

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 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 short time, for a limited period, the legislative powers as well are vested in the hands 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 distrust your President ? Do you think he will go out of his way to indulge in acts of personal tyranny in order to feed 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 feels; 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 provisions 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 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 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 Sastri (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