

**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 in 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.