

Prof. K. T. Shah (Bihar: General): Mr. President, I have been viewing the tendency, noticeable throughout this Draft Constitution, of arming the Central Executive Government with excessive authority, with deep misgivings. In this particular clause there seems to be incorporated even stronger authority and worse features of centralised authority than was found in the original article to which this is an amendment.

There are several points on which I think this amendment not only breaks new ground, but seeks to invest the President with authority and power that cannot be consistent with democratic, responsible Government as we have been taught to believe.

In the first place, Sir, the substitution of the term 'internal disturbance' for the original expression 'violence' fills me with deep concern and misgiving. These are terms not only very difficult to define; but the contrast, whatever may be the implication, seems to me to suggest unjustifiable invasion of democratic freedom. The slightest disturbance, slightest fear of disturbance in the internal management of the State, so to say, or any part of it, may entitle the President to declare a State of Emergency, and issue a proclamation on that account.

This, I think, is more serious and is brought out more prominently when we see the third part of the amendment, where it is not even the actual occurrence that is sought to be guarded against, but even a possible danger of it. The mere apprehension of it in the minds of the executive is made good ground for a proclamation of this kind to be issued. Now I feel that this is utterly indistinguishable from the series of Ordinances which were issued in 1942, wherein not only the occurrence of commission of an act was made punishable but even the likelihood of such an act being committed was made liable to action under the Ordinance. If this Government that we are constituting now, if the State that we are setting up under this Constitution, is not to be distinguishable for liberalism, for tolerance, for freedom of thought and expression to the citizen, in any way from the preceding Government, except that the complexion of the rulers would be different,--then I am afraid we are not being true to the pledges that have been given to the people of this country, viz., that Swaraj would be really Ram Raj on this earth.

I feel, Sir, that the same tendency is noticeable in another part of this amendment where a Proclamation of Emergency is said to be possible to extend or uphold if by Resolution the two Houses of Parliament approve of it. There is, however, no provision, so far as I can see, for the Houses being able to disapprove or reject the Proclamation, to declare that there was no occasion for such a Proclamation, and that as such it should be null and discontinued. It is quite possible that, at a given moment, the President, who by the way is not always obliged to accept the advice of his Ministers, acts on his own and declares a state of emergency. This may happen particularly, when a Parliament is on the eve of dissolution, and when party passions

run high, and when, there is a possibility of other Ministers or Party coming into power expressly intending to discontinue the programme of the Party preceding in power, including the Proclamation of Emergency. If at that time advantage is taken of a provision like this, and acting on the apprehension that there may be "disturbance" internally in any part of India, the President should act upon his own, or even upon the advice of an aggressive Minister, to declare a state of emergency, what would happen. The new House may not like to continue, such a state of emergency. The House may want to disregard or disapprove of the proclamation. Under those circumstances, this Constitution, with all its supposed loyalty to the Lower House, makes no provision that an Emergency declared by the President can be disapproved by the Legislature. Nor is the Lower House entitled to say that there is no ground for such apprehension, and, therefore, there should be no such proclamation.

I consider this a very serious omission, even accepting the *bona fides*-and I do not doubt it-of the draftsmen in making this provision. I think the omission of the contrary provision that the Houses would be entitled to reject or disown a Presidential Proclamation leaves very serious ground to fear that all the power is to be Centralised in the Executive and the Parliament is to be reduced to be only a sort of Registration office which has to say ditto to whatever the Executive has done. I do not think this is consistent with the ideals and ambitions on which we would be inaugurating a government in the country on a democratic basis. It is indistinguishable from the series of Ordinances under which we had to live before; and under which we are liable perhaps still to continue if a provision of this kind goes unnoticed.

The danger of substituting such a thing as 'internal disturbance' for 'violence' is very serious, because disturbance can be defined according to the mood of the moment, especially if any General Election is impending, and feelings are running very high, and public sentiment is strained to very high pitch. At such a moment disturbance may occur anywhere. Such disturbances ought not to be regarded under any free constitution as a source of Emergency in which the Chief Executive would be entitled to issue a Proclamation and suspend the Constitution. Considering it also in the light of subsequent articles, and the effect of such a Proclamation, it would perhaps amount to denial of freedom to the individual or to whole units of their right to self-Government. This therefore, is a provision to which I think too strong exception cannot be taken; and I hope the House will be inclined to reconsider this position, and see that some at least of the points I am putting forward--such, for instance, as the right of the House to disapprove of any Proclamation-are included, and the security of the State should not be made an excuse--as it appears to me to be the case here-for excessive authority being vested in the Chief Executive.