

[Mr. President]

- (d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.
- (2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

The amendment was adopted.

Mr. President : The question is:

"That the proposed article 278 stand part of the Constitution."

The motion was adopted.

Article 278 was added to the Constitution.

Mr. President : The question is:

"That proposed article 278-A stand part of the Constitution."

The motion was adopted.

Article 278-A was added to the Constitution.

Article 279

(Amendments Nos. 3026 and 3027 were not moved)

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, this article takes away the Fundamental Rights contained in article 13 in an emergency. If it is the desire that these rights should be abrogated, it should be done by Parliament by law during that period and it should not be left merely to the executive authority to do so. It is quite conceivable that a war may break out and may last for a fairly long time. The last war lasted for six years and I cannot conceive that for six years the Fundamental Rights granted under article 13 should remain suspended all over the country. It is a most extraordinary state of affairs and I do not know of any Constitution in the world where the fundamental rights would remain suspended for six years. I therefore move the following amendments :—

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words 'or to take any executive action' and the words 'or to take' occurring at the end be deleted."

The article will read as follows after that:—

"While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the Parliament to make any law which the Parliament would otherwise be competent to make."

My amendments come to this, that during an emergency the Parliament alone will have the power to suspend the Fundamental Rights given under article 13. Otherwise, if the rights become automatically suspended and the executive authority can do what it likes in this regard, it would be an extraordinary state of affairs. This is a matter of fundamental importance and I would like honourable Members to ponder over this question. The rights that we propose to give

under article 13—are they such rights. The results of which will threaten the security of the State in an emergency ? I do not agree. Article 13 itself has taken care to see that in an emergency these rights should be exercised only in such a manner as will not endanger the security of the State. I would like honourable Members to read article 13. There are seven fundamental rights guaranteed under this article. The first is that all citizens shall have the right to freedom of speech and expression. Now, this fundamental right is not absolute. We have clause(2) where it is stated—

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State.”

So, that freedom of speech and expression can be exercised only subject to this last clause. This means that the State can make any law to restrict freedom of speech and expression to prevent the undermining and overthrow of the State. The Fundamental Right itself prescribes the limitation to that right in an emergency. I do not see the necessity for article 279 to suspend the provisions of article 13. In an emergency, of course, the State has the right to restrict freedom of speech and expression because the right says that nothing shall prevent the State from making a law in case the situation is such that the security of the State is liable to be undermined. I therefore do not see any reason why this fundamental right of freedom of speech and expression should remain suspended for an indefinite period, during a war, when the right itself says that it shall give the State authority to restrict that freedom if it is so necessary for the security of the State. The second right is that the citizens shall have the right to assemble peaceably and without arms. Then this right is not absolute. It is said in clause (3) “Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause.” So in the interest of public order nothing can restrain the State from making any law. When, therefore, Sir, there is an emergency, nothing will stop the State from making a law because it is necessary to maintain the safety of the State. I, therefore, think that this right to assemble peaceably and without arms should not be denied for an indefinite period or the war merely because there is an emergency. I think the right itself is limited and the State can make any law if it is necessary in the interests of public order. Therefore, Sir, I think the right should be guaranteed and should not be abrogated and suspended during the war.

Then the third freedom is the freedom to form associations or unions. That is limited by proviso (4) which says : “Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause.” Here also in the interest of public order reasonable restrictions can be imposed on the right to form associations or Unions. Why then for long years, six or seven or eight years during which a war lasts, should this right remain suspended ? Again, Sir, there are the rights (d), (e) and (f) to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to acquire, hold and dispose of property and all these three rights are again qualified by clause (5) which says “nothing in sub-clause (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any aboriginal tribe.” Here also in the public interest, the State can make any law which goes against these rights. I therefore think, Sir that the Fundamental Rights are sufficient in themselves and it is not necessary to abrogate them during in emergency. If this article is passed, what will

[Prof. Shibban Lal Saksena]

happen is this : The fundamental rights of the people will be suspended. There is no limit to the period of war and it may last five or six or ten years and throughout that period people all over the country shall be deprived of the fundamental rights. I apprehend there is danger and I would invite the attention of Dr. Ambedkar to consider this clause properly and calmly. If you cannot delete this clause, then at least accept my amendment. I only want that this power should be given to the Parliament for exercise if it is found necessary. If the limitations imposed upon fundamental rights are not sufficient, then let the Parliament declare by law that in the interests of emergency they shall increase these restrictions. There should be no objection whatsoever to my amendment which provides for the emergency and at the same time retains to the people the liberties which have been guaranteed by the Constitution. Otherwise, people will laugh at our Constitution and they will say "on the one hand you give them liberty in the fundamental rights and on the other you take them a way". Do we not trust our own Parliament ? If Parliament is not trusted in an emergency, whom else shall we trust? I therefore think that we must amend this article if we cannot delete it altogether. The power to interfere with fundamental rights should be vested in the Parliament and not in any other authority.

Shri H. V. Kamath : Mr. President, while according general support and wholehearted support to the amendment just now moved by my honourable Friend, Prof. Shibban Lal Saksena to the effect that the power in the event of a Proclamation of Emergency to suspend the fundamental rights guaranteed by article 13 of the Constitution should be vested in Parliament and not in the President, I would go a step further and would like to plead with the House that in view of the new draft of article 280 which will shortly come before the House, there is no need whatsoever to retain article 279 as well. If the House will with patience compare the original draft of article 280, and the present draft of article 280, they will find that the new draft refers to the suspension of all the rights conferred by part III of the Constitution. Article 13 is only one of the articles comprised in Part III of the Draft Constitution. Therefore I see no reason whatever no reason *d'être* for the retention of article 279, and in my humble judgment there is no need now for this article 279 in this Constitution in view of article 280 which follows.

As regards the point made out by my honourable Friend, Mr. Saksena, that the Proclamation of Emergency once issued, the President under articles 275 or 278 as assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler so far as the constituent State is concerned; and also he is empowered to declare in so far as that State is concerned, that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament. Therefore, it is very necessary to make a distinction here and to be clear in our minds, in case article 279 is going to be adopted by the House as it is; as to what the "State" as, specified in that article actually means. Article 279 as moved by Dr. Ambedkar provides that while a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take etc., etc..... We shall now turn to Part III and find out how 'State' has been defined in that Part. The opening article of Part III defines the State as follows : "State includes the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." I need not labour the obvious. We have already adopted articles which provide that once an Emergency Proclamation is issued, the State legislatures and the Governor or Ruler of the State become, more or less *functus officio*. The President may assume to himself all powers. To my mind the Ruler or Governor of the State

or the State legislature will not be competent to take such action as may be required to further restrict Or annual the rights conferred by article 13. Parliament alone, or the President alone can do it. I would prefer if action in this regard is taken by Parliament; that would be a much wiser provision. If we are wise, we will do so; if we are otherwise, we may not do it. In any case, I think, considering that 'State' is defined in article 7 in Part III so as to include all local or other authorities within the territory of India or under the control of the Government of India, I think it is much wiser to define here exactly what is meant by 'State' to obviate all doubts and difficulties and I think it would be much wiser to provide that not the President, but Parliament alone can legislate in this regard.

One other point, and it is this. Is there really any need for this article specifically relating to article 13 of Part III? I urge my honourable colleagues here to study carefully article 13. Article 13 is already laden with five provisos. Everyone of these provisos provides that in no event, in no contingency, in no emergency, in no case shall the security of the State, or public order or public interest be jeopardised. This article, as was remarked in the course of the debate thereon in this House, as a matter of fact, confers rights, and then abridges them, if not abrogates them, at one and the same time. In view of this consideration that the article as it stands, as we have adopted it, has got safeguards in the interests of the safety of the State, in the interests of public order, safeguards against the exercise of the fundamental rights comprised in, the sub-clauses (a) to (g) of clause (I), I feel that there is absolutely no necessity whatever for incorporating article 279 here. Because, article 279 has got relation to the situation where the security of the State, the security of the country or any part thereof is endangered and we have already made provision for that through the provisos (2) to (6) suffixed to article 13. All these provisos have one meaning; though they may be couched in different language they all bear the same significance, that is, in the exercise of the fundamental rights guaranteed by this article, public order, public peace and the safety of the State shall not be jeopardised. If that stands in danger, this article lays down specifically that nothing shall affect the operation of any existing law in so far as it relates to, or,—this is important, in view of the article that we are now considering—prevent the State from making any law, so on and so forth with regard to the different rights comprised in the article. What do we find here in article 279? "Nothing shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take." This is already provided for in article 13 and this would be merely an overlapping, if not a cumbersome repetition of what we have already adopted in article 13.

I may, firstly, That this article 279 should be deleted; not that I do not want such a provision, but it is unnecessary because of article 13, adopted by the House already. If that does not find acceptance, I would welcome the acceptance of the amendment of my honourable Friend Prof. Shibban Lal Saxena to the effect that Parliament and not the President may be empowered in this regard.

Dr. P. S. Deshmukh : Mr. President. Sir, I think the provision of article 279 is unnecessary from many points of view. I would like to urge that we ought not to make any provisions which detract from the fundamental nature of our fundamental rights. Even if in an emergency it was necessary to suspend any fundamental rights, there is ample provision already existing in the clause that we have passed so as to make it unnecessary to have an article like this, where we specifically say that laws will be promulgated irrespective of the fact that they nullify or abrogate fundamental rights provided in article 13, Part III. I would like to refer to article 13 and point out what a number of important rights are likely to be affected by the passing of the present article 279. It is not merely

[Dr. P. S. Deshmukh]

prevention of association of people, or prevention of people from inciting other people to violence and utilising the right of speech and expression. It also refers to free movement throughout the territory of India, refers to the residence and settling down in any part of the territory of India, to acquisition of land and disposal of property, to the practising of any profession or carrying on of any occupation, trade or business. So, to infringe in any way these rights is to declare martial law, and even that is unnecessary because both by the second sub-clause in article 13 there is provision which will give sufficient power both to President as well as Parliament to intervene. This has been pointed out by Mr. Kamath. It has been laid down for instance in article 13 (2):

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State *from making any law*, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or *undermines the authority or foundation of the State*.”

There is therefore sufficient provision recourse to which could be had in an emergency of the type which has been described under article 279. Then, if we refer to the new article which we have just passed *viz.*, article 278, as I pointed out yesterday—there is also another wide provision for setting aside the provisions of the Constitution and I do not think there is anything to suggest that the article referring to the Fundamental Rights are excluded from the operation of those sub-clauses. It has been stated in article 278 (1)(c)—

“make such incidental and consequential provisions as appear to the President to be necessary or desirable etc. etc. in the State”.

In view of these provisions, I do not think there is any necessity to have this article 279 and I therefore urge reconsideration of the position and if possible withdrawal of this article altogether.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir, this is a very simple article that has been provided under the emergency causes. It is true that under article 13 provisions have been made to enact Acts as stated by my friends just now but I do feel that when the emergency arises, it should not be understood that the whole administration would be at a standstill, and therefore this article particularly defines that despite the emergency the State shall not be prevented from making any law under article 13. It is helpful and it is neither superfluous nor redundant. In my opinion the Drafting Committee has taken precaution to state that even in the, event of emergency the States will function, if they so desire, by administering laws as defined in article 13 and nothing would prevent the state from making any laws. It is a very helpful provision lest generally in a state of emergency people feel that emergency is there and therefore all ordinary laws should come to a standstill and no more laws would be enacted. Here we have been told that despite the emergency the State can function if it so desires under article 13. Under these circumstances I feel it is a very happy and necessary article which is desirable under an emergency which may prevail in the States. Under these circumstances, I support this article.

Shri Brajeshwar Prasad : Mr. President, I had no inclination to take part in this, debate but my Friend Mr. Sidhwa has not, if I may be excused for saying so understood the implications of this article. It means suspension of provisions of article 13 during emergency. There is no meaning in saying that the article vests, the State with powers, in conformity with article 13. It means there may be suspension of freedoms of speech and association. If this article 13 would not have been present in the Constitution, the States could have taken powers in their own hands and restrict the freedoms of speech and other freedoms. So irrespective of the presence of article 13, the State Legislature can

do anything restricting the liberty of the individuals. That is the meaning of article 279.

Shri R. K. Sidhwa : No.

Shri Brajeshwar Prasad : I do not know. Let the Drafting Committee explain the provisions of article 279, but I am quite clear in my mind that, article 279 means that the State Legislature can make laws during an emergency restricting freedom of speech irrespective of article 13. This is my interpretation. I do not know if it is correct. If we do any act in politics, it results in either of two ways. Either we expand man's liberty or restrict it. There is no third possibility. I feel that during a period of emergency the executive and the legislature should have the power to restrict man's liberty.

The Honourable Dr. B. R. Ambedkar : Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental Rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

Prof. Shibban Lal Saksena : During emergency ?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article 280 was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President : I will put the amendments to vote.

Amendment No. 235, moved by Prof. Saksena.

The question is:

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President: The question is :

“That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words ‘or to take any executive action’ and the words ‘or to take’ occurring at end be deleted.”

The amendment was negatived.

Mr. President : Then I put article 279 to vote.

The question is :

“That article 279 stand part of the Constitution.”

The motion was adopted.

Article 279 was added to the Constitution.

Article 280

Mr. President : Then we take up article 280.

Amendment No. 3028—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for the existing article 280, the following article be substituted:—

‘280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order.’

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the Proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus*, writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to Permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

Mr. President : Mr. Kamath, do you wish to move amendment No. 3030 ?

Shri H. V. Kamath : Sir I shall move the alternative in No. 3030. I move:

“That in article 280, after the words ‘by order’ the words ‘and subject to the approval of a majority of the total membership of each House of Parliament’ be inserted.”

Shall I move my other amendments now and speak on them later? Prof. Saksena has an amendment also.

Mr. President : You may move your amendments.

Shri H. V. Kamath : I also move Sir, by your leave, the three other amendments. The first one reads as follows :

“That in amendment No. 3028 of the List of Amendments proposed to article 280 for the words ‘enforcement of the rights conferred by Part III of this Constitution’ the words ‘enforcement of such of the rights conferred by Part III of this Constitution as may be specified in that Order’ be substituted.”