

"Emergency for armed rebellion"

NEW DELHI, October 12.

THE comprehensive constitution amendment bill expected to come up before the winter session of parliament would seek the repeal of the present article 352 providing for the imposition of emergency to meet internal disturbances and its substitution by another stipulating that emergency may be proclaimed "only in cases of armed rebellion" with a proviso that it may even be confined to only part of the country.

To further tighten the provision, it is proposed that such a proclamation can be issued by the President only on the written advice of the cabinet ministers. The parliament session begins on November 14.

The proposals, aimed at safeguarding democracy and rule of law in the future and now under the consideration of the government and the ruling Janata party, incorporate many provisions, several of which even the framers of the constitution, perhaps, did not have in mind three decades ago.

A meeting of the executive of the Janata parliamentary party will be held here on October 19 to discuss these proposals which have emerged after a series of consultations at various levels. The proposals relate not only to the constitution 42nd amendment but also to the 38th and 39th amendments.

Since a proclamation of emergency is a "virtual amendment" of the constitution, it is also proposed that it should be approved by both the houses by a special majority (as laid down for other amendments of the constitution), within one month of the proclamation. Such approval would have to be obtained afresh every six months.

Further, it is suggested that one-

tenth of the members of the Lok Sabha could requisition a meeting of the house to call in question a proclamation of emergency, which would cease to operate if a resolution to that effect is passed by a simple majority of the house.

While there is no move to change the amended preamble, to which the words "socialist," and "secular" were added, it is proposed to define the two words.

By an amendment to article 366, it is sought to be clarified that the term "secular" would mean equal respect to all religions and being irreligious. "Socialist" would mean freedom from all forms of exploitation—social, political and economic.

The maximum period of preventive detention without reference to an advisory board is sought to be reduced from three months to two months. Distinction is also sought to be made between persons subjected to preventive detention and those who have been convicted of crime.

SUSPENSION OF RIGHTS

By an amendment to article 358, it is proposed to provide that rights granted by article 19 (freedom of speech, etc.) would not be automatically suspended on the proclamation of emergency on grounds of armed rebellion but only in the case of external aggression. A specific order would be necessary for such suspension in the former case.

Similarly, article 359 would also be amended to deprive the executive of the power to suspend article 21 dealing with the right to life and liberty or its enforcement.

It is also suggested that the right to enforce fundamental rights can be suspended only in respect of action taken under legislation relating to emergency and not to other legislation. But whether a particular legislation related to emergency would not be justiciable.

The proposals seek to delete article 31-D and 32-A which conferred sweeping powers on the state to frame laws for dealing with "anti-national activities" and restricted the power of the supreme court to consider the constitutional validity of a state law.

While amendments to part four relating to the directive principles of state policy might be retained, the those relating to "fundamental duties" of citizens might be deleted as, it is argued, it serves no purpose.

In the chapter on "fundamental rights", it is proposed to amend article 31-C in such a way as to confine the protection conferred by it only to laws of the state for securing the directive principles contained in clause (B) or clause (C) of article 39.

The supreme court will be restored the authority to determine the validity of elections to the office of the President and the vice-president which was sought to be taken away from it by conferring it on another authority.

While it is not intended to make any changes in article 74 as amended during the emergency, it is felt that

the constitution should "expressly recognise" the right of the President to refer a matter back to council of ministers once for reconsidering the advice given to him earlier.

Amendments are sought to be made to articles 83, 172 and 371-F to reduce the term of the Lok Sabha and the state legislative assemblies to five years as originally provided. Steps are also proposed to restore the original requirements of quorum for the transaction of business in the two houses of parliament and state legislatures. This will, however, be subject to the law made by the appropriate legislature.

As regards the power, privileges and immunities of members of parliament and state legislatures, it is felt that these should be determined by law. This would remove the uncertainty caused by the amendment to articles 105 and 194. While giving effect to this proposal, a provision would also be made to avoid a reference to the privileges of the British House of Commons.

It is proposed, as recommended by the supreme court, to do away with the requirement of a special bench of seven judges to hear and decide constitutional questions on the validity of a Central law. Similarly, article 228 would be amended to do away with the requirement that not less than five judges should determine questions on the validity of a state law. The stipulation of a special majority provided in the relevant articles would also be deleted.

The proposals envisages, the deletion of article 257A which enables the Centre to deploy armed forces of the Union in a state and articles 321A and 323B which provide for the creation of tribunals outside the judicial hierarchy.