

लोषों को बोट देने के अधिकार सम्बन्धी भारत के संविधान का संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति चाहता हूँ।

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted

डा० रामजी सिंह : सभापति महोदय, मैं उक्त विधेयक को पुरःस्थापित करना हूँ।

15.41½ hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL

(Insertion of new section 78A)

SHRI SAUGATA ROY (Barrack-pore): I beg to move for leave to introduce a Bill further to amend the Representation of the People Act, 1951.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1951."

The motion was adopted.

SHRI SAUGATA ROY: I introduce the Bill.

15.42 hrs.

CONSTITUTION (AMENDMENT) BILL

(INSERTION OF NEW ARTICLES 329B, ETC.)

SHRI SAUGATA ROY (Barrack-pore): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

SHRI SAUGATA ROY: I introduce the Bill.

15.42½ hrs.

CONSTITUTION (AMENDMENT) BILL

(Amendment of article 352)—Contd.

By Shri Hari Vishnu Kamath

MR. CHAIRMAN: Now we take up further consideration of the following motion moved by Shri Hari Vishnu Kamath on the 29th July, 1977, namely:—

"That the Bill further to amend the Constitution of India, be taken into consideration."

Shri Shanti Bhushan may continue.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): On the last occasion I had dealt with most of the provisions of the Bill which had been moved by the hon. Member, Shri Kamath. There is only a little more to be said on that.

I have dealt with the question of the ratification of the proclamation of the Emergency and said that it would not be proper that it should be permitted to be done by a bare majority of the two Houses and I have said that there should be a special majority. I only joined issue a little with Shri Kamath that if the Constitution can be amended by two-thirds majority of the Members present and voting, ratification of the proclamation may also be allowed to be done by the same kind of special majority.

15.43 hrs.

[SHRI DHIRENDRANATH BASU in the Chair]

The last part of the proposed Bill relates to the subsequent ratifications. Sir, the hon. Members of the House are aware that the original emergency

[Shri Shanti Bhushan]

provisions contained in the Constitution provide that after the proclamation has been made by the President it requires ratification by the two Houses of Parliament. But once it has been ratified by the two Houses, then in that case the Parliament has no say in the matter and that proclamation of emergency can continue indefinitely till the President makes up his mind to revoke that proclamation. It has been a rather unhappy experience of the people of this country that even in the case of external aggression when the whole country stood like a man and helped the Government and supported the Government in proclaiming an emergency in the country after the aggression was over and after everything had normalised even then the previous Government many a time had decided to continue with the emergency for many many years because when there is a proclamation of emergency then there are certain enlarged powers which are available to the Government. Therefore with the attraction of being able to use those enlarged powers it appears that even when the conditions had normalised those proclamations of emergency had still been continued.

I am thankful to the hon Member for highlighting that deficiency that inadequacy in the Constitution because the Parliament I believe and the Government believes should have the right to oversee not merely that the proclamation of emergency was properly proclaimed but that it is continued only so long as there is necessity for the continuation of a proclamation of emergency and as soon as this situation in the country alters when the emergency or the emergency powers which go along with it are no longer required then in that case the proclamation of emergency should be brought to an end. Therefore the hon Member has suggested that after intervals of not more than six months the matter of emergency should be reconsidered by the two Houses of Parliament. I am happy to say that the

Government's thinking on this subject is also in the same direction. Therefore, I hope when in this very session that comprehensive Constitution (Amendment) Bill is brought by the Government it will contain provision to provide that at an interval of not more than six months the Parliament should have an opportunity of reconsidering the question as to whether the proclamation of emergency should be continued any further. In that connection I may be permitted to draw the attention of the hon Member to one more thing although it does not primarily arise out of the Bill moved by my hon friend, Shri Kamath. I have had occasion to inform the hon Members of the House earlier also but it is such an important matter that I think it would bear repetition. Apart from amending the provisions of Article 352 in this connection it is also necessary that certain further safeguards be introduced so that the emergency powers cannot be abused and that kind of situation those dark days of this internal emergency—can not be brought back in this country where even the right to life or liberty had been suspended. We had the curious spectacle that if anybody was alive he was alive on account of the mercy of the executive Government of the day and if a person was free it was only on account of the mercy of the executive Government of the day because if you had taken away Article 21 which was the sole repository of the right to life and liberty as soon as the enforcement of that Article had been suspended that right to life and liberty had itself got suspended. It is in the contemplation of the Government to remedy that situation also by proposing an amendment to Article 359 to provide that so far as this very sacred and fundamental right is concerned—there cannot be a more sacred right than this which an individual can have—it shall neither be capable of suspension nor its enforcement shall be capable of suspension under any circumstances whether external emergency or any other kind of emergency.

After all, there are extensive powers with the Parliament and with the executive Government, etc. to control situations. So far as the present Government is concerned, it does not subscribe to the proposition that even the fundamental right to life or liberty which is granted requires suspension. As the hon. Members are aware, it is a qualified right. That is not an absolute right. It is qualified, namely, not to be deprived of one's right to life or liberty except by the procedure established by law. I cannot see any justification as to why it should be necessary to suspend even such a fundamental right to life or liberty, namely, it should be open to any executive power to take away a person's right to life or liberty without even complying with the procedure established by law.

I think this is a very important Bill which has been moved by the hon. Member, Shri Hari Vishnu Kamath, highlighting these things and, possibly, he wanted to use it as a catalytic agent in order to further quicken the pace of Government in bringing forward a comprehensive Constitution Amendment Bill.....

SHRI HARI VISHNU KAMATH (Hoshangabad): There is one more provision in my Bill which has been tucked away in a small amendment which I moved along with my Bill, and that seeks to restore the court's jurisdiction.

SHRI SHANTI BHUSHAN: Yes; the introduction of clause 5 in various articles. Clause 5 or a similar clause had been added by earlier amendments. The idea was that such a proclamation should not be questionable in a court of law on any ground whatsoever. I am again happy to say that the Government's thinking on that subject is to restore the court's jurisdiction. Of course, the court's jurisdiction was not to sit in appeal over the decision of the Government or the decision of Parliament. It was a qualified jurisdiction in a sense that if there is a mala

vide proclamation, etc., in that case, on that limited ground on which the subjective decision of the President, etc. was questionable in a court of law, there is no reason why that limited power which the courts had should have been taken away. I am happy to say that the thinking of the present Government is also to delete that restriction which has been imposed on the courts' powers.

With these words, I would request the hon. Member not to press his Bill but to withdraw his Bill and to wait for the early introduction of a more comprehensive Constitution Amendment Bill in the Parliament in this very session.

MR. CHAIRMAN: Shri Kamath.

PROF. P. G. MAVALANKAR (Gandhinagar): Sir, if you will kindly recall what happened two weeks ago, the House had agreed that the Law Minister would intervene in this debate, leaving some scope for other hon. Members to speak before Shri Kamath replies. That is what was agreed to last time. Therefore, I do wish to take this opportunity of speaking briefly on the Bill.

MR. CHAIRMAN: The hon. Minister has already replied.

SHRI HARI VISHNU KAMATH: He does not reply. I have the right of reply.

SHRI SAUGATA ROY (Barrackpore): There is a very important Bill, the Unemployment Allowance Bill, coming up next standing in the name of Shri Lakkappa.

SHRI HARI VISHNU KAMATH: I will not come in the way of that Bill.

PROF. P. G. MAVALANKAR: I will be very brief. I only want to invite your attention to what was agreed to two weeks ago when the House decided that the Law Minister would intervene, leaving some scope for other

[Prof. P. G. Mavalankar]

hon. Members, to speak before Shri Kamath replies. In any case, the hon. Minister does not reply. The right of reply is only for the mover of the Bill. The hon. Minister has only intervened. Kindly allow me some time; I will be very brief and then Shri Kamath may reply. I do not want to come in the way of Shri Lakkappa's Bill. In fact, I welcome that Bill also.

MR. Chairman, Sir, I do wish to support my esteemed friend and elder, Shri Kamath on his Bill which deals with the very radical amendment of Article 352. Now, I do not want to go into the history of the entire gamut of emergency things that had happened in this country. I want to speak briefly. I want to suggest, first of all, that this Article 352, as it stands today in the Constitution is liable to be further abused and misused if proper, prompt and timely action is not taken to revise it suitably.

Now Mr. Kamath has come forward with his amendments and the Law Minister in his intervention gave an assurance that he will also go into the same direction, and perhaps Mr. Kamath, at that point of time, after getting some clarification, may even withdraw the Bill. We are not interested in seeing Mr. Kamath's Bill passed but we are interested to ensure that emergency provisions are never abused or misused by any power that be. That is the main objective.

I want to suggest that we must look at Article 352 in relation to Articles 358 and 359. I do not know what the Law Minister has to say in this regard, but Articles 358 & 359 also take away under the name of emergency so many fundamental rights during the continuance of emergency which again they need not, because in continuance of emergency and having blanket powers for the Government of the day during emergency did not call for abrogation of fundamental rights for all times. Once the executive has tasted

all these powers, it does not want to get rid of those powers. That is the difficulty.

I start by saying that Shri Kamath deserves to be congratulated. I also think that Shri Kamath said that he wants not only everything to be fool-proof but knave-proof. I repeat that. That is a very good point. We are grateful to him for that and we are happy that he is still with us in this House—one of the founding fathers of our Constitution. It may be said to his credit that he was a forefronter in the Constitution making, that he gave a very clear, and ample warning that there was a possibility of this article (352) being abused and misused. I hope Mr. Kamath will bear me out when I say that he did give the warning.

SHRI SHANTI BHUSHAN: Is he a founding father or founding grandfather?

PROF. P. G. MAVALANKAR: He is a bachelor. So, in one sense, he cannot be a father or a grandfather. But he is one of the founding fathers of the Constitution. Now, Sir, what he has done in this Bill is that he says, instead of internal disturbance, use the words 'armed insurrection'. This phrase, this internal disturbance, has always been a phrase which is very nebulous, very doubtful because a Government can misuse this; this can be taken as a nebulous ground, and Government could declare emergency as was done by Mrs. Gandhi only some time back because how do you define internal emergency? Now, Sir, I do not know whether internal emergency, once declared, can always be, simultaneously, in the same breath, justifiable. That point is worth consideration further. I think the Law Minister may have something to say on that point also because we all agree that the declaration of emergency is

particularly and largely a political act rather than a legal or constitutional act, and if there is an emergency, crisis, disturbance, etc., well, I do not think the law court can go into the question and decide whether the declaration was legal or not legal, constitutional or not constitutional. Therefore, I want to limit the justiciable part of it only to one word—whether declaration was *mala fide* or *bona fide*. But beyond that, judicial power must not be stretched. Otherwise, we will go into another danger and the remedy may prove to be worse than the disease. Having said that, why I want to support Shri Kamath is—I want to say briefly—that because he got rid of the phrase internal disturbance which is a very loose word capable of all kinds of definitions, capable of fresh crisis, abuse, as was done by Mr. Gandhi in 1975; and therefore, he used the word ‘armed insurrection’. I would say that it is slightly better. But I would even say that there is a case for complete abolition of the whole Article 352. Why should we have internal Emergency? If there is an Emergency of such a grave disorder as an external aggression, do you think that anybody in this country, any patriotic citizen in this country, will be objecting to Government having vast powers? Was there no unanimity of opinion at the time of the Chinese Aggression in 1962 and the Pakistan Aggression in 1965 and again in 1971? People were one with the Government. It is only when there is no emergency and when Government wants to have the Emergency powers, that difficulties arise.

Therefore, I would like the hon. Minister to think on those lines and tell us, maybe at a later stage when he comes with his own Bill, whether this article has any justification whatsoever and if it has, whether he will make it so rigid and strict that it will become next to impossible to make use of it except in a very rare, genuine, extraordinary, critical situation which, one hopes, will never arise.

Mr. Kamath has very rightly said that the whole matter must be left, not to the President and, therefore, the Prime Minister and the Council of Ministers, but to the Parliament. The Parliament's approval is not to be given once and for all. The matter must come before the Parliament periodically, so that Parliament—meaning the people of India—has the right to find out, periodically, whether the Emergency still continues or not. The present provision is that the Proclamation will be presented to, and passed by Parliament. But its continuation is not under the supervision and control of Parliament. Once the Parliament approves of the Proclamation of Emergency as unfortunately it did in July, 1975—though some of us opposed it tooth and nail; we ultimately staged a walk out; that was all that we could do; it was passed—there is no further remedy, that becomes perennial until the President, that is the Prime Minister, chooses to get rid of it. Therefore, Parliament must come into the picture afterwards also. Parliament's powers must be increased or strengthened. Parliament must not be allowed to lose all control once they have got the approval of the Parliament in the beginning of Emergency-declaration.

Take the countries like the U.S.A., Canada and Australia, the three large countries, federal countries, democratic countries like India. I want the Government to tell me whether there is any provision for Emergency powers in these three countries, namely, in the USA, Canada and Australia. If these three countries, large as they are, resourceful as they are, rich as they are, prosperous as they are, do not need Emergency provisions in their Constitutions and they could use Emergency powers during emergency situations with the consent of the people without having Emergency powers laid down in their Constitutions, why do we in India want to anticipate, theoretically and academically, possibilities of Emergency and incorporate such provisions in our Constitution?

[Prof. P. G. Mavalankar]

Dr. B. R. Ambedkar, in the Constituent Assembly of India, when he referred to these Emergency provisions, said that these Emergency powers were unique in the world; Dr Ambedkar has gone on record in the Constituent Assembly debates to say that the Emergency powers given in the Indian Constitution, if they were used, would make the Indian quasi-federal structure completely unitary. Therefore, he had only a war situation in mind, no other internal disturbance of a local or regional character; he really thought of big Emergency like war. Dr. Ambedkar did not think in terms of any kind of internal disturbance—where it would be so used as to make a non-sense of the Constitutional provision.

From that point of view also I feel that we should support Mr. Kamath's Bill, and I hope that Government will assure us that not only article 352 but, along with that articles 358 and 359 also will be so radically amended that no future executive or government, will dare abuse the powers of the executive which are given in the Constitution both with a view to protecting the country and with a view to enhancing the democratic traditions of this great Republic

16.00 hrs.

SHRI HARI VISHNU KAMATH. It was well over 28 years ago that, in the Constituent Assembly, when the Emergency provisions of the Constitution were adopted in spite of the efforts that I and a handful of my colleagues in the Constituent Assembly had made to amend some of the provisions, soon after these provisions were adopted, I rose in my seat and said, with pain and agony in my heart "This is a day of sorrow and shame: may God help the Indian people". Today, Sir, I am deeply grateful to Hon Members of both sides of the House who have taken part in this (may I say) important debate—a very significant discussion on the key provisions, on the Emergency provisions of the Constitu-

tion which constitute a constitutional threat to democracy. I am deeply beholden to the Minister of Law and Justice who...

SHRI KRISHAN KANT (Chandigarh): And Company Affairs also.

SHRI HARI VISHNU KAMATH: Let us not speak of affairs. So let that be kept apart!

I am deeply beholden to the Minister of Law and Justice who has indicated to the House the mind of the Government and on what lines the Government proposes to move with regard to these provisions of the Constitution. It was only a little over two years ago that the fear, expressed by me more than 28 years ago came true. The Government of the day sought to butcher democracy, to debase the Constitution, to denigrate Parliament—particularly the Opposition, by dubbing them 'anti-national traitors'—to throttle the Press and emasculate the Judiciary. This was sought to be done in the name of the Constitution

SHRI JAGANNATH RAO (Berhampur): Such strong language?

SHRI HARI VISHNU KAMATH: It is well-deserved. It can be stronger. In fact, I am amazed at my own moderation.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): No language is too strong to describe what happened.

SHRI HARI VISHNU KAMATH: I am glad that the Bill has evoked and provoked a very interesting debate, a stimulating debate. Sometimes it was exciting and there has been much heat but I must say there has been considerable light also during the debate.

When I first moved the Bill for consideration, on the 29th July, 1977—a historic year, an annus mirabilis if I may call it so, a year of miracles and wonders—soon after I moved the Bill for consideration, two friends on the other side, from the Congress (now

there are two Congress parties and I do not know to which Congress these two friends belong now) both Mr. Vasant Sathe and Mr. Stephen took part in the debate on that day, and I must say that nothing but heat emanated from their speeches. My friend Mr. Biju Patnaik rightly said at the conclusion of the discussion on that day, the 29th July (I am reading from the printed Hansard of ours): "When I listened to Shri Sathe and Shri Stephen I was reminded of Dante's 'Inferno and Devil's Advocate'. I would only say that both of them were inebriated by the exuberance of their own verbosity. That is all I would say about those two speeches. I am happy to say that most of the other Members who took part in this debate supported the Bill. Some hon. Member wanted, of course, the entire deletion or repeal of Art. 352 so far as internal extraordinary situations are concerned. The majority of the other Members who took part in the debate on the 29th July, on the 18th November and on the last occasion on the 24th February, 1978 when the hon. Minister was the only participant in the debate—most of the members and the Minister have, I am glad to say, happy to say, supported not only the principle of the Bill, but also the provisions of the Bill. That is a very happy augury for the future of our democracy in our country. My only objective in bringing the Bill was to see that democracy was, as far as the constitutional provisions or safeguard can make it, is established on a sound, safe and strong footing. And may this democracy of ours be fool-proof and knave-proof against all attempts to subvert it.

We are today the largest democracy in the world, but as Rabindra Nath Tagore once said in a poetic vein, what is huge is not great. Our democracy is large, huge: the largest nation in the world is a communist country and we have the honour and privilege to be the largest democracy in the world. But my objective is to transform, as far as is possible with human power, with divine grace and divine *shakti*,

our largest democracy into the greatest democracy on earth. That is my objective and I am sure it is shared by all Members on both sides of the House. That is our goal and objective.

I would now briefly refer to the observations made by the hon. Minister. The Minister has, more or less, agreed with most of the provisions of my Bill. I have used the words 'more or less, with most'. As I said on the last occasion on the 24th February, I am not a stickler for words, I want the substance, not the shadow, and so last occasion on the 24th February, I do not mind giving up the shadow willingly, gladly. Therefore, when the Minister says that he prefers, the Government prefers, the word 'rebellion' in place of the word 'insurrection', I have no objection. I did not look up the dictionary, Webster, Oxford or whatever bigger dictionaries there are, but the lawyer that the Law Minister is, the able, famous, jurist that he is, he knows these words, the nuances of these words, the meanings of these words far better than I do; if he thinks that 'rebellion' is a more appropriate word in this context, I have no objection. Let them have the word 'rebellion'. A colleague of mine wanted to substitute 'revolution' for the word 'insurrection'. I think, that would be inappropriate because a rebellion, if it succeeds is then called a revolution. Insurrection, if it succeeds, becomes a revolution, with hindsight. But if fails, it becomes a mutiny. That is what is said of our revolt of 1857 when we struck for independence and we lost—our forefathers, our ancestors. Therefore, it was called a mutiny. Had it succeeded it would have been a revolution. In 1905 Lenin in Russia struck but he failed. Again in 1917 when he succeeded, it became a revolution. Therefore, in my mind the word 'revolution' is inappropriate. Either for insurrection or rebellion—I have no objection. Let the Government come forward with their Bill and we can have a discussion on that and if necessary, we can amend it suitably even then.

[Shri Hari Vishnu Kamath]

The most important provisions in this Bill are with regard to the fundamental rights. My friend, Shri Chitta Basu—he is not here now—wanted that the courts' powers should be restored. I had overlooked that point, and I forgot about it when I introduced the Bill. Later on it struck me that I had lost sight of clause 5 and, therefore, I moved an amendment on the same day as I moved for consideration of the Bill—the Members perhaps have lost sight of it—whereby I have sought to delete clause 5 to the extant Art 352 which seeks to oust the courts' jurisdiction, with regard to testing the *bona fide* of a proclamation of emergency. The courts' jurisdiction which has been ousted by clause 5 of Art 352 is sought to be restored through this Bill.

Therefore, I am glad to see that the government's mind is also working on the same lines, to restore the jurisdiction of the courts. Here I may add one word that, as the Minister rightly observed, some of the fundamental rights should be—may I use the word—entrenched. I do not know whether the Minister agrees with it—fundamental rights in regard to Art 21, the right to life and personal liberty should be entrenched,—which became a national and almost an international issue in the Supreme Court in April 1976. That Article which guarantees the right to life and personal liberties should be an entrenched article of the Constitution, incapable of being subverted by any executive fiat or by Parliament. If that is done and with the power of the courts restored also, I for one feel that we would have evolved the necessary constitutional safeguards.

Along with that, I do not know whether Art 32 seeking to guarantee the right to move the Supreme Court, that also should not be suspended and this also should not be suspended, the right to personal liberty, in any circumstances whatever and however grim the circumstances may be. Even

the Britishers during the days of the Second World War did not suspend the right to move for *habeas corpus*. Our Supreme Court here unfortunately did it and in spite of 29 Judges of various High Courts in the country holding that the petitions were maintainable, a few Judges in the Supreme Court disallowed it and from that flowed a lot of evil and injustice. So, I do recognize that courts' powers will not guarantee everything that we have in mind with regard to restoration of democracy because I am sorry to say that when this *habeas corpus* case was being discussed and our Law Minister was one of the great Counsel—he was defending the rights and liberties of the citizen and he knows the case inside out. He must have felt a wrench in his heart when the judgment came. I am sorry to say—it pains me to say so, but I cannot help reading an extract from one of the judgments of the judges in the *habeas corpus* case.

I do not know how after 25 years of framing the Constitution, a judge of the Supreme Court in India, with this Constitution—one of the best Constitutions of the world—could have the heart to write What he did. This is what he wrote:—

“The object of depriving a few of their liberty for a temporary period has to be to give to many the perennial fruits of freedom”

That is not so bad. Look what follows:

“Counsel after counsel expressed the fear that during the Emergency, the Executive may whip and strip and starve the detenu and if this be our judgment, even shoot him down. Such misdeeds have not tarnished the record of Free India and I have a diamond bright, diamond hard hope that such things will never come to pass.”

This is what the present Chief Justice wrote in his judgement in that case.

Compare with what a great British Judge Lord Atkins wrote in habeas corpus case—

"Amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are fighting, that the judges are no respectors of persons and stand between the subject and any attempted encroachments on his liberty by the executive; alert to see any coercive action is justified in law."

In our Supreme Court, Justice Khanna did write judgment on the same lines and this is the only judgment of the Supreme Court which caused a very heartening editorial in one of the American newspapers.

I am quoting from the editorial in the New York Times:—

"Indian democrats are likely to remember only in infamy the four judges who obediently overturned the decisions of half a dozen lower courts scattered across India which had ruled in defiance of the Government that the right of Habeas Corpus could not be suspended, even during emergency that Mrs. Gandhi declared last June. But they will long cherish the lonely judge who said, in words reminiscent of other enduring, declarations for freedom:"

I now quote from Shri Kanna's judgment

"The power of the courts"

—almost redolent of Lord Atkins:—

"The power of the courts to issue a writ of habeas corpus is regarded as one of the most important characteristics of democratic States under the rule of law. The principle that no one shall be deprived of his life and liberty without the authority of laws is rooted in the consideration that life and liberty are precious possessions."

We have a hunting reminder. Mr. Justice Khanna went on to say:

"In a purely formal sense, even the organised mass murders by the Nazi regime qualify as law."

Because, under the Weimar Constitution it was done. Here also that same refuge was taken under our constitution. Therefore, Sir, I am glad that the hon. Law Minister has come forward to lay bare the mind of the Government in this matter. I would have been happy to agree with those of my friend who opined that the Article should be repealed so far as the internal situation is concerned. May I humbly and most earnestly submit that what I would like to do through my Bill is to strike a *modus vivendi, survarna madhyam, golden mean*, between the powers and functions of the State and the rights and liberties of the citizen in an extraordinary situation whether it be internal or external. I am glad that the hon. Minister agrees with most of the provisions of the Bill. I am grateful to him for the light that he has shed on this issue under this Bill. I remember—if my memory does not betray me—the hon. Home Minister in the last monsoon session said—whether it was the considered opinion of the entire Cabinet or his own personal view. I am not sure that the Government intends to repeal Art. 352. I do not know whether he sticks to the same view now. I am sure the Government and the entire Cabinet has considered this matter. I am sure that the view that the law Minister expressed today and on the last occasion on February 24 is the view of the Government. And there is only one word more which I would like to add before I close and that is this. The Minister referred to it. I had indicated in my speech when I moved the Bill for consideration on 29th of July that this is not an adequate Bill. I recognised that the Bill is not adequate. I had said on that occasion that there are other Articles Art. 356, 358 and 359. These should be taken care of and suitable amendments made so

[Shri Hari Vishnu Kamath]

that the danger that looms large to our democracy by these provisions could be obviated once for all with regard to Art. 356 I would say just one word. Dr. Ambedkar said so in the Constituent Assembly when there was a debate on the provision for imposition of President's rule in the States. Replying to the discussion on the amendment which I had moved, he said:

'I hope that this provision will remain a dead letter.'

It is not really dead; it is alive and kicking, Sir. Under the provisions of Art. 356 how many times has the President's Rule been imposed? Even in our time also how many times has this been imposed? As my colleague, Shri Mavalankar tells me, in thirty years forty times President's Rule has been imposed. My friend has got the figures at his finger tips—it is more than one per year. It is pretty bad. I hope you will agree with this observation of mine, Mr. Chairman, that this is pretty bad.

With regard to the provisions in Art. 352, 356 and 359, I said that these may lead to a dictatorship. Abusing such a powers conferred under these articles, this was what Hitler did in Germany, such a provision in the Weimar Constitution led to a similar dictatorship in Germany. In Dr. Ambedkar's own words—He was very sympathetic—I remember his words—I remember that this is what he said:

'I care for fundamental rights as much as my hon. friends do'.

It was only Shri Krishnamachari who used the phrase 'constitutional dictatorship' with regard to the possibilities of Art. 352 and 359.

Lastly, I would briefly respond to the appeal made by the hon. Minister because, as indicated in my very first speech on the 29th of July, the only objective in my mind was to make the Government think. This was what I said on that occasion. I know that this

Bill is not adequate for making full amendment of the emergency provisions. As a matter of fact, my scheme was to set the ball rolling and make the Government and my colleagues think. I wanted to provoke thought about this emergency Chapter. I have succeeded in that. I am painfully aware that the crux of the matter does not lie only with this Art. 352 but also with Art. 356, 358 and 259. This is what I said on the 29th of July. I know it is futile—an exercise in futility—to press this Bill to the vote of the House because this Constitutional Amendment Bill by a private Member has to face many hardships and difficulties unless of course the Government obliges me by issuing a three line Whip and that kind of thing. I do not want to put them in that predicament. These three articles together make the head and front of the emergency chapter

Therefore, I hope the Minister's assurance is a solemn assurance and not something that can be diluted or watered down or deviated from or be the victim of amnesia. I hope nothing of that kind will happen because sometimes it happens that because of other pre-occupations, other work, other pressing engagements, other crowded work-load, promises are sometimes relegated to the limbo of amnesia, if not oblivion. But, I hope that this Bill will not share that fate; the emergency provisions will not share that fate because it will be a sad day for democracy and for our country again if this is relegated or deferred to the next session

I also hope that, as the Minister indicated on the 24th February, he would bring forward a comprehensive Constitution Amendment Bill which will include amendments also to the emergency provisions of the Constitution. Today in reply to a question, he has solemnly assured and promised that the Bill will be introduced in this very Session. I know it cannot be passed in this Session but let it be introduced in this Session. I hope it

is a gilt-edged guarantee from the Government, and that they do mean business. I do hope that the Government means business, and means business earnestly and sincerely and promptly. It should be introduced by the end of this month. It should not be postponed to April or May. There should be no excuses also that the Government is discussing with leaders of the Opposition. I know the difficulties of the Government in regard to a Constitution Amendment Bill. It must have the support of a two-thirds majority in both Houses. There is no difficulty in this House, but a difficulty may arise in the other House if the Opposition is allergic to the moves made by the Government. Even so, I would submit, we should go ahead. Government should go ahead even if there is opposition in regard to this important measure. We should honour the pledges made in our manifesto. That is the first and foremost duty of the government come what may. Let the ball go in the other court. Let the people know who are the culprits. Therefore, it is very necessary that the Government should make up its mind once and for all even if there is opposition either in this House or in the other House. Government should not be deterred by such an attitude on the part of the Opposition. They should go ahead and get the Bill passed in this House, the real House or the Peoples' House and then show to the people of the country as to who wants to retain Emergency provisions. If there is any doubt in the mind of the Government in regard to the comprehensive Bill, I would like to appeal: let Government bring only the Bill with regard to the Emergency chapter. Other amendments can wait. I know some hon'ble Members wanted the Forty-second Amendment to be done away with lock, stock and barrel. But I would request the Government not to dilly-dally or shilly-shally with regard to the Emergency provisions. Let the two Congresses—Congress I or J or K—oppose or do what they like.

AN HON. MEMBER: Why are you abusing us? We have heard you very patiently.

SHRI HARI VASHNU KAMATH: No. No. Is that abuse? I would not go to that extent. I would only say, Sir, let the Government not go on marking time, trying to ascertain what the Opposition is thinking on this matter. Let them bring forward a Constitution Amending Bill. On that solemn assurance given by the Minister, I am withdrawing the Bill. Otherwise, I would not have withdrawn the Bill. On the solemn assurance of the Government, I would withdraw the Bill. I hope they will bring forward a comprehensive Bill in this Session. If that is not possible, let them bring forward a Constitution Amending Bill seeking to limit this Emergency chapter and seeking to amend the provisions on the lines which he has indicated in his speech on the last occasion and today. That is all my appeal. I hope you would respond to my appeal in the same spirit and in the same manner and therefore I conclude by saying that let us all solemnly resolve that we, here, in the House, in the Parliament, and in the country shall strive, to the best of our ability, to make our largest democracy the greatest democracy on earth.

SHRI SAUGATA ROY: Sir, on a point of Order. Since Shri Kamath has waxed so eloquent about the demerits of Emergency and since he is so set against the Emergency and since the Law Minister is also inclined to accept his proposals, why not the Government set a precedent and accept his Bill. So, I shall protest against the withdrawal of the Bill. If a division is taken, we will vote against it.

MR. CHAIRMAN: Now in consideration of statements and assurances given by the hon. Law Minister, Mr. Kamath, do you withdraw your Bill?

SHRI HARI VISHNU KAMATH: Yes, I seek leave of the House to

[Shri Hari Vishnu Kamath]

withdraw the Bill further to amend the Constitution of India.

MR CHAIRMAN The question is

"That leave be granted to withdraw the Bill further to amend the Constitution of India"

The motion was adopted

SHRI HARI VISHNU KAMATH I withdraw the Bill

UNEMPLOYMENT ALLOWANCE BILL

SHRI K LAKKAPPA (Tumkur)
Sir I beg to move*

"That the Bill to provide for compulsory payment of allowance to all unemployed persons in the country be taken into consideration"

Sir the Bill is one of the historic Bills. It is a most important Bill which is now under consideration. Of course facilities for drafting the Bill in a more scientific manner were not available from the Secretariat, but still I have drafted it in a lucid manner. I hope the dynamic Minister Shri Ravindra Varma would bring forward a Bill on the same lines. The basic object of this Bill is to provide allowance to the educated unemployed. There are doctors, engineers, diploma holders who are unemployed. They should be paid each an allowance of Rs. 150 per month. I want that this allowance should be increased till such time they remain unemployed or start their own business. The number of unemployed persons must be on the increase. I have stated that more than 20,000 doctors, engineers and diploma holders are there in the country. Half a million job scheme was announced with high sounding words by the government. It has not fulfilled the aspirations and

desires of the unemployed people of this country. So this Bill is inevitable, if the government wants to establish egalitarian society.

In reply to a recent question of mine on unemployment my hon. friend Shri Ravindra Varma has not given the correct picture of the situation in the country. He has given a sort of promise. But this country is not prepared to listen to the promises of the government. Government must understand the explosive and alarming situation in the country. It can lead to any situation any time, it can blow off the present government if they do not take it seriously. The Prime Minister got up and gave a reply saying I am not for unemployment doles. Some states in the country want to give social security to unemployed people. The Chief Minister of Maharashtra had brought forward a scheme. In Karnataka we had a scheme that if the income of a particular family or a person is below 3000-5000 rupees an unemployment dole and facilities should be given to that person. I cannot understand the helplessness of the present government. I do not know what is the philosophy. I am not satisfied with the answer given by Moraji Desai, the Prime Minister of this country. I do not know how the younger ministers of unemployed persons, teachers or doctors or diploma holders, literate and illiterate can agree with that statement. The Prime Minister said that it was the philosophy of the Janata Party government to abolish unemployment within ten years. Mr. Fernandes says we are considering providing opportunities in cottage industries and other things. Our Charan Singh has got beautiful philosophy and economic policy. He has written a book. He mentions Mahatma Gandhi. I do not know how it is relevant for him. He says Gandhian blueprint. I do not know what it is that he envisages for this country. The hungry

*Moved with the recommendation of the President