decrees that all the fundamental rights are suspended, there is under the proposed article no provision for Parliament considering the matter. My Friend, Prof. Saksena, has tabled a little more radical amendment. I for my part, will be satisfied that, if the President passes an order before Parliament is convened, that order is laid soon before Parliament for it to debate on and approve or reject it. We are pleading, Sir, in season and out of season, that we are passing through a crisis. I am sure that the Italian Constituent Assembly, when it met two years ago soon after World War II was over, was faced with no less grave a crisis. There was danger of upheaval within the State and Communist were rising against the State. Italy was a border State between the Russian bloc and the Western bloc and it was wedged in between the two, and it, was thus subjected to various stresses and strains. Even then, the Italian Constituent Assembly which adopted the Constitution in 1947 did not go so far as we are going today. What did they do? They were faced with a very grave crisis, the Communist near—insurrection within the State : and as we all read in the papers the other day, there were free fights within the Chamber of Deputies in the Italian Assembly when the Atlantic Pact was ratified. The Constituent Assembly adopted, however, an article, with a view to meeting the grave crisis confronting the State, but they provided adequate safeguards, and the relevant article in their Constitution reads thus :

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“When in extraordinary cases of necessity and urgency, the Government on its own responsibility adopts provisional measures having the force of law, it must on the same day” (in the U.K. the Act provides that Parliament must be summoned in five days) “present it for conversion into law by the Chamber which, if dissolved, should be convoked for the purpose and assemble within five days. The decrees lose effect as on the date of issue if not converted into law within 60 days of their publication. The Chambers may, nevertheless, regulate by law political relationships arising from decrees not converted into law.”

Again the power is left to the Chamber.

I have placed before the House the constitutions of U.K., U.S.A. and Italy. I would like to place other constitutions also before the House but I do not propose to do so. I do not find in any constitution a similar provision of such sweeping character, as the provision in this chapter.

There is one more point and it is this. We have already provided in article 278 that even otherwise than on the receipt of a report from the Governor a proclamation can be issued by the President. I suppose under article 275 if India as a whole or even any part thereof is threatened by invasion, external aggression or internal disturbances, the President is empowered to proclaim a state of emergency. If the President issues a Proclamation of Emergency without receiving a report from the Governor and takes action subsequent thereto, annulling the fundamental rights, there is one grave danger. The Governor or the ruler of a State or other authorities within the State will feel that they have been bypassed or ignored and a very serious conflict may arise. The authorities within the State—the ruler, Governor, his ministers or other administrative apparatus in the State—God forbid they should,—may refuse to co-operate with the Central Government or President and refuse to execute or conform to the decrees issued by him as a sequel to or in pursuance of the Proclamation of Emergency. This is an eventuality or situation which, I am sure none of us desires to bring about. Therefore, bearing all these considerations in mind, and taking serious notice of these possibilities and dangers, I feel that article 280, moved as amendment 3028 of the List of Amendments, (which has been couched in rather unfortunate language) is to my mind fraught with grave consequences not merely to the liberties of the individual but also to the powers of the constituent units. I once again urge, in all humility and with all the emphasis at my command, that this House should deliberate very coolly upon this article and provide safeguards against the abuse of power by the executive which is very likely,—nay, I am certain will result—from the operation of the article if it is passed as brought before the House today.

Prof. Shibban Lai Saksena : Sir, I beg to move:

“That in amendment No. 3028 of the List of Amendments, in the proposed article 280 for the words ‘the President may by order declare’ the words ‘The Parliament may by law provide’ and for the words ‘the order’, occurring at the end, the words ‘that law’ be substituted.”

My amendment if accepted will read as follows :

“Where a Proclamation of Emergency is in operation, the Parliament may by law provide that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the proclamation is in operation or for such shorter period as may be specified in that law.”

I would have very much wished that this article was completely deleted. It is even more far-reaching than the preceding article to which I voiced my opposition. That article has not taken away the liberties guaranteed under article 13, but this is of much greater import. In fact it nullifies the subject’s right of constitutional liberties, which have been provided in the Constitution. I would Invite the attention of the House to article 25 which says :

“The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

The Supreme Court can always be approached whenever any of these rights is infringed. The second clause is even more important. It says :

“The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by this Part.”

Clause (3) says :

“Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.”

Clause (4) says :

“The rights guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.”

Here we are invading the powers of the Supreme Court in regard to the liberties of the subject, not only the liberties guaranteed under article 13 but all the rights plus the right of the subject to obtain a writ of *habeas corpus*. When I read this article I was transported back to the glorious revolution of 1942, when India waged her war of independence and we were thrown into dungeons on charges which were fantastic such as waging war against the King, etc. Even then the British Government did not suspend the power of the High Courts to issue writs of *habeas corpus* which is guaranteed by Section 491 of Criminal Procedure Code. I remember numerous detenus sent applications under the *habeas corpus* section and they had to go to a High Court and were heard there. But in this free India we are providing for the suspension of this most fundamental article and section 491 of the Criminal Procedure Code will not have any effect if the article is adopted. Supposing a war lasts for ‘ten years; is nobody to have the right to approach the Supreme Court with an application for a writ of *habeas corpus* during that whole period? This gives the bureaucracy the right to arrest any person without any cause whatsoever. One cannot even go to the Supreme Court for redress. I do not think that in any emergency this right of the Supreme Court to do justice should be taken away. After all, the Supreme Court which will be created under this Constitution will be presided over by a Chief Justice who will be nominated by the President on the advice of the executive and the other judges also will be eminent men appointed more or less in the same way. Cannot such gentlemen be trusted in an emergency ? I cannot conceive how we can trust the executive which can ride rough—shod over the liberty of the citizens. I can understand the provision of safeguards for an emergency, but not the complete suppression of the liberty of the citizen. I do not know of any parallel for this anywhere in the constitutions of the world. I, therefore, suggest strongly that this article should be removed from the Constitution; but if that be not possible, I would suggest that my amendment which gives power to the Parliament to make any law which it considers necessary for an emergency may be accepted. The President may order the issue of a proclamation and the executive will be supported by Parliament. I do not see what harm is there in giving the Parliament the right to pass laws for emergencies. Why should the President alone have the power which in effect means power for the executive behind him? The Parliament must have the right to say what sort of action should be, taken in an emergency. I do not think that this article is at all necessary. But if it is considered necessary, my amendment must be accepted and Parliament should be empowered to safeguard our freedom even in emergencies. Let, it not be said that we distrusted our sovereign Parliament and gave power to one single individual.

[Prof. Shibban Lal Saksena]

My Friend Mr. Kamath quoted many articles to show how foolish it is to suspend the entire Chapter XIII. I am surprised to see that the Drafting Committee considered this necessary. There are some articles in this Chapter that have nothing to do with an emergency. Why should they be suspended ? If this article comes into operation, discrimination can also be practised. And that would go against the spirit of the Fundamental Rights we have conferred on the citizens, such as non-discrimination between citizen and citizen, untouchability and other things. I do not think that this article has been drafted with proper care and with a proper understanding of the situation. I do not know what defence Dr. Ambedkar can have for this provision. In replying to my amendment in the previous article, he said that power had been given to all the States legislatures also to make laws in violation of article 13. That is something which can be understood. I wanted that Parliament should have this power and be said that the States also should have this power. But here the President only is given this power to issue orders and the question of States does not arise. I only want that Parliament by law should do this. Why do you want the President to be an autocrat ? If my simple amendment is not accepted and the fundamental rights of the people safeguarded, people will not have much respect for this Constituent Assembly; for the Constitution made by it, because this article cuts at the root of our freedom and should not be in the Constitution. It should at least be amended as I have suggested.

Mr. President : Pandit Kunzru has given notice of an amendment to article 280. That is No. 211 in the printed Supplementary List.

Mr. Tajamul Hussain (Bihar: Muslim): What about my amendment, Sir?

Mr. President : What is it?

Mr. Tajamul Husain : It is for deletion.

Mr. President : That is only negative. You can vote against the motion.

Shri H. V. Kamath : Yesterday, Sir, a motion for the deletion of an article was allowed by you.

Mr. President : Because it was moved by the Drafting Committee itself.

Shri H. V. Kamath : I suppose the rules must be the same for all.

Mr. President : The Drafting Committee has the right to ask for a deletion. In the case of Members, such a motion will not come in as an amendment.

Do you wish to move your amendment, Dr. Kunzru ?

Pandit Hirday Nath Kunzru: Yes, Sir. I move:

“That in amendment No. 3028 of the List of Amendments, for the proposed article 280 the following be substituted :—

‘280. Where a Proclamation of Emergency is in operation, the President may, by order, declare that the Suspension of the right to move any court for the enforcement of any of the rights conferred by enforcement of certain articles 13, 14, 15, 16 and 24 of this Constitution and all proceedings pending in any court for the enforcement of any such rights shall remain suspended for fundamental rights during Emergencies. the period during which the Proclamation is in operation or for such period as may be specified in the order.’ ”

The object of this amendment is a very simple one. The amendment that Dr. Ambedkar has moved covers all the fundamental rights. What I want is to limit the operation of article 280 to certain rights only. It is not necessary that, when a Proclamation of Emergency has been issued by the President, all the fundamental rights should be suspended. Take for instance, the right of a man, to whatever caste he belongs, to stay in a hotel or go to a restaurant or

draw water from a public well. Is this right too to be suspended while a Proclamation of Emergency is in force ? All that is desired is that, so far as the right to free speech or the right to form associations or the right to assemble peaceably are concerned, it should not be enforceable through the courts of the land while a Proclamation of Emergency is in force. I am not entirely of the same opinion as Dr. Ambedkar in this matter, I share the opinion of his critics; but I each understand his desire that in times of serious trouble, the State should not be tampered by any formalities in the formidable task of restoring law and order. It is however not necessary for the purpose of quelling internal disturbance or meeting external aggression that we should deprive the people of all their fundamental rights. All that is necessary is that notwithstanding the rights conferred by this Constitution on the people, such of them as, if allowed to be exercised in an unrestricted manner, will create difficulties in the way of re-establishing peace, may not be legally enforced. I think this limited purpose will be gained if the amendment that I have moved is accepted. It does not seem to me to be at all necessary or desirable that the scope of the article should be wider than this. However serious the situation may be, the State will be armed with ample powers to bring it fully under control if my amendment is accepted. The entire suspension of the fundamental rights is neither necessary in any case nor desirable. Indeed, it would be deplorable. I hope therefore, that my amendment which gives the executive all the powers that it need possess in troubled times, will be acceptable to the House.

Shri Mahavir Tyagi (United Provinces : General) : Sir, in view of the fact that the House has already passed article 279 as desired by the Drafting Committee, I think, the passing of 280 is rather too serious. The House has already permitted the future governments to override important fundamental rights in the case of an emergency. Now, to go further and to allow the State to go beyond the powers of the Supreme Court is, in my opinion, too much. I agree with my Friends, Mr. Shibban Lal and Mr. Kamath, in their protests against this power being given to the future governments. An emergency has to be declared when there is danger to the peace or tranquillity of the country or to the existence of the government. But let us also understand that a Government is always poised as against the people it governs. So, while giving a Constitution to our country, we must not lose sight of the fact that the rights and privileges of the people being poised against the authority of the State, it is for us to see that the stress is not lop-sided. While assigning political rights, we should strike a balance between the governed and the governors. No doubt, in a democratic State, the government is necessarily formed in accordance with the will of the people, but even then, once a State is organised, the role of the people becomes passive. It is the people who are acted upon by the State. Now, for instance take our own case. It is the Members of the Constituent Assembly today who compose the State. In fact, all the State authority of India is in the hands of the Constituent Assembly (Legislative). We are wielding power. On whom are we wielding it ? We are wielding it on the people whom we claim to represent. Have our electors any hand in the administration ? Have they any say ? No. Let us not be under the impression that we would last for ever. It is always the case that when one occupies an office of responsibility, one thinks that that office to be effective should be armed with more and more powers, because one is too self-confident and therefore one honestly feels that one will not misuse the powers given to one's office, but the one must not also forget that that office is not for the one to occupy for ever. Another may occupy it tomorrow and misuse the power. So, while giving more powers to the State, we as the representatives of the people and also as the judges of the rights of the people, must bear in mind the fact that the state might also change bands. And that the future governments might not be so considerate towards the rights of the people, and that they might also misuse these powers. The only guarantee that the people have against the high-

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handedness of their State is the Court. And so if in our enthusiasm we empower the State to go beyond the judiciary and override it, there will remain nothing but the law of the jungle. There will be nothing to control either the government or the people. Sir, my experience is only from India, while many of my honourable Friends, who have read books on foreign countries, and seen their politics too, have a different picture of democracy in their minds. I value their experience and knowledge, but to me it seems that their opinions are mostly borrowed. I would appeal to them to study the march of democracy in India. Are they satisfied with the manner in which we are running our democracy? Sir, my opinion is based on what I have seen with my own eyes. The present Government here and the governments in various provinces can claim to be known as the peoples' governments. Such people's governments are spread over the whole of India today; and also in such territories as used to be Princes' States, the government is no doubt of the people but even then the fact remains that in practice the Government stands in opposition to its people. I do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the election were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. We have not got the right to recall the Government. People after once voting for the Government have no right of recall or to censure it unless there is a fresh election. So whatever rights we give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all. Their only privilege is that they have a free access to the Judiciary. People, who feel that their privileges or their rights, fundamental or otherwise are violated, can have resort to a court of law, and that is the only guarantee, that is the only safety under which the people may remain contented. If the people were to be told that the State is supreme in India, and that the Supreme Court is liable to be over-ridden, they will lose confidence of their security and existence. With an Independent judiciary, it is not only the people who draw a sense of security, against the tyranny of the State, but even an individual feels confident about himself, whenever his rights and privileges come in clash with the vagaries of society. If the society is hard on an individual, even that single individual must have the guarantee, must have the security to stand alone and to live alone. and he must have the guarantee that no wrong will come on him and that he will not be dealt with unfairly. That guarantee is there, only because he is confident the Court is Supreme. Even if the whole State pounces on him he has one guarantee, as a citizen of the land, to approach the Supreme Court for protection and relief. Therefore, Sir, I submit that this article will have an alarming reaction. It will shake an individual's faith that law will be justly exercised. It is through this faith that individuals cling to society. Devoid of this sense of security the society will diffuse and disperse like particles of sand. I submit, Sir, that the principle involved in the article under discussion is very pernicious. I for one cannot vote for it. Even if the whole House agrees to arm the Government with such powers even in the case of an emergency, I for one wish to bring it on record that I am opposed to this, now and ever. (Hear, hear). I think the rights of an individual to move the judiciary should not be taken away in any circumstances. And if we were to agree to the draft that has come before us then,—Sir, I do not know, my logic may be wrong, it is for the lawyers to say,—but I feel that no fundamental rights can remain protected and there would be no security of life or property or even of political rights and liberty. And having in view the poor training of political parties in their practise of democracy, I am inclined to

profess that we should not be surprised if individuals are ordered to be hanged for flimsy reasons of their not seeing eye to eye with the powers that be. All this will be done in the name of emergency. May be that Shri Alladi Krishnaswami Ayyar might find a way for the condemned to smuggle him into the court, but I do not see there shall remain a chance, because all fundamental rights or rights of *habeas corpus* shall stand suspended altogether. After seeing the people's government run for the past two years I am afraid it will take a long time, yet, for our representatives to know how to run the administration in the interest of the people. It is, indeed, wrong to say that even our government, however popular it may be, is really the people's government. Neither people have a voice in it nor are we able to interpret their wishes into action. We were elected long ago to fight with the British, and now by indirect election we have come here; people have not given us their sanction to make a Constitution for them. It is the British who gave us that sanction, and with that borrowed sanction of the foreigners we are constituting for the people. And this Constitution is going to be inflicted on the people without their expressed consent or legal sanction. Therefore to legislate or to constitute in a manner whereby the people's rights are disregarded, will be rather unfair and bad in law and in constitution. I therefore submit, Sir, that the Drafting Committee might please review their opinions and see if they could still bring some change to the effect that the supremacy of the judiciary is not interfered within the manner in which it is proposed in this article. Sir, people's government will still take time to come and it is not by vote that we can make the people's government really so. It is by our aptitude and method of administration and behaviour that the Government may become really people's government. It is not that the ministers belong to the people, but the government belongs to the people. It is the policy of the Government that should belong to the people, that that Government will be the people's government. I submit, Sir, the people have not yet received any power. And so long as the people are not rich enough in their rights to enforce their policies on the Government, the Government howsoever popular it be, can never be the people's government, And I am afraid if things go on at this pace, the tendency of the government, being towards arrogance, it will soon become tyrannous for people, and time would come when people will make their own government, because after all it is a democracy. People's voice cannot be subdued for long and people will exercise their free voice at last. But the day they choose to exercise their rights and act freely, they will at once have their own government and when. their own government comes and they begin to act there must crop up a party in opposition. But as I have seen we are not yet trained in democracy. Any opposition here even in this House is not seen, is not considered or treated with that much of generosity as in foreign countries opposite parties are treated. I submit that in India the generosity, the intellectual honesty and the strength of conviction has still to come, and so long as we are not trained to treat our opponents with respect and honour and so long as party bitterness exists in the politics of the country, I am afraid many rich and precious lives, the lives of many a learned and the patriots will be in danger if this pernicious article is allowed to creep into this Constitution; because as soon as there is war, the parties in power will try to exterminate their opponents. We must also remember the present century is a century of emergencies; there will be emergency at home, and emergency abroad all over the world; and these emergencies will be intermittent; they may repeat themselves very often; the future governments of most of the countries are going to be governments ruling under the emergency declarations. If times are really so 'disturby', if times are so unstable, then our country will have emergency proclamations for most of the, time; with too much of power and with little fear of re-election, the government must tend to become tyrannous and beastly. The opposite party will have no safety. For God's sake, therefore, let not the individuals, let not your opponents be deprived of their basic right of approaching

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the Supreme Court for the protection of their life, honour and liberty. I therefore submit, Sir, that this article may not be accepted and the Drafting Committee might be pleased to reconsider, and in the interests of democracy, in the interests of our future freedom, they will please revise it and amend it in such a manner that the future Governments might not be able to misuse it in any manner.

With these words, I oppose this article.

Prof. K. T. Shah (Bihar: General): Mr. President, coming to this grand finale and the crowning glory of this chapter of reaction and retrogression, I fear one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter. On the one hand, there is a desire, it seems to me, to arm the executive, arm the Centre arm the Government against the legislature against the units, and even against the people on the score of possible threat to internal peace, a possible danger of war or external aggression, or even any local disturbance. Looking at all the provisions of this Chapter particularly, and scrutinising the powers that have been given in almost every article, it seems to me, Sir, that the name only of Liberty or Democracy will remain under this Constitution. Every one of these articles,-and ultimately this particular article,—suspending even the fundamental rights and the right of approach to the Supreme Court for the enforcement of those rights, merely on the ground that there is an emergency declared by the Head of the State, is, to my mind, a denial of any right of freedom or civil liberty of any kind that has been conferred in a previous chapter.

It seems to me, incidentally, that this article is inconsistent in spirit, if not in letter, with the articles previously passed, which require that while all other powers and functions may be arrogated to himself by the President, or may be, delegated to some other authority named by him, the powers and authority of the High Courts will not be interfered with. In this article, though directly the powers of the High Courts or of the Supreme Court or any court are not interfered with, inasmuch as the right of the individual to move the Supreme Court as guaranteed in article 25 will remain in suspension, if this article is accepted. it would follow that even the powers of the High Court, the Supreme Court or any court would be suspended. For. the courts cannot go to the individual aggrieved by such acts of the Executive, and say, “bring your troubles to us and we shall redress them”. The Courts must wait till any individual aggrieved comes to them, or raises the question of the Fundamental Rights under this Constitution. If that is not permitted, as this article seeks to do, then, I am afraid, the right of position of the court itself is put under suspension.

That, surely, should not have been the intention, and that should not be the purpose of a provision like this in the Constitution. The moment you introduce a provision like this in our Constitution, the moment you provide that the right to move the Supreme Court which has been guaranteed by a previous article shall be suspended by an order of the President, by an order of the Executive that moment you declare that your entire Constitution is of no effect.

Dr. Ambedkar takes credit, and I think he is fully entitled to it, that he has changed six into half a dozen; that is to say, instead of saying that the suspension shall remain operative during the period of the Proclamation And some time after, he now provides that the suspension shall remain in operation during, the period of Proclamation, or for a shorter period. To that extent, I repeat his amendment deserves congratulation. But the essence remains; that is to say, the suspension of the right to move the Courts of justice for an aggrieved citizen the only, right guaranteed by the Constitution, who is denied his Fundamental

Rights as conferred by the Constitution itself, remains untouched, even if the period of its duration may be shortened in the manner that Dr. Am has done.

So long, therefore, as this provision remains in the manner in which it has now been put forward, so long as it is the power of the Executive only to make such an order, and suspend the fundamental rights in effect, so long, I think, this provision would be and must be objectionable.

As an amendment here has suggested, if you really feel that some extraordinary measures are necessary, when an emergency is so grave that you cannot wait for the ordinary individual's rights to be enforceable, and the legal technicality of procedure to take effect, by all means act; but in such acting take the Legislature into your confidence, and make the Legislature enact the necessary law. Why should you assume that the Legislature should be so unresponsive, so callous, so indifferent and unaware of the real situation of the country, that it will not agree to such legislation as may be necessary for preserving peace and tranquillity inside the country, and guarding the country against any danger of external aggression? After all, you have the example of Britain during the, last two World wars that she has fought in this century. Then under the so called Reference of the Realm Acts, again and again, certain rights what we call Fundamental Rights had to be suspended or denied; and nobody protested against any such legislation being passed. Why do you assume that the Parliament will be so unaware of the situation, or unwilling to pass the necessary legislation, that you must arm the Executive, the President on his own authority so to say, to pass such an Act by Executive Order, and go to the extent of stopping or suspending even the one guaranteed Fundamental Right of justice in the courts of law?

I think this is an excess of power being given to the President, I think it is an excess, shall I say, of reaction against which the Draftsmen cannot be warned too strongly, cannot be warned too often. I would, therefore, suggest that if at all such a clause is necessary—for my part, I do not think it is necessary—it should be included as part of the powers of the Legislature. If at all you think that it is not possible to rely upon Parliament or upon the people's good sense, let the Executive take action face the consequences without an express provision in the Constitution to that effect. But it would be better if you make at least the legislature to pass a law giving these powers by a special provision in such an Act.

The difference between an executive order of the kind contemplated in this amendment and an Act of Parliament is quite obvious. Whereas in an executive order the President alone will act, or perhaps one or two of his Ministers will advise him and he will act on that advice without any further discussion, in an Act of Parliament, it would be unavoidable that the fullest searchlight will be thrown upon every provision and every word of the provisions. Not only the necessity for such special provisions would be laid bare, but also the limitations and restrictions that may be deemed necessary by Parliament to impose, before executive action of this kind can be allowed to take effect, and the conditions under which it takes effect. I, therefore suggest that instead of concentrating all effective power and authority and influence in the hands of the Executive, It would be better if at least the Central Parliament—I am not suggesting the local Legislature—of the country as a whole should have the right to discuss these matters, and pass the necessary legislation. If you have confidence if you really believe if the collective wisdom of the representatives of the people greater than your own wisdom as the Executive, then, I think there is no alternative but to accept the amendment which suggests that this power should be given by an Act of Parliament and not by Executive Order the President.

The Honourable Dr. B. R. Ambedkar : May I say a word? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President : This article may be held over.

Then we shall go to article 247.

Article 247

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

“That for the heading to the articles commencing with article 247, the following heading be substituted:—

‘General’ ”

Mr. President : I do not suppose any discussion of that is required.

The question is :

“That for the heading to the articles commencing with article 247, the following heading be substituted :—

‘General’ ”

The motion was adopted.

Mr. President : Amendment No. 2832.

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

“That in article 247, the words ‘unless the context otherwise requires.’ be deleted.”

I submit that these words are not only unnecessary but somewhat misleading. In article 247 there are certain important clauses. Clause (a) defines “Finance Commission.” I submit that Finance Commission is a precise expression. It has only one meaning and it has been used throughout the Constitution in that specific clear meaning. In clause (b) ‘State’ has been clearly defined that it does not include a State for the time being specified in Part II of the First Schedule. ‘State’ has been clearly defined in the appropriate places and a State as specified in Part II has also been specifically defined without the possibility of any misunderstanding. So State here is clearly understood. In clause (c) it is said that “references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.” I submit part II of the First Schedule and Part IV are clear and therefore these explanations in clauses (a), (b) and (c) are absolutely precise and incapable of being misunderstood even with reference to any context. Therefore the words ‘unless the context otherwise requires’ are absolutely unnecessary. I shall ask the honourable Member to point out any place where the context can possibly ‘otherwise require’. In the Penal Code the definitions are very precise and therefore the misleading condition ‘unless the context otherwise requires’ is entirely absurd. The addition of these words will make the reader or Constitutionalist think

several times before giving these words the meaning which is here definitely given. Therefore in order to remove any uncertainty or doubt in the minds of a reader, these words should be omitted. That is the purpose of my amendment.

(Amendments Nos. 2833 to 2836 were not moved.)

Mr. President : Does anyone wish to speak ?

The Honourable Dr. B. R. Ambedkar : All that I need say is that those words are included by way of 'abundant caution'. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

Mr. President : The question is:

"That in article 247, the words 'unless the context otherwise requires,' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That article 247 stand part of the Constitution."

The motion was adopted.

Article 247 was added to the Constitution.

Article 248

Mr. President : Then we take up article 248.

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

Taxes not to be imposed save by authority of Law.	"That for article 248, the following articles be substituted:— 248. No tax shall be levied or collected except by authority of law.
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'248A. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State". '	"
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(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with, law and for the purposes and in the manner provided in this Constitution."

These amendments are only consequential to what we have already accepted previously.

Mr. President : Amendment No. 196 ?

Shri T. T. Krishnamachari (Madras: General): Pandit Kunzru who gave notice of amendment No. 196 is not in the Chamber at present. There is another amendment, No. 198, which the Drafting Committee feel may be accepted and in order that it may be accepted, this amendment No. 196 has to be moved and accepted. If I am permitted to move it. I will do so.

Mr. President : Yes.

Shri T. T. Krishnamachari : Mr. President, Sir, I move amendment No. 196 in the printed Supplementary List, standing in the name of Pandit Hirday Nath Kunzru :

[Shri T. T. Krishnamachari]

“That in amendment No. 195 above, in clause (1) of the proposed new article 248-A alter the words ‘Subject to the provisions of’ the words, figures and letter ‘article 248-B of this Constitution and to the provisions of’ be inserted.”

I have already explained, Sir, that there is another amendment standing in the name of Pandit Kunzru which the Drafting Committee felt it would be wise to accept, and that is also a matter about which I will explain subsequently. And therefore in order to enable that amendment to be accepted, this amendment is necessary.

Mr. President : Amendment No. 197 standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move:

“That in amendment No. 195 above, in clause (1) of the proposed new article 248-A the words ‘Subject to the provisions of this Chapter with respect to the assignment of whole or part of the net proceeds of certain taxes and duties to States.’ be deleted.”

Sir, at an early stage I gave my wholehearted approval to the new scheme of financial provisions, where Consolidated Funds and other such things have been introduced. But in this amendment of mine, I have only suggested that in the article 248-A as proposed by Dr. Ambedkar, the words, “subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States” may be removed. What will be the effect ? At present, what is contemplated is that several taxes should be allotted directly to the States, even though they may be collected under the laws framed by the Government of India. But what I want is that every tax or duty or whatever money is realised from the people of the country under laws framed by the Government of India they should first come to the treasury of the Government of India and thereafter any assignment should be made and money transferred. It should not be lawful for any State to appropriate to itself any revenue collected on the authority of the laws passed by the Government of India. Money should not go to the States treasury without first coming to the Central Government. I want that all the money should be pooled together and then from there it should be distributed. That gives the Centre some idea of the total collection, and also how it has been distributed. Otherwise they will probably not know how much money has come under a particular tax. My amendment is a simple one, though it involves a change in procedure. But I think all will agree that all finance should first come to the Central pool and then get distributed. I hope this simple amendment will be accepted by the House.

Mr. President : Does any one wish to say anything about the amendments or the original article moved by Dr. Ambedkar ?

(No Member rose.)

Then I will put the amendment first to vote. The first amendment is the one standing in the name of Pandit Kunzru.

The question is :

“That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, alter the words ‘Subject to the provisions of’ the words figures and letter ‘article 248-B of this Constitution and to the provisions of be inserted.”

The amendment was adopted.

Mr. President : The question is :

“That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, the words Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States,’ be deleted.”

The amendment was negatived.

Mr. President: Then I put the amendment moved by Dr. Ambedkar.

The question is :

Taxes not to be imposed save by authority of law. "That for article 248, the following articles be substituted:—
"248. No tax shall be levied or collected except by authority of law.

248-A. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one consolidated Fund to be entitled "the Consolidated Fund of India," and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

I put this article, as amended by amendment No. 196, to vote.

The motion was adopted.

Articles 248 and 248-A, as amended, were added to the Constitution.

Article 248-B

Mr. President : Then we come to article 248-B, amendment No. 198, in the name of Pandit Kunzru.

Pandit Hirday Nath Kunzru: Sir, I move:

"That after the proposed new article 248-A the following new article 248-B be added:—

'248-B. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "The Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by Parliament pending authorisation of such expenditure by Parliament by law under article 95 or article 96 of the Constitution.

(2) The legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled the Contingency Fund of the State into which shall be paid from time to time such sums as may be determined by such law and the said Fund shall be placed at the disposal of the Governor to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by the legislature of the State pending authorisation of such expenditure by the legislature of a State under article 180 or article 181 of this Constitution."

Article 248-A requires that all moneys received for the Government of India shall be paid into a fund called the Consolidated Fund of India, and that no amount shall be taken out of this Consolidated Fund without express parliamentary authority. Now it has been found from time to time that the expenditure voted by Parliament for a department is not enough; it has to be exceeded for some reason or other. If the expenditure is incurred without parliamentary authorisation it will be illegal, But if the executive awaits the sanction of the legislature before incurring the expenditure the department concerned may be put to great inconvenience. Besides, the expenditure may be urgently required and the inability of Government to make provision for it may be detrimental to the public interest. It is therefore necessary that some means should be found of enabling Government to meet unforeseen expenditure not authorised by Parliament. I have proposed that for this purpose a Contingency Fund to be called the "Contingency Fund of India" should be established. Parliament may fix the size of the Contingency Fund, but when money has been

[Pandit Hirday Nath Kunzru]

put into this Fund, the executive can legally draw upon it to meet such expenditure as has not been authorised by Parliament but is necessary. Of course this Contingency Fund will not absolve the executive of the duty of bringing all excess expenditure to the notice of the House for its sanction. But in any case it will be a limited fund and if it is exhausted the executive will have to come to the legislature for sanction to replenish it. In either case, therefore, there will be full parliamentary control over expenditure, a control that does not exist at the present time. We know that in the year 1948-49 expenditure amounting to several crores was incurred without any authority from the legislature. We came to know of the large amount that had been spent in addition to that voted by the legislature long after the expenditure had been incurred. The expenditure was of such a magnitude as to attract the attention of the House and compel some members to draw the pointed attention of the executive and the legislature to this matter. In order that such irregularities may not occur in future, it is necessary to establish a fund of the kind that I have proposed. Such a fund exists in Great Britain and we shall be wise in following that example in order to provide for unforeseen expenditure. The object of article 248-A and 248-B taken together is that not a pie should be spent without the sanction of Parliament. I hope my proposal will be acceptable to the House.

Prof. Shibban Lal Saksena : Sir, I move

“That in the proposed new article 248-B for the words ‘such law’ and the words advanced by him’ wherever they occur, the word law and the words ‘used by him for advancing money’ be substituted respectively.”

The words ‘such sums as may be determined by such law’ do not make any meaning and we should say ‘by law’. I further suggest that for the words to be advanced by him’ it is better to say ‘to be used by him for advancing money’.

Then Sir, in clause (2) it is said:

“The Legislature of a State may by law establish a Contingency Fund in the nature an imprest to be entitled ‘the Contingency Fund of the State’ into which shall be paid from time to time such sums as may be determined by such law (it should be ‘law’ and not ‘such law) and the said Fund shall be placed at the disposal of the Governor to be advanced by him (I say, these words are not generally used in Constitutions. I would suggest ‘by the Governor, to be used by him for advancing money’) for the purposes of meeting unforeseen expenditure which has not been authorised by the Legislature of the State pending authorisation of such expenditure by the Legislature of a State under article 180 or article 181 of Constitution.”

The amendments though verbal are, I think, important in a clause dealing with the finances of the country. So far as the, points made by the amendment are concerned, I agree with them. I think a Contingency Fund is necessary and without it our provisions in regard to finances of the country will not be complete. Therefore, this article should be passed and amended by my amendment. I hope the Drafting Committee will look into it and try to see that it is corrected.

Shri T. T. Krishnamachari : The Drafting Committee is accepting it.

Mr. President : There is an amendment by Prof. Saksena.

Shri T. T. Krishnamachari : We are accepting the clause as put forward by Pandit Kunzru.

Mr. President : I shall then put Prof. Saksena’s amendment first.

Mr. President : The question is :

“That in amendment No. 198 above, in the proposed new article 248-B, for the words ‘such law’ and the words ‘advanced by him’. wherever they occur, the word ‘law’ and the words ‘used by him for advancing money’ be substituted respectively.”

The amendment was negatived.

Mr. President : The question is:

“That proposed article 248-B stand part of the Constitution.”

The motion was adopted.

New article 248-B was added to the Constitution.

Article 249

Mr. President : We now come to article 249.

But before that, there is an amendment No. 200—regarding the heading, by Dr. Ambedkar.

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

“That above article 249, the following sub-heading be inserted :—

‘Distribution of Revenues between the Union and the States.’”

Mr. President : Does any one wish to say anything about it ?

Shri Brajeshwar Prasad : About what ?

Mr. President : About amendment No. 200 viz.,

“That the above article 249, the following sub-heading be inserted:—

‘Distribution of Revenues between the Union and the States.’”

Shri Brajeshwar Prasad : I would like to speak on article 249.

Mr. President : We are not taking up the article-only the heading. I take it that it is accepted. The question is :

“That above article 249, the following sub-heading be inserted :—

‘Distribution of Revenues between the Union and the States.’”

The motion was adopted.

Mr. President : Now we take up article 249. There are some amendments of which notice has been given. They may be found at page 296 of the second volume of amendments.

(Amendments Nos. 2837 to 2840 were not moved.)

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

“That in clause (2) of article 249, the words ‘in that year’ be deleted.”

May I also move Nos. 69 and 70?

Mr. President : Yes.

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

“That in clause (1) of article 249, after the words ‘such stamp duties’ the words ‘as are imposed under any law made by Parliament’ be inserted.”

Sir, I also move :

“That in clause (2) of article 249, for the words ‘Revenues of India’ the words ‘Consolidated Fund of India’ be substituted.”

(Amendment No. 68 was not moved.)

Mr. President : The article and amendments are now open to discussion.

Pandit Hirday Nath Kunzru : Is the discussion on this article to proceed now ?

Mr. President : Yes, in five Minutes more we shall have at least one speech today.

Shri Brajeshwar Prasad : Sir, I am opposed to the general principles of article 249. I am not in favour of the existing or the proposed system of distribution of revenues between the Union and the States. I am in favour of two propositions, which I want to lay down before the House. The first proposition is, that all duties and taxes should be levied, collected and appropriated by the Government of India. The provinces should have no power of levying taxes, or collecting it, or of appropriating it. There should be no financial autonomy in this sphere because of a very valid political reason, which I shall mention afterwards.

The second principle which I want to lay down is that there should be an independent authority at the Centre to allocate funds between the different units in accordance with the needs of each province. That independent authority, Sir, may either be the President or the Parliament or a Finance Commission. I am not in favour of the existing system because, Sir, it is opposed to the basic concept of nationalism. The meaning of nationalism, Sir, is that every inch of the territory is as much mine as it is yours.

The second meaning of nationalism is that the total wealth of the country belongs to each and every citizen in an equal measure. The present system of distribution of revenue leads to inequality between man and man, between one province and another. Therefore, I am opposed to the present system of distribution of revenue. I am in favour of scrapping the whole thing.

Having due regard to the facts of our political life, I would suggest that the President should allocate funds. I want to see that day when the question of allocation of funds would not arise as there would be no Provinces left. Financial autonomy is dangerous, because it will pave the way for the establishment of independent States. This is the last straw on the camel's back. Already ample, powers have been vested in the provinces and this is the only method by which we can keep the provinces under the subordination, direction and control of the Government of India. If a big province like Bombay or Madras (I am sorry to say this) is vested with financial autonomy, what will be the result ? Tomorrow under the stress of some political movement these two provinces might declare their independence. Therefore I want that provincial ministers should come over here before the Government of India and place their case for allocation of funds, so that they may remain under the control of the Government of India.

Mr. President : A suggestion has been made that we might not sit on Monday next on account of Sarvan Purnima. We cannot afford to lose one day. I therefore suggest that we sit on that day from 3 P.M. to 7 P.M. that afternoon.

The Assembly then adjourned till Nine of the Clock on Friday the 5th August 1949.
