

**Mr. Vice-President :** The question is:

“That article 277, as amended, stand part of the Constitution.”

The motion was adopted.

Article 277, as amended, was added to the Constitution.

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#### **New Article 279-A**

**Mr. Vice-President :** Pandit Thakur Das Bhargava may move his amendment No. 73 to add a new article 279-A. There is an amendment of his also to article 280 in exactly the same terms as amendment No. 73. I wish to know from him whether he will move this as a new article or propose it as an amendment to article 280.

**Pandit Thakur Das Bhargava** (East Punjab: General): Sir, I beg to move:

“That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments after article 279, the following new article be added:—

‘279-A. Any law made, or any executive action taken under article 279 in derogation.’ ”

**Mr. Naziruddin Ahmad :** On a point of order, Mr. Vice-President. This should be moved as an amendment to article 280.

**Mr. Vice-President :** But he wants now to move it as a new article after article 279.

**Mr. Naziruddin Ahmad :** Then, article 280 also may be moved and the whole thing considered together.

**Pandit Thakur Das Bhargava :** I have no objection to that course being adopted.

**Mr. Vice-President :** I think Pandit Bhargava might move his amendment No. 74 after article 280 is moved. Instead of moving amendment No. 73, he may move amendment No. 74 after Dr. Ambedkar moves article 280.

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#### **Article 280**

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

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

‘280. (1) 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 such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.’ ”

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may be emergency, it may be quite possible

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to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the Proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that Parliament will be free to take such action as it likes.

**Mr. Vice-President :** Now Pandit Thakur Das Bhargava may move amendment No. 74.

**Shri H. V. Kamath :** There are other amendments in List I of Third Week.

**Mr. Vice-President :** I am coming to all that.

**Shri H. V. Kamath :** List I may be taken up first.

**Pandit Thakur Das Bhargava :** With your permission I propose to move amendment No. 73 for new article 279-A as well as amendment No. 74 to article 280.

**Mr. Naziruddin Ahmad :** This proposed new article is not on the agenda for today.

**Mr. Vice-President :** Pandit Thakur Das Bhargava has to move amendment No. 74, That is what was agreed to.

**Pandit Thakur Das Bhargava :** The point is that if new article 279-A is agreed to, I would have no objection to drop the amendment to article 280.

**Mr. Vice-President :** You agreed sometime ago that you would move the amendment for the new article 279-A as an amendment to article 280.

**Pandit Thakur Das Bhargava :** My submission is that I have, given notice of two amendments, Nos. 73 and 74. The substance of both is the same. But, while one seeks to substitute article 280, the other seeks to add article 279-A. At the same time, the objective of both the amendments is quite separate. Therefore you may allow me to move both and put both—in fact all—the amendments to the House.

**Mr. Vice-President :** Very well, you may speak.

**Pandit Thakur Das Bhargava :** Sir, I move:

“That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added :—

‘279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall enure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force.’ ”

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, or the proposed article 280, the following be substituted:—

‘280 Any law make or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force.’ ”

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (1) of the proposed article 280, after the words ‘a Proclamation of Emergency’ the words, figures and brackets ‘under article 275(1) of the Constitution’ be inserted.”

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end :—

‘for a period during which the Proclamation is in force or for such shorter period as may be specified.’ ”

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added :—

‘(2A) Any such order may be revoked or varied by a subsequent order.’ ”

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments in clause (3) of the proposed article 280, the following be added at the end :—

‘and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament.’ ”

Sir, I would beg of the House to consider article 279 which we have already passed and the present article 280 together and in the light of what we have passed under article 279, consider the affect of article 280 along with article 279.

So far as article 279 goes, we have so far agreed as follows:—

“While the 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 any executive action which the State would otherwise be competent to make or to take.”

When we have passed this article 279, it follows that as a matter of fact we have given very extensive powers to the executive, in so far as the restrictions which have been imposed by provisos to article 13 in regard to fundamental rights have been practically taken away. While the proclamation of an emergency is in operation, the executive can change any law and make any law with regard to fundamental rights, of freedom of speech etc., and those restrictions which have been placed by the statute under Section 13 as such power will no longer avail, Which means that during the period of emergency the Executive will be armed almost with autocratic powers.

Now if you will kindly look at 280 it is half not so drastic as article 279. In regard to article 280 as it now emerges from the Drafting Committee the, prick of the clause has been taken away. If you will kindly see the original Section 280 then the House will come to the conclusion that this section as originally drafted was much more drastic than it is at present. The old article 280 as originally found. In the Draft Constitution ran thus:—

“Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending *beyond a period of six months* after the proclamation has ceased to be in operation as may be specified in such order.”

So that according to article 280, all the rights spoken of in article 25 would have remained suspended. Not only the right to move and the guarantee of the right to move the Supreme Court for implementing these rights was taken away, but, the rights themselves were taken away. Now, there is a great difference between the guarantee of moving the Supreme Court being taken away and the rights guaranteed under III being taken away. If

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the rights were not taken away then the position is very safe and the Supreme Court and other citizens cannot go against the declared law of the country, but only the right to move the Supreme Court by appropriate proceedings is taken away. The laws remain as they are, but if the right to change the law is taken away, as it has been taken away by article 279, a position is created in which the Executive becomes too autocratic. They can do whatever they like; they can pass any law if they can make the Parliament to enact it, so that article 279 is much more drastic in its effect than article 280. If you will kindly see article 279, it appears that during the period of emergency you authorize the executive to take any action untrammelled by the provisions of article 279 and similarly you authorize the legislature to pass any law, a legislature as it is defined in article 7, without those safeguards and restrictions which the Constitution has in its wisdom taken the trouble to enact in respect of article 13, so that the result will be that if any action is taken or the law is passed during that period, the action and the law will be good and will inure for all time. Article 279 does not say that the action taken or the law passed will only be applicable for the period of emergency or within six months after that and article 279 is totally silent upon that. Therefore, any law enacted during this period will be a good law unless it is repealed or avoided. My amendment seeks to restrict this period and I want that any law passed during this period or any executive action taken during this period under the provisions of article 279 may only inure for the period of the emergency or such shorter period as the State enacting it or the executive taking the action thinks it necessary.

Therefore independently of what we do in regard to article 280, it is absolutely necessary that you agree to the enactment of article 279-A. Otherwise the effect will be that the powers taken under an emergency and action taken and law enacted during that period will inure for all time unless it is repealed or avoided. If you accept the amendment, then automatically as soon as the emergency passes away and normal condition return, the effect of any such action or law would be taken away and the action and the law will be automatically repealed and avoided.

In regard to article 280 I would beg of the House to consider its full implication before it considers this article. The wording "emergency" has not been defined anywhere and one of my honourable Friends suggested to Dr. Ambedkar to define the word "emergency" and I told Dr. Ambedkar that he will certainly perform a miracle if he succeeded in defining the word "emergency" as the word "emergency" is so fluid and is of such a nature, that you cannot possibly define it. It depends upon a particular executive to say whether there an emergency has arisen and an ordinary, emergency may soon unnerve them executive of any State. A small bubble may at any time develop into a glacier and even the biggest seeming mountain of truth may just dwindle into a mere scrap of sand. Nobody can foresee or can say before hand how the actual trouble will develop. Therefore a panicky Cabinet will declare an emergency very soon, whereas a strong and sturdy Cabinet will not declare in any such situation that an emergency has arisen. It will depend upon the nerve and spine of the Cabinet as to how they deal with this question., Therefore, I think that we should not visualize that the present Cabinet shall remain for all time or there will not be cabinets in the future which will perhaps not take the view which our present Cabinet is expected to take. Let us therefore be cautious and see that, we arm the executive with such powers as are necessary, so that the liberties of the people are not jeopardized by a panicky Cabinet. Therefore it is up to us to see that we enact provisions which do not arm the Executive with too much power.

After all is said and done, Parliament is the alternate authority. If we can take away some of the powers which are sought to be given by this article 280 and invest the Parliament with those powers, it would be doing the right thing. It is in that view that I have proposed the other amendments to this article.

The first amendment in this connection to which I would draw the attention of the House is No. 75. So far as this amendment is concerned, I think it is only a clarification. I have pointed out that a Proclamation of Emergency can only be issued under article 275(1). Under article 278 it is not contemplated that any proclamation of emergency can be issued. I only want to make it quite clear that it is only under this article that the powers can be taken.

In regard to amendment No. 76, I beg to submit that as I read the amendment of Dr. Ambedkar, I can understand that the proclamation or order may apply to the whole of India or it may apply to a part of India. In so far as question of time is concerned, if you keep the article as it is and do not incorporate the amendment contained in No. 76, in clause (2), it would mean that every order shall remain in force for the full time of its duration in the whole of India or part of India. If you add these words, it would be possible that in certain parts, the order may be for a shorter period, and in the rest of India, it may be for the full period. Unless you add this, the object which Dr. Ambedkar has in view will not be fulfilled.

In regard to amendments 77 and 78, I do not want to take much of the time of the House because as a matter of fact, these two amendments have been taken from the original clause which we have already passed about the Proclamation of Emergency. If you kindly refer to article 275, you will see that these two are already there. I want these two safeguards which appear in article 275 in regard to Proclamation of Emergency may also appear in regard to this order also. After all, the first and foremost effect upon the citizens of a proclamation of emergency is that it takes away their fundamental rights. They are affected very vitally. When I understand that an emergency may be as elastic as the proverbial foot of the Chancellor, then my difficulty becomes all the greater. Unless and until Parliament confirms the particular order taking away the guarantee of enforcing the fundamental rights, we will not be safe in this country and no citizen would be safe with his liberty, unless this provision is enacted.

If you look at the present position in regard to articles 279 and 280, you will find, as a matter of fact, this provision of article 280 is not so necessary as it appears to be. One of my amendments is that instead of article 280, we may substitute article 279-A. I wish to take the House with me in coming to the conclusion that the enactment of article 280 is not so necessary as it appears at first sight. So far as the fundamental rights are concerned, article 13 is the principal article. If you take away article 13, very little remains in the Fundamental Rights over which a person should feel enthused or to feel concerned. Article 13 being practically taken away by article 279, what is there to worry any person about fundamental rights? In regard to the personal liberty of the subject and the protection of his rights, article 15 is there. The House will kindly excuse me if I dilate a bit on this provision.

Now, Sir, according to the fundamental rights as they exist today, this article 15 is the greatest blot on our Constitution. By article 15, whatever we had given in article 13 we have taken away. If the adjective law has been sought to be corrected by enacting article 13, and safeguards against the misuse of the powers given under article 13 were provided by the use of the word "reasonable" before the word "restrictions", they are all washed away by article 15, because in regard to procedure we have not put in any restriction

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whatsoever on the powers of the legislature. Under article 15, the legislature is at perfect liberty to pass any law it likes. It can take away all the safeguards that exist today. Under article 15 any legislature is competent to enact that no accused shall be defended by counsel. Any legislature, under article 15 as it exists today.. is competent to enact that as a matter of fact, the present provisions relating to arrest, relating to remands and bail, production of defence, appeal etc., can all be abrogated. Under article 15, any special courts with special powers and procedure can be created and the liberty of the subject can be reduced to zero. This is the present position. Unless and until we see that article 15 is righted, there is nothing which you possess can be taken away by article 280. If you take full powers under article 13, what else is there for which one should feel sorry for the deprivation ? If you kindly look at the fundamental rights, you will be astonished to see there is no other such fundamental right which could possibly be taken away by enacting this article 280. In the first place, if you look at those rights one by one, you will come to the conclusion that article 280 does not practically touch many of them. Taking article 9, I do not think that any person will dispute that article 280 touches any of the rights in regard to the use of wells, roads, hotels, etc, Similarly in regard to article 10 which deals with employment and article 11 in regard to untouchability and article 12 in regard to titles. Article 13 has already been taken away. In regard to article 14, I understand something worse can be done if article 280 is enacted. A person who has committed a crime two months ago may be tried by a law enacted subsequently by virtue of which he may be liable to a greater amount of punishment. Similarly, there can be two convictions for the same offence and the right to move the Supreme Court for immediate remedy will be taken away. In regard to article 15, I have already submitted. If the article 15 remains in its present form, I can predict that after all this Constitution is enacted and all the dust of controversy is over and Dr. Ambedkar sits down in his bungalow, he will repent the day when he passed article 15 without any safeguards. I appeal to him and to the House that if they really mean well to the people of the country, they must see that article 15 is amended. If article 15 is not amended, this Constitution and these fundamental rights are not worth having. Therefore, I submit so far as article 15 is concerned, the law already provides that Parliament may make any law as regards procedure and thus there is no fundamental right in respect of procedure. So that, there is no other vital fundamental right which this article touches.

In regard to article 16, which deals with freedom of trade, the Parliament already possesses the power to enact laws. Article 17 deals with prohibition of traffic in human beings, and article 18 deals with the employment of children. I do not think any Government worth the name will try to conscript under article 17 one class only. The State is empowered by this article to conscript without discrimination. It is thus more an enabling than a disabling clause. No other fundamental right is affected if article 280 is not passed, in regard to articles 19, 20, 21, 22, 23 which deal with religious and cultural rights and article 24 deals with compensation.

So that my humble submission is, if my interpretation is correct, article 280 only takes away the power guaranteed to the people of moving the Supreme Court alone. The rights are not taken away; the laws are not taken away; the laws will remain as they are. Only I cannot move the Supreme Court by appropriate proceedings. The laws will not be taken away except in regard to article 13. If the President takes power under this article 280, the laws will remain as they are; only the immediate remedy by appropriate proceedings is taken away. Therefore, my submission is, unless and until you change

article 15, I do not care whether you enact article 280. If article 15 is amended or the safeguards are further provided by enacting other articles, as I think they must be and shall be provided in the Constitution, then article 280 would have a meaning. Then article 280 will be a necessary article because it would mean that if emergency is there, the important rights which the amended article 15 will confer will be taken away and we should see that the Executive is not armed with such powers as to take away all the cherished and vital rights of the citizens. As I have submitted, this emergency may be very serious or may not be serious at all. Suppose there is a war in Kashmir or in any outlying part of the country, I do not see what would thereby happen to Travancore and Mysore, and why the rights of the people there should be taken away. It would depend upon the particular emergency. A panicky cabinet may take away all the rights, without good reason.

Therefore my humble submission is that as ultimately our last resort is the Parliament, Parliament should be given all those powers and should have the last say in the matter and as soon as an Ordinance is passed, it should be subject to the veto of the Parliament and Parliament should within one month be able to say whether it accepts it or not. If there is a Resolution that the order is not accepted, it should be scrapped. Therefore, if you want to safeguard the rights of the people, you must see that article 280 is not passed in the way it is sought to be passed by the amendment of Dr. Ambedkar.

**Shri B. N. Munavalli** (Bombay States): Mr. Vice-President, I beg to move :

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words ‘when it meets for the first time, after such in order’ be added thereafter.”

Sir, the article 280 is an article which arms the President with drastic powers. If we look to the other constitutions of other nations, we will find that no President is armed with such powers. Under the French Constitution the President is simply a Phantom of the King without a Crown. The only power he assumes is that of veto and even that power is scarcely used. During the last fifty years there was no occasion to use such a power. So also under the Swiss Confederation, the President is not clothed with such powers; but curiously enough, the President under our Constitution, instead of becoming a Phantom of a King without a Crown, is so to say a Phantom of King with a Crown and also with a Sceptre. Of course he is armed with these powers at the time of emergency but the fundamental rights which every citizen is to enjoy under this constitution, will be deprived, by passing an order under this article by the President. He has no recourse even to law; but even then there is one sanguine point *viz.*, the clause (3) which states that an order passed by President may be placed as soon as may be after it is made, before the Parliament. My amendment to this clause is that as soon as the Parliament meets for the first time after the President passes such An order, it should be placed before the House of Parliament instead of postponing the matter. My Friend Pandit Bhargava has moved certain amendments and they are quite regular and proper because the article as it stands will simply stun the citizens as they are deprived of all the fundamental rights and if his amendments are accepted, there will be some facilities. So I support the amendments of Pandit Bhargava.

**Mr. Naziruddin Ahmad** : Mr. Vice-President, Sir, I beg to move:—

“That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure ‘Part III’ the words and figures ‘articles 13 and 16’ be substituted.”

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Sir, this proposed new article 280 is also equally drastic. It is just in keeping with other equally drastic clauses which are allied to it. What is the effect of article 280 as it is proposed in its new shape ? It may be recollected that this article was moved by Dr. Ambedkar on a former occasion in a milder form. There were serious objections in the House. Dr. Ambedkar desired that its consideration be postponed till he could attend to it and then he has brought in something which is much more drastic, more objectionable and therefore there was not only no consideration of the objections raised but the article has been presented again to the House in a more objectionable form. In its present form it strikes at pending cases also. What is the purport of article 280? It is that during the pendency of an emergency the President may by order suspend the right of any person to go to Supreme Court or other Courts which might be empowered in this behalf by Parliament to vindicate his rights under Part III of the Constitution. What are the rights contemplated in Part III of the Constitution ? They are what are called "Fundamental Rights". It is suggested that those Fundamental Rights should remain, but no one would be able to approach the Court for redress if they are violated. Pandit Bhargava has drawn a distinction which does not really apply at all. He contends that the rights will not be taken away but only the resort to Court for their vindication will be prevented. The right will be there; its existence is not to be denied, but people would be merely prevented from going to Court. This is wrong way of approach. There is no point in giving anyone any right unless he is also enabled, in case the right is violated, to go to Court. If you say "we give you a property absolutely, but if I take it away you must not go to Court," that is as good as denying the right itself. I submit taking these two together it amounts to this that the rights are also suspended. What are the rights that are going to be suspended? They are described in the Constitution itself-Fundamental Rights. They are however such rights which should not be in the least affected by the fact that there is an emergency. You must give the President power to act in an emergency. That power is conceded by the House. What is now contended is that needless power, the power needlessly to interfere with fundamental rights should not be given. The powers now sought are absolutely unnecessary and an emergency cannot be solved by refusing to give the people rights which are fundamental. Now, what are the fundamental rights granted by the Constitution, the enforcement of which through Court is prohibited? I shall briefly point out these rights. They are laid down in articles 9 to 23-A.

Article 9(1) lays down that there shall be no discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Does this article mean that this fundamental right of protection against discrimination is to remain in abeyance when there is a Proclamation of Emergency ? Can any honourable Member conceive of a situation where it will be possible to suppress the rights relating to this, that there should be no discrimination on grounds of religion, sex and so on? Does it mean that during an emergency, the State may make discrimination on the ground of religion, or race or caste, sex, or place of birth? Under article 7 "State" includes the Government and Parliament of India and those of the Provinces and even the "local or other bodies". I think the obvious implication of the suppression of these rights means that it would enable any Government or even a District Board or a Municipality or a Union Board to discriminate against any person on these grounds. I think nothing can be more absurd than this.

Then we come to clause (1-a) of article 9. There it is said that there should be no disability on grounds of religion, race, caste, sex, etc. etc., in having access to shops, public restaurants, hotels, and using wells, tanks, bathing



ghats, roads and places of public resort. May I ask whether, during an emergency any section of the people should not be allowed to go to shops, or public restaurants, hotels, use wells, tanks and so forth? I submit these rights cannot remain suspended even during an emergency.

Then we come to article 10 which says there shall be equality of opportunity in the matter of employment or appointment. If you suspend these rights during an emergency, it would mean that during an emergency, there should be no equality of opportunity. May I ask what is the point of this suspension? Then we come to article 11 which deals with a most important right. By article 11 untouchability is abolished. If there is any observance of untouchability, if there is any discrimination on the ground of untouchability, it is made penal. Do you mean to give the President down to the meanest village Union Board authority to re-impose untouchability? I think this will not solve an emergency but will accentuate it.

Then in article 12, the conferring of titles is prohibited, or rather it says that titles are not to be recognised by the State. Does the suspension of this mean that during an emergency titles will flow from our Governments or from foreign governments and will be recognised by the State? I fail to see how this will solve an emergency.

Then we come to article 13 which guarantees the freedom of speech, and to assemble peacefully and without arms, to form associations and move freely from one place to another and so forth. But these are also hedged in by conditions, that in making the speeches we should not commit libels, slander or defamation; that there should not be violation of decency or morality, that there should not be any attempt through this freedom of speech to effect the security of the State or any attempt to overthrow the State. This freedom of speech has been circumscribed by conditions in such a way that they would be harmless even in times of emergency. Then the same conditions apply to assembling. Anything done against public order such as unlawful assemblies and similar other things are safeguarded. I think, Sir, therefore, that this right to assemble peaceably has been sufficiently safeguarded and conditions imposed so as to make them perfectly harmless. And then the right of forming associations and other things are also begged in with similar conditions. These fundamental rights have been given to the people in such a way that they cannot be used for any purpose detrimental to the safety of society or to public morals or public peace.

Then coming to article 14(1), it says that there should be no conviction except in due course of law. If you suspend this right, then it would mean that there could be conviction without any law, that you can catch hold of any person who speaks against the Government, or any newspaper writing any article against the Government and send him to jail without the authority of law. In article 14(2), we have also laid down that there should be no double prosecution and no double punishment for the same offence. If you suspend this right, it will authorise any one being punished twice for the same offence as also without the authority of any law. Also, no accused under this article can be compelled to give evidence against himself. If this right is suspended, then a Criminal Court may compel an accused to give evidence against himself.

Article 16 deals with trade and commerce, that trade and commerce should be free.

These Sir, in general, are some of the more important fundamental rights guaranteed in so many words by the Constitution. There are others, but it is not necessary to recapitulate them. May I ask what earthly purpose could

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be served by suspending these rights ? In most cases the suspension of these rights, as I have pointed out would lead to absurdities and in some cases to serious injustice, without in any way helping the State to come out of the emergency. In these circumstances, I submit that the suspension of these right; is not only unnecessary but would lead to hardship and injustice and in many cases to patent absurdities. But my amendment makes some exception in the case of articles 13 and 16. Article 13 deals with the right of freedom of speech, freedom of assembly and so on. These rights may, during an emergency, have to be curtailed in the interest of the State itself. Similarly freedom of trade guaranteed under article 16 may have to be restricted on public grounds. In an emergency consumer goods may be concentrated in the hands of a few who may use them for purposes of blackmailing. So it may be necessary for the State, to interfere with this right during an emergency. I have therefore by my amendment, provided that the rights guaranteed under article 13 and 16 may be suspended during an emergency.

Article 280, as it would read along with my amendment is that during an emergency, the President may order that no person shall have the right to move the Court, that the rights under articles 13 and 16 have been interfered with. I have conceded this right of suspension to this extent, though I fail to see to what extent these could be legitimately or usefully suspended even during an emergency. At any rate, I am prepared to give the right to the President to interfere with these rights.

Sir, as I have already submitted, an emergency is not a ground for suspending these important and valuable rights. Fundamental rights will cease to be fundamental if they could be suppressed on these flimsy and unnecessary grounds. These are inalienable rights and should not be interfered with, without the State being in the least benefited by such interference. Even during the two great World Wars—the greatest emergencies that can happen to mankind—Courts were never closed. In fact, Indian and English Courts kept their doors open. No one thought that their powers should be curtailed. These rights should be justiciable. Otherwise, it is impossible to say that the rights exist. The very right of violated rights being challenged in court would act as a deterrent upon the State officials acting arbitrarily. The sacred name of the President has been used—I submit exploited—in these articles. As I have already submitted, the President will not act himself. He is not supposed to be acting on his individual discretion.. He has always to act on the advice of his Ministry and it is conceivable that the Ministry may be moved to action by some Secretary or Under Secretary who may start the mischief innocently, and so valuable rights which are the essence of liberty, will be suspended in the sacred name of the President.

The feeble provision that orders must be placed before the next sitting of Legislature seems to be a poor consolation in view of the fact that such order as is passed by the President cannot be questioned or criticised or even discussed in the House. So the mere fact that they are placed before the House without any opportunity of discussing them, I submit, is a poor consolation for those who value individual freedom more than anything else.

I think, Sir, that these powers should be curtailed as much as possible, though everybody will concede that some powers should be given to President to be exercised which are really needed to meet an emergency. But the powers claimed for the President will suppress the liberties of the people. During the War, the English Courts were open and the Indian Courts were also open and one of the greatest Law Lords—Lord Atkin—when an argument was made

that during the war, justice should be so modified and individual rights so curtailed as help the war effort—made a famous pronouncement. He said: “War or no war, justice must go on. His Majesty’s justice cannot be curtailed or in the least affected by the existence of a war.” War is the greatest emergency conceivable, and yet law Courts were open to give effect to individual rights. We have not defined emergency. Emergency may mean anything; or, it may mean nothing. A trivial matter may be called an emergency and may be used want only to interfere with fundamental rights and liberties of the people with which the emergency may have nothing to do. The rights may be totally irrelevant for the emergency, but yet they will remain suspended and the Courts will be absolutely powerless to give them redress. I submit that these powers cannot be given. They can be confined at least to rights guaranteed under articles 13 and 16 as I have submitted. I think the matter is too serious to be passed by a mere majority of votes without any adequate debate by the device of premature closure motions.

**Mr. Vice-President :** Are you proposing to move No. 17 ?

**Mr. Naziruddin Ahmad :** No, Sir.

(Amendment No. 16 was not moved.)

**Shri H. V. Kamath :** Mr. Vice-President, the draft of the proposed article 280 now before the House is a mere rehash of the old draft of the same article. The House will recollect that on the last occasion, further discussion of this article was held over and the wise men of the Drafting Committee asked for time to put the article into better shape. We hoped—at any rate those of us who had taken an interest in the subject—we hoped that this article would come back to the House in a more presentable form, in a better shape. Our hopes have been disappointed. There is an old saying in Sanskrit that a person tried to do something but got something worse out of his labours:

*Vinayakam Prakurvano Rachaymasa Vanaram*  
*विनायकं प्रकुर्वाणो रचयामास वानरम्*

A person who set out to make an image of Vinayaka—Ganesh—ultimately got out of it a model of monkey. That—is what has happened to the labours of the Drafting Committee. The Drafting Committee hoped—or at least we hoped—that the Committee would consider the various suggestions made in the House and embody them in the new draft. But that was not to be. The Constitution has been founded—at any rate, we the founding Fathers here have tried to found the Constitution on what I would call the “Grand Affirmation” of fundamental rights. We have tried to build on that the edifice of democracy, but I find surmounting that edifice is the arch of the “Great Negation”. First, the grand affirmation, then that edifice, at any rate that facade of democracy and surmounting that edifice or facade is the great negation of Part XI, the notorious negation of Part XI; and article 280 is to my mind the key-stone of this arch of autocratic reaction.

The draft now before the House has been sought to be amended by my Friends Pandit Thakur Das Bhargava, Mr. Munavalli and Mr. Naziruddin Ahmad. I have tabled several amendments to this proposed article which, by ‘your leave, I shall now put before the House. My amendments visualize two, separate schemes. One scheme is to vest this great fundamental power of suspension of fundamental rights completely in Parliament. That is one scheme. If that scheme be not acceptable to the House, I propose a second scheme whereby the action of the President shall be subject at every turn to the consideration and approval or rejection of Parliament. Amendment No. 18 comprises these two sets and according to the order in which they appear in the list, I shall now move them before the House.

[Shri H. V. Kamath]

I move:

- “(i) That in amendment No. 15 above, in clause (1) of the proposed article 250, for the words ‘the President may by order declare’ the words ‘Parliament may by, law provide’ be substituted.
- (ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘mentioned in the order’ the words ‘specified in the Act’ be substituted.
- (iii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘the rights so mentioned’, the words ‘any of such rights so mentioned’ be substituted.
- (iv) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘in the Order’ occurring at the end of the clause, the words ‘in the Act’ be substituted.
- (v) That in amendment No. 15 above, for clauses (2) and (3) of the proposed article 280, the following clause be substituted :—
- “(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament.”

These as I have already stated, vest the power of divesting or depriving the individual of the fundamental rights guaranteed to him by Part III of the Constitution in Parliament and not in the President.

The second set of amendments provides for the conferral of provisional power to suspend fundamental rights upon the President, subject to its immediate ratification or rejection by Parliament. That set, Sir, is the alternative set which I have tabled, and which by your leave, I shall now move.

Sir, I move :

- “(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the word ‘mentioned’ where it occurs for the first time, the word ‘specified’ be substituted;
- (ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘the rights so mentioned’ the words ‘any of such rights so mentioned’ be substituted.

I am not moving (iii)

- (iii) That in amendment No. 15 above, for clause (3) of the proposed article 280, the following be substituted :—
- ‘An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.’
- (iv) That in amendment No. 15 above, after clause (3) of the proposed article 280, the following new clauses be added :—
- “(4) An order made under clause (1) of this article may be revoked by a subsequent order.
- (5) An order made under clause (1) of this article may be renewed or varied by a subsequent order, subject to the provisions of clause (3) of this article.’
- (v) That in amendment No. 15 above, at the end of the proposed article 280, the following new clause be added:—
- ‘Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writs of *habeas corpus* and all such proceedings pending in any court shall not be suspended except by an Act of Parliament.’

Now, the matter under discussion today is a very serious one in all conscientised. I would appeal to the House not to dismiss it very airily, but to bestow on its mature judgment. As I have already said, this article to my mind is the

Great Negation; and I am sure that when tempests blow—God forbid that they blow—the weight of this Negation will be so heavy that I am afraid the whole edifice will collapse. It is for that reason that I have sought your leave, Sir to move these amendments and I would again appeal to the House to consider them earnestly and seriously.

The argument has been very often trotted out that we must have a strong Centre. I am all in favour of a strong Centre—especially so in a time of emergency when the security and the stability of the State are at stake. But what do you mean by the Centre? The Centre, I may remind the House, is not merely the Executive. The Centre is Parliament, that is the Legislature, plus the Executive *plus* the Judiciary. We are apt to forget this when we speak of a strong Centre. We are inclined to think that by a strong Centre is meant a strong Executive. That is a wholly erroneous conception—a fallacy which should be discarded at the earliest possible moment. The Centre therefore is the Parliament (Legislature), the Executive and the Judiciary. Make all the three strong—I agree—but not one at the expense of the other two, not the Executive at the expense of the Judiciary, or the Legislature.

The other day the Prime Minister, I believe while addressing some public meeting, referred to the frequent conflict between the liberty of the individual and the security of the State. Yes, I agree that the State should be secure so that the individual may have life, liberty and happiness. But the liberty of the individual is not a thing to be trifled with at the mere behest or arbitrary fiat of the executive. It was the great American thinker Thoreau who said: “At a time when men and women are unjustly imprisoned, the place for the just man and woman is also in prison.” If this article as moved by Dr. Ambedkar were passed today can we say with any degree of assurance, that the liberty of men and women in this country would be worth a moments purchase and would not be trampled under foot without a moment’s notice ? Sir, I do not want to alarm the House and sing a jeremiad, but I fear that such a situation is likely to arise if this article be passed today. As an autocratic negation of liberty this article takes the palm over all other constitutions of the world. Article 279 which we have already passed provides that as long as an emergency proclamation is in force the guarantees of individual freedom as set forth in article 13 will be automatically suspended throughout the Union; and now article 280 denies to the citizen the right of access to courts of law for making complaints about the violation of not only the rights of individual freedom but all other fundamental rights during the period of emergency. A general authorisation of this kind for restricting individual freedom has no parallel anywhere else.

The Drafting Committee took time to prepare a new Draft and they have tried to put up a rehash of the article. I find that the language of this article compares unfavourably with that of the Emergency Powers Act (DORA) passed in England in 1920 which the Drafting Committee have plagiarised in a dishonest fashion. Clause (3) of the proposed Draft reproduces the first part of one of the clauses of that Act, but the second and vital portion of that clause has been conveniently and dishonestly dispensed with. I do not know why this subterfuge has been resorted to. The relevant clause of that Emergency Powers Act reads thus :

“If Parliament is then separated by such adjournment or prorogation as do not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet ‘and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.”

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And the further safeguard is this:

“Any regulations so made under the Act shall not continue to be in force after the expiration of seven days from the time when they are so laid unless a Resolution is passed by both Houses providing for the continuance thereof.”

This vital portion of the Emergency Powers Act of England is absent from our Draft article.

Then I come to the Weimar Constitution whose provision came very near to this clause but which was still very mild as compared to this. In clause 48 of the Weimar Constitution occurs this provision :

- ‘(2) If Public safety and order in the German Reich is materially disturbed or endangered the National President may take the necessary measures to restore public safety and order and, if necessary, to intervene by force of arms. To this end he may temporarily suspend, in whole or in part, the fundamental rights established in articles 114 (personal liberty), 115 (inviolability of dwelling, 117 (secrecy of postal, telegraphic and telephonic communications), 118 (freedom of speech and press), 123 (right of peaceable assembly), 124 (freedom of association), and 153 (guarantees of property rights).”

But even to this there were safeguards. The next clause was to the effect that the President must immediately inform the Reichstag of all measures adopted by authority of this article and that these measures shall be revoked at the demand of the Reichstag. This was the safeguard of the German Constitution.

Under the American Constitution the privilege of the writ of *habeas corpus* shall not be suspended unless when in case of rebellion the public safety may require it. But even here the suspension can be authorised only by the Congress whose decision can be tested by the Supreme Court as to whether the conditions under which such suspension would be justified did exist or not.

That is so far as the American Constitution is concerned. So also in the Italian, Constitution there are similar safeguards. But, unfortunately, we who profess to build a Sovereign Democratic Republic in India have no use for such safeguards. We trust the executive implicitly. God grant that our trust be justified. But if our executive demands our trust, why should not the executive trust the judiciary, why should it not repose confidence in Parliament? Is our judiciary, bereft of all wisdom, integrity and conscience that the executive should snap their fingers at them? This is a most disgraceful state of affairs. I do not see how we can build up an egalitarian or democratic State on such a foundation.

It has been suggested that in a time of emergency the State has got to be preserved. By all means preserve the State; but not at the unjust sacrifice of the liberty of the individual. In some cases and on some occasions, the loss of liberty is worse than the loss of life. I for one would claim that liberty is even more precious than life, and the most serious emergency should not enable the State to unjustly deprive the individual of his liberty. That is a great principle and that should be the lodestar or the Pole-star of our Constitution. The right to a writ of *habeas corpus* is a sacred right in which is enshrined the liberty of the individual : it gives him the right of appeal to the Supreme Judiciary. This article before us today destroys this right of the individual.

We want peace and order so that the State will be safe during an emergency. But what sort of peace are you going to have at this rate? What sort of security or stability are you going to have ? The State will be preserved! But it may be that the peace that you thus visualise will be the peace of the grave, the void of the desert. If that is the peace the Drafting Committee’s wise men have in mind, I would rather die than live in such a peaceful situation.

In our passion for making the Centre strong, we are misinterpreting it as the strength of the executive. If we want a strong executive, let us also have a strong legislature and a strong judiciary. I have pleaded that it is not the executive alone that makes the State. We have the Parliament and the Judiciary which, together with the executive, make the State. All my pleadings have fallen on deaf ears. I sometimes tell myself, "O Judgment, thou art fled to brutish ceasts, And Men have lost their reason". Have we come to that stage ? I hope not. I hope, for the good of India, for the good of our fellow men and women who have just emerged from the darkness of slavery into the light of freedom, we shall do something for their happiness and not merely be content with strengthening the hands of a group of people, a tiny coterie or caucus in power. That is not the idea which the Father of the Nation had in mind. As the House well knows he was all for decentralisation, and not for strengthening the Centre at all. He was for a decentralised State and for giving power to self-sufficient units.

We are discussing the provisions for an emergency. I therefore grant that the Centre should have certain powers. All I plead is that there should be adequate safeguards, judicial safeguards and parliamentary safeguards. None of these safeguards is here in the Draft article. But this re-hashed article has come before the House for consideration and for approval. I believe it will be approved in due course. I have closely followed the provision for emergency powers in the Emergency Powers Act, 1920 of the United Kingdom. It provides that Parliament must be summoned within five days. Secondly, the decree will expire at the end of seven days unless earlier approved by Parliament. On the same lines I have sought in my amendment No. 4 to provide that any order made under clause (1) of the article shall, before the expiration of fifteen days—India is a vast country of distances compared to England. So for seven days I have put in fifteen days be placed before Parliament for approval. If you mean business and if you mean to secure to individuals their liberty, and not merely the safety of the State and the security of the men in power, fifteen days would be adequate time to summon Parliament. I have also provided further on the same lines as the Emergency Powers Act of England that this order suspending the fundamental rights shall expire at the end of one week unless it has been approved earlier by resolutions of Parliament. This is a wise safeguard which I hope the House will consider in all earnestness.

My last amendment—I am not going to speak on my remaining amendments—is No. 6 of the Second Week. There I do not object to power being conferred on the President, subject to Parliamentary regulation and control. Therefore the last amendment of mine is to the effect that the right to move the Supreme Court or the High Court for a writ of *habeas corpus* by appropriate proceedings shall not be suspended except by an Act of Parliament.

During the last world war, the British Government here were indulging in the severest forms of repression for the preservation of their Empire. Mr. Churchill went to the length of saying, "I have not become Prime Minister to preside over the liquidation of the British Empire," which shows that even Mr. Churchill feared at one time that the Empire was in danger and that it might be liquidated. Though they were thus engaged in a life and death struggle, the British Government did not suspend the right to move the courts for a writ of *habeas corpus*. The famous case of *Talpadé of Bombay* is a case in point. This case came up to the Federal Court and the Chief Justice, Maurice Gwyer held Section 26 of the Defence of India Act *ultra vires*. This section was subsequently amended as a consequence thereof. It must be fairly fresh in the memory of my colleagues here. I therefore do not wish to dilate upon that matter. As I was saying, even the British Government

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did not then suspend this important right. But we who are drawing up a democratic Constitution are contemplating a provision for suspending even that right in an emergency.

After all, most of our leaders are telling us that we are today passing through a crisis. By crisis they mean a sort of emergency : we have had trouble in Hyderabad, Kashmir, West Bengal and other parts of India. But the Central Government has lived and is getting on very well without proclaiming a state of emergency. None of the fundamental rights or right to move for habeas corpus has been suspended. Even here, on August 15, 1947, when the old Government of India Act was adapted under the India Independence Act, the emergency powers vested in the Governor-General and in the Governors were omitted from the Act as adapted. They were not embodied in this adapted Act of the Government of India and the emergency powers were not conferred upon either the Governors or the Governor-General under the Act of the Government of India, as adapted. We have tided over two fateful years, very difficult years, very critical years, without any of the emergency provisions or powers being vested in the Governor or in the Governor-General. Sardar Patel told us some months ago that this country is getting more stabilized. In one breath you say the situation is getting better and more stable, and in the very next you try to insert a clause in the Constitution which seeks to deprive the citizen of all fundamental rights in case of an emergency. Dr. Ambedkar might get up and reply: "Oh It is just written in the Constitution; it will remain a dead letter. I hope we shall not be required to use it or to put it into operational I hope we shall never use it. That is what he said on a previous occasion I agree Dr. Ambedkar might say that, the Prime Minister might say that, and other Ministers might say that. I readily grant they are all honourable men, they are all wise men and true, but a Constitution is not meant for Dr. Ambedkar or Pandit Nehru or Sardar Patel; the Constitution is meant not only for this generation : but we are building it for other generations to come, and not for Dr. Ambedkar and the present Government. I hope this Constitution will last for many generations. At times, however, apprehensions arise in my mind; looking at the Constitution as it is being built, as it is being framed by us here, sometimes I apprehend that this Constitution may not last very long. God forbid that my fears should come to pass. But I occasionally fear that the Constitution,—the whole of it, at any rate may not last many more years than one can count on the fingers one of one's hands. That is what I feel : I hope I am wrong and I hope I am painting too gloomy a picture; but, Sir, I wish to plead with the House that by all means if you want to save the State, do save it, but do not unjustly deprive the individual of his rights, of his liberties, his fundamental freedoms, which we have in the opening chapter of the Constitution guaranteed to him. Towards the fag end of the Constitution we are taking away with one hand what we have given with the other. Is this the sort of liberty we have fought for? Is that the sort of liberty that we aspired after? is that the sort of democracy that we are building .....

**Mr. Vice-President :** Will the honourable Member kindly bring his remarks to a conclusion? He has been speaking for 45 minutes.

**Shri H. V. Kamath:** If you think I am repeating, I shall bow to your ruling, but if I am not .....

**Mr. Vice-President :** I am sorry to say that the Member is repeating his arguments and I shall be very glad if he will kindly conclude his remarks.



**Shri H. V. Kamath:** I will take only two minutes more, Sir. I bow to the Vice-President's ruling and I shall conclude. I wanted to say much more but I shall reserve that for another occasion. I am afraid that the article, if it is adopted by the House as moved by Dr. Ambedkar, is fraught with grave danger to the rights and liberties of the individual guaranteed to him under the Constitution. I fear that by this one single chapter—Chapter XI,—we are seeking to lay, the foundation of a totalitarian State, a Police State, a State completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continual jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert I only pray to God that He may grant us wisdom, wisdom to avert any such catastrophe, grant us fortitude and courage. Let me conclude with prayer of Mahatma Gandhi: "Sab Ko Sanmati De Bhagawan".

**Prof. K. T. Shah** (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in part (vi) of amendment No. 18 above, for the proposed new clause in the proposed article 280, the following be substituted :—

'Notwithstanding anything contained in this article, the right to move the Supreme Court, as guaranteed by article 25 of this Constitution, by appropriate proceedings shall not be suspended, nor shall any Proceedings in respect of such right naming at the date of the Proclamation of Emergency in any court be suspended :

Provided that in the event of any cause of action, arising in respect of any violation of any of the Fundamental Rights declared or conferred by Part III of this Constitution, against any person of authority, Parliament may, by a special indemnity Act passed in that behalf, indemnify any such person or authority against the consequence of any such act done *bona fide* during the period while the Proclamation of Emergency was in force.' "

Sir, I have as strong an objection as many of the speakers who have addressed this House on this subject to arming the President with such extraordinary powers extending even to the suspension of the one solitary right which by the express terms of the Constitution is guaranteed, namely, the right to move the Supreme Court for certain, prerogative writs whereby any violation of the rights declared or conferred on citizens may be remedied. Here is one right more precious perhaps than any other because it makes other rights workable real, concrete, and actually experience able; so that if anybody feels aggrieved because of any of the fundamental rights mentioned in Part III being denied, such a person shall be in a position to move the Court which may give him appropriate relief or remedy.

As the article is now proposed a President would be in a position to suspend even this right by an executive order. The amendment of Dr. Ambedkar suggests that having made the order he must place it before Parliament as soon after making it as possible. I confess, I do not see that this is any improvement over the original draft, because, even if you lay an order *ex post facto* before Parliament, you only invite either acrimonious criticism, which may be of no use or avail whatsoever, of an act already done or make the relations between the Executive and the legislature strained. If you had suggested that before the order is made, Parliament would be consulted, or if you had even suggested that the remarks of Parliament may be given effect to by modification of the order, I could have understood.

**Shrimati G. Durgabai :** On a point of order, may I know whether the honourable speaker is speaking on the original motion or is moving his amendment?

**Prof. K. T. Shah :** I have moved the amendment.

**Mr. Vice-President :** He has moved the amendment.

**Prof. K. T. Shah :** That being the case, in the article and the amendment proposed by my Friend Mr. Kamath, I am suggesting further by my amendment that this fundamental right, which is the only one right guaranteed in the Constitution, shall in no case be suspended, notwithstanding anything that may have been said in the preceding articles. Whatever the emergency, this particular right should not be suspended. As another honourable speaker has mentioned, even if a war is there, the justice of the people, justice of this country shall not be stopped or suspended.

I realise, however, that in an emergency the officers of Government, both civil or military, may not be in a position to wait before taking action. They have, to learn, however, that if we are going to live under a free democratic Constitution, who-ever does a wrongful act will have to bear the consequences of that act. Anything that he might have thought was required in the interests of the country would not avail him as an answer to an act wrongful in itself. To guard, however, against any undue hardships being imposed upon officers, who act bona fide in the interests of the community and in pursuance of the orders issued for dealing with an emergency, if any fundamental right,—let us say, the freedom of movement of association, or expression, is violated, any violation would not *ipso facto* be covered by the proclamation. But subsequently Parliament may pass an Act of Indemnity, enumerating the cases which might give rise to such prosecution, or such suits, or actions against individual officers, and extending the protection in its sovereign capacity as legislature to such persons, and providing a valid defence for any such charge.

This is a procedure very well known in the British Constitution which we have been copying almost *ad nauseam* in, and here is one case in the British Constitution, where I think we might as well take a lesson from it, and instead of giving a *carte blanche* as it were, to the President to do or allow any act to be done merely on the score of a Proclamation of Emergency, we would lay down, that though an officer may be acting primarily on his own risk under this order, on a proper case being made out, Parliament may consider the advisability of giving a general or special Indemnity.

What would happen would be, that public servants or officers of the State would be automatically restrained. Instead of using any force or extending their authority in any way they think proper or necessary, they would think twice before taking such steps as may not be permitted by an Act of Indemnity. Or Parliament may not pass an Indemnity Act at all. Here would be a very salutary restraining factor, which I think would be for the benefit both of sound administration, and also continued freedom of the citizen.

If you accept this idea, as I hope the sponsors of the article will accept, a provision of this kind, worded as they like, suited to the occasion will amply meet the case. I think much of the difficulty that the previous speakers have referred to, much of the apprehensions that many of us feel as regards the unnecessary extension of the executive authority, would be avoided by this means.

Nowhere in this Constitution is any mention made, so far as I remember, of such a provision as I am advocating here, that is to say, an Indemnity Act. Time and again; those in authority, those responsible for the Draft Constitution, have characterised criticism in this House as being destructive or serving no purpose either for themselves or for the House. Here I make a present of this a constructive proposal, with the very respectable authority of the British Parliament and British History behind it. It is a matter of test whether the sponsors have sufficient regard for the freedom of the citizen to accept even such a suggestion as this. I leave it to their good sense.

(Amendments Nos. 20, 21, 22 were not moved.)

**Shri B. M. Gupte** (Bombay: General): I beg to move:

“That in amendment No. 78 of List II (Fourth Week) of Amendments to Amendments, in the words proposed to be added at the end of clause (3) of the proposed article 280 for the words ‘one month’, wherever they occur, the words ‘two months’ be substituted.”

Sir, this is an amendment to an amendment moved by my Friend Mr. Thakur Das Bhargava. The only difference between my amendment and his is, that I propose two months for the submission of the order to the Parliament while he has proposed only one month. Two months are preferable because that period is mentioned in the main article 275. No doubt, Dr. Ambedkar has respected to a certain extent the sentiments expressed in this House when the matter was debated last time. But, he has not gone far enough and has not mentioned any definite period within which an order under this article shall be submitted to Parliament. Under article 275, the main Proclamation of Emergency must be endorsed by Parliament within two months. I do not see why the same effective control should not be given to the sovereign legislature in this matter, which after all, would be the most important consequence of that Proclamation. The suspension of the remedy for the fundamental rights is a very fundamental matter and it should be incumbent on the executive to get it ratified within a short specified period say two months. I do not see that there should be any difficulty about this. Most probably the order would be issued shortly after the Proclamation is issued, *i.e.*, most probably it may be issued in the intervening period between the issue of the Proclamation and the meeting of Parliament. Thus there would be no difficulty in the Proclamation and the order being simultaneously submitted to Parliament. Even granting that the order may have to be issued after Parliament has dispersed, what happens? Parliament will have to be convened only for this specific purpose. I saw, there is no objection. The only argument against this course would be the question of cost. I submit that in matters of vital importance, cost is of no consequence at all. We have deliberately chosen democracy as the form of our Government and after that we should not grudge the cost that might be necessary to make that democracy really effective. Of course, I do not mean to say that there should be wasteful expenditure. Those who are responsible for the conduct of the Government now or those who may be responsible for the conduct of Government hereafter must so arrange their business that no unnecessary expenditure is saddled on the public purse.

But at the same time in important matters, where important principles are involved, consideration of cost is of no avail at all. It cannot certainly be a decisive factor. The suspension of Fundamental Rights is not only a very important matter but a fundamental matter and I would therefore request Dr. Ambedkar to accept Pandit Bhargava’s amendment, as amended by me.

**Prof. Shibban Lal Saksena** : (United Provinces: General): Mr. President, Sir, I beg to move :

“That in amendment No. 15 of List I (Fourth Week) of amendments to Amendments at the end of clause (3) of the proposed article 280, the following words be added:—

‘and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately.’ ”

If this amendment is made, clause (3) of Dr. Ambedkar’s amendment would read as follows:—

“Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament, and if the House of the People, by a resolution passed by it amends, varies or rescinds the order, the resolution shall be given effect to immediately.”

[Prof. Shibban Lal Saksena]

During the discussion on this article on the last occasion I had proposed an amendment that for the words 'President may by order' the words 'Parliament may by law' be substituted. I had hoped that the Drafting Committee had been convinced of the mistake and they would make suitable amendments. I find an improvement has been made over the former Draft, and all the rights conferred by Part III of the Constitution shall not be abrogated automatically but only those rights which the President may declare as abrogated. I think if this article forms part of the Constitution, it will still be an arbitrary denial of the liberties that we are giving in the fundamental rights. I therefore think that either the amendment which I had moved the other day and which has now been moved by Mr. Kamath to this very article 280 should be accepted or at least this amendment of mine to clause (3) of Dr. Ambedkar's amendment should be accepted. This will at least have the effect that if the Parliament is not meeting and the President thinks that the emergency requires that he shall exercise such powers, this amendment will give him that right; but as soon as Parliament meets, he will bring forward that order and see that that is laid on the table of the House and the House of People shall be entitled to vary it, rescind it or alter it. This should not be objected to. What Dr. Ambedkar wants is that during an emergency, the powers of the President should not be fettered. I am not fettering them. In fact the very proclamation of emergency will come before the House of People within two months and will have to be renewed. So Parliament is the final authority. Then what is the harm if the abrogation of fundamental rights also—if they are made in an emergency—is brought before the Parliament as soon as it meets and Parliament must have the right—particularly the House of People—to amend it, vary or rescind it. Otherwise the most fundamental rights—the most cherished rights that are given in the Chapter on fundamental rights—shall be taken away. I value the rights guaranteed in article 25 very much the rights of *Habeas Corpus* and other rights. As I said last time, when we were in jails in 1942, even then during the war foreign government did not think it fit to deprive us of the right of, *Habeas Corpus*. So if the power is given to the President to abrogate this right, it will be a slur on our Constitution and it should not be allowed to be included in it.

I therefore think that if Dr. Ambedkar is not prepared to accept Mr. Kamath's amendment, he should at least accept mine which will meet the point of view of his, that the President will be having the power in emergencies and even to suspend those rights but as soon as Parliament meets, then the order of the President will be—liable to be rescinded by Parliament. This is the most modest amendment and if the Drafting Committee thinks over it, I hope they would accept it. Our learned Friend Pandit Kunzru had voiced his great opposition the other day about this article and he had said that this is a very dangerous article and the article should not have found a place in this book but if it is included, at least it must be so modified that the ultimate authority of Parliament is not questioned. If the Parliament has no right to vary or alter his order, then a fundamental right of the Parliament is infringed. You may say it is always open to the House to censure the executive but that is an extreme method and nobody would like to adopt it for simple variation of an order passed by the President. I therefore think that my amendment to this clause will entitle any Member who may like to move for a modification or alteration of the order of the President by a resolution. This is a very modest amendment and I hope Dr. Ambedkar will accept it.

**Mr. Vice-President :** There is amendment No. 3031 by the Honourable G. S. Gupta.

(The amendment was not moved.)

**Shri H. V. Kamath:** There is an amendment by Mr. Kunzru.

**Mr. Vice-President :** It has already been moved.

**Shri R. K. Sidhwa (C.P. & Berar: General):** Mr. Vice-President, Sir, this is a clause which relates to emergency powers in the event of some grave emergency or a national peril existing in the country. Now, what is an emergency ? My Friend Pandit Bhargava stated that an emergency can be interpreted in many ways. He is right. It is a very flexible word but it cannot be denied that an emergency is an emergency. Emergency means—according to Oxford Dictionary—a sudden juncture demanding immediate action. One cannot deny that a certain action has to be taken by a Government. May I know whether a democratic government, a government of the people, is going to take an action which will come into conflict with the wishes of the people ? Are they going to take any action of such a nature which in the ordinary course it would be said that they want to suspend the Constitution because there is some small disturbance ? That Government cannot exist for a day if it is going to be a democratic government. Therefore that apprehension does not stand for one moment.

I want to know, in the event of an emergency when there is a calamity and when the freedom of the country is threatened, I want to know from my friends who oppose this article whether they want, like Nero fiddling when Rome was burning, if they want our ministers should be listening to radios or to some music when things may be taking place in a distant part of the Country which may disturb our very freedom? If that is the attitude of these friends who oppose this article, then I do not think they have really understood the meaning of this article. This article is to be applied only in the event of a national calamity and when our very freedom is threatened. My Friend Mr. Kamath said that our well-deserved freedom must be preserved and asked why these rights are being taken away, to do you want the people to revert back to slavery? I say it is for the very purpose of safeguarding our freedom, our well-deserved freedom during an emergency that I want to give the Ministers sufficient powers to see that no danger comes to our freedom and that we do not revert back to slavery.

**Shri H. V. Kamath :** I do not object to that but only provide the necessary safeguards.

**Shri R. K. Sidhwa :** My friends have quoted from foreign constitutions. In the Canadian and Australian constitutions there is no such provision. But there they have the convention that in the event of emergency, the Centre can take all the necessary powers from the provinces. It has by convention been accepted as an inherent power of the Centre to do so, in the event of an emergency. Every Government has such inherent power, this inherent right to take action in the interest of our freedom, for the purpose of maintaining our freedom. If we do not safeguard our freedom in this manner, then I may assure you that our freedom will be in danger. I will go further and say that with such things as are happening I want our government to be invested with all the powers so that we may see that our freedom is not lost. Do my friends want that our freedom and our security may pass into the hands of our opponents and our enemies?

**Pandit Thakurdas Bhargava :** Is Parliament your enemy?

**Shri R. K. Sidhwa :** No, I entirely agree with my Friend Pandit Bhargava I do not consider him an enemy of the country. But there are people outside

[Shri R. K. Sidhwa]

who are enemies of the country in this country and also outside, mischief mongers who are, out to create mischief. I want to safeguard our freedom against them, and for that purpose I am prepared to sacrifice a little of my own freedom, for the purpose of keeping the country's freedom intact. I do not want anybody to disturb our freedom which we have won after a great struggle.

Sir, I may tell my Friend Mr. Kamath that even in America, in the United States Constitution, there is provision to this effect.

**Shri H. V. Kamath :** Have you read that constitution?

**Shri R. K. Sidhwa :** I have read it, you can also read.

**Shri H. V. Kamath :** I have quoted from it.

**Shri R. K. Sidhwa :** Yes, the American Constitution recognises the power in article 1, section 8, clause 18, on the same principle of emergency.

**Shri H. V. Kamath :** Is it the text or the commentary?

**Shri R. K. Sidhwa :** I have given Mr. Kamath the section. He cannot now argue that ....

**Shri H. V. Kamath:** It is a misquotation.

**Mr. Vice-President :** I shall be glad if Members do not interrupt the honourable Member.

**Shri R. K. Sidhwa :** Sir, I strongly support this article. But at the same time, I do feel that some of the objections raised by some of my friends have some justification, that the whole of Part III need not have been suspended. There are in Part III certain clauses which even in an emergency, could be allowed to remain intact. For instance, under fundamental rights article 11 relates to untouchability. May I know whether in the event of an emergency, you want untouchability to be re-imposed? Also there is the article about titles. Do you want titles to be bestowed in an emergency? There is clause regarding *begar*. Do you want that in an emergency *begar* should continue? Article 18 says that no child below the age of fifteen shall be employed in mines. If it is an emergency, do you wish that a child of fourteen should go into a mine and work ? And then there is article 19 about rights relating to religion, education and so on.

I can understand the argument of my friends as far as these rights are concerned, and I can appreciate that argument, that the Drafting Committee should not have suggested that the whole of Part III should remain suspended during an emergency. Certainly there are many rights, as for instances the right about freedom of speech, of free association etc., which cannot exist during an emergency. That is against the very principle of an emergency. But I do feel that the Drafting Committee need not suggest the wholesale suspension of Part III, where untouchability, titles and such other things are also dealt with. Emergency does not mean that the Government will not function for the day to day work also, but for the purpose of our retaining our freedom such laws, rights and privileges that are given to the people which affect the very existence of the country could be suspended, and must be suspended. But the extraordinary powers of the law can be suspended with these words, I strongly support the article. I know this would mean taking away some of individual persons' rights, but I do not mind it, because I want and I am anxious to see that the freedom of my country is maintained, and I am sure the friends who have opposed this article are also equally

anxious to preserve our freedom. It is only a slight difference in the outlook. Some of my Friends, like Mr. Kamath may say that some other government may come into power and on the ground of emergency upset the whole Constitution. But change of government is always possible in a democracy. A future Government may bring in much worse laws, we cannot say what kind of Government it may be. But in the earlier stages, when we have attained our freedom after great struggle and when we know that there is danger, we should be prepared to lose a little right—although I may say I cherish my rights as much as anybody else—for the purpose of retaining our freedom. With these words, Sir, I strongly support the article.

**Shri Alladi Krishnaswami Ayyar** (Madras: General): Mr. Vice-President, in supporting the amendment moved to the article by the Honourable Dr. Ambedkar, I should like to say a few words. In the first place, the first part of article 280 as now put forward meets the point of view put forward by the Committee on a former occasion, namely that the mere existence of a war is not to result in a suspension of all fundamental rights. What the article says is :

“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 such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.”

It is not intended that the President will suspend all the rights such as were referred to by my honourable Friend Mr. Sidhva which are mentioned in the Chapter on Fundamental Rights. He is quite right in saying that they are rights that do not need a suspension during the period of the war. Such rights will not, and cannot, be suspended. But instead of singling out particular clauses, it is left to the President, who—I have no doubt—will act in a reasonable and proper manner, not in a spirit of vandalism against the Fundamental Rights guaranteed to the citizen in the Constitution.

The second part of the article says :

“An order made as aforesaid may extend to the whole or any part of the territory of India.”

This is to remove any possible objection that the commotion, war or internal disturbance may not extend to the whole of India and may be confined only to a particular part, and therefore there is no need for suspending the Fundamental Rights in every part of the territory of India.

Lastly, it enjoins the President or the Cabinet to place the order before the Parliament as soon as may be after it is made. There is nothing to prevent Parliament from taking any action it likes. The President may suspend, but yet the Parliament may say that there is absolutely no necessity for the suspension of this right or that right. Time and again, it has been mentioned before the House that it is a Cabinet responsible to the Parliament that is taking action in the name of the President. Parliament has a right to take any action it likes with reference to the course adopted. Under those circumstances, there can be no objection to the article.

In this connection, I will remind the House of a famous saying that “a war cannot be fought on principles of the *Magna Carta*”. Freedom of speech, right of assembly and other rights have to be secured in times of peace but if only the State exists and if the security of the State is guaranteed. Otherwise, all these rights cannot exist. We are envisaging a situation threatened by war, in a country with multitudinous people, with possibly divided loyalties, though technically they may be citizens of India. We trust that the time

[Shri Alladi Krishnaswamy Ayyar]

will come when the citizens of India will not look to far-off countries but we cannot proceed on the footing that in regard to all citizens of this country their loyalty is assured. Freedom of speech may be used for the purpose of endangering the State and resulting in crippling all the resources of the country. If only we realize that the country must exist, that the nation must exist, that the State must exist, if liberty and other things are to be guaranteed, there can be no possible objection to this article.

A reference has been made in the course of this Debate to the American Constitution. I do not know if Members of this House have read a recent book by Prof. Corwin one of the greatest authorities on constitutional law, on the President's powers. During the Civil War, President Lincoln suspended the Writ of *Habeas Corpus*. In the American Constitution, power is given to suspend the *Habeas Corpus*, but it is not mentioned whether the authority to suspend is the Congress or the President. But as a matter of fact the President did suspend the Writ of *Habeas Corpus* during the Civil War and the American people as a nation in their wisdom, never questioned the President's power.

I want to refer to another passage in regard to the President's powers. There is no country in which the President has more dictatorial powers than the United States Prof. Corwin puts it in these terms on page 317 of his recent book :

"The war power of the United States has undergone a three-fold development. In the first place, its constitutional basis has been shifted from the doctrine of delegated powers to the doctrine of inherent powers, thus guaranteeing that the full actual power of the nation is constitutionally available. In the second place, the President's power as Commander-in-Chief has been transformed from a simple power of military command to a vast reservoir of indeterminate powers in time of emergency—an aggregate of powers—in the words of the Attorney-General Middle. In the third place, the indefinite legislative powers which are claimable by Congress in war-time in consequence of the development first mentioned may today be delegated by Congress to the President to any extent, that is to say, may be merged to any extent with the indefinite powers of the Commander-in-Chief."

That is the position today in America the most democratic country. Here we have the doctrine of Parliamentary sovereignty. Therefore, the Ministry must be, acting in close liaison with the Parliament. The moment they act against the wishes of the Parliament, there is an end of their power so far as the powers of the President of the United States are concerned, they are unbridled. He cannot be questioned. Therefore, why quarrel with the powers of a Cabinet—I use the word Cabinet advisedly because in spite of repeated reminders Members of the House seem to forget that the expression "President" in every article of the Constitution must be understood as a Cabinet responsible to the people. There can be no better and more profitable reading than that of Lincoln's life.

Now, I should deal with the various objections that have been raised in the course of the debate. My honourable Friend Mr. Bhargava's point has been answered in the previous part of my remarks, namely, that Parliament has the final voice in the matter. Parliament may rescind any action of the President. It may remove the Cabinet if it so chooses, because the Cabinet is as responsible to the House of the People during the war as it is during peace.

Its life depends upon parliamentary majority. There being continuous liaison between the Cabinet and the Parliament, this bogey of Parliamentary sovereignty need not be put forward at every stage. There is no question of denying the right of Parliament. The only question is how is the Parliament to govern in times of peace it may govern by every day interfering with govern by entrusting the power to the the executive at another time it may govern by entrusting the power to the



President or the Cabinet in whom they have confidence. Therefore, it is times and circumstances that determine the manner of action of the Parliament whose authority and sovereignty nobody disputes.

Then an extraordinary suggestion has been made that we must pass an Act of Indemnity. What is the meaning of an Indemnity Act? In countries where parliamentary sovereignty obtains an Indemnity Act is generally passed after the war is over. In spite of all Acts and Ordinances, it may be that particular officers may have out stepped the limits of law. In order to guard against infringement of the law and people being molested by action for damages and criminal prosecutions, Acts of Indemnity are generally passed. I would in this connection refer to Professor Dicey's Book on "The Law of the Constitution" in which he explains the scope and principle of an Act of Indemnity. An Act of Indemnity is not normally passed before the war is over. If Professor Shah means to say that even before the war is over, you can pass an Act of Indemnity, it would be worse than suspension of fundamental rights, because you give a *carte blanche* to the executive. Thereby you guarantee to absolve them of all acts of lawlessness perpetrated by them. That, certainly is not what Professor Shah wants. Therefore, I submit that this proposition which has been placed before the House by Professor Shah cannot meet with their acceptance.

The third point was a legal one raised by Pandit Thakur Das Bhargava, namely, with regard to article 279 : "while a Proclamation of Emergency is in operation nothing in this Act shall restrict the power of the State to make any law or to take any executive action." As it is, if a law is passed during the period of Proclamation, it will automatically lapse with its end of the emergency : that is the meaning of article 279. Those who are for limiting the power of the President cannot quarrel with the provision as it is, because where the period is restricted to a particular duration, automatically the law will come to an end, unless there is a provision in the Constitution or in the particular Act giving it a fresh lease of life after the termination of the emergency. Therefore, if anything, my honourable Friend Pandit Thakur Das's amendment will give fresh life instead of cutting short the life of the law passed under article 279.

Therefore, under these circumstances, I submit that as the security of the State is more important, as the liberty of the individual is based upon the security of the State and as a war cannot be carried on under the principles of the *Magna Carta*, or principles of individual freedom, particularly in a country with multitudinous types of people with possibly diverse loyalties, this provision is very necessary. It will be the life of this Constitution. Far from killing the democratic Constitution—as one of the speakers said—it will save democracy from danger and from annihilation.

With these remarks I support the amendment.

**Shri Krishna Chandra Sharma** (United Provinces: General): Mr. Vice-President, Sir, I have listened to my honourable Friend Mr. Alladi Krishnaswami Ayyar with the attention he deserves. But what I could not understand is this, that in article 13 certain rights are given. In that very article there is a provision that those rights may be restricted. There are certain other rights given in article 15; in that very article, there is a provision that the law can be made for the restriction thereof. Then again there is article 279 under which the rights given in article 13 can be done away with under emergency, declaration. Now, my respectful submission is that when there are no rights there are no remedies, and there is no need of article 280, but when there are rights left there must be remedies for them. So, I see no reason in enacting article 280 by taking away, the remedy even for the rights that have not been curtailed or taken away under the emergency legislation.

[Shri Krishna Chandra Sharma]

We have heard a lot about emergency. Sir, when two world wars were fought, the right to approach the High Courts of this country for certain fundamental rights was never taken away, even though we were ruled by a foreign power who were fighting for their own safety and the safety of civilization and of the world and we were fighting for our independence against that power. I do not apprehend such an emergency would ever arise in this land; and there is no need to take away the rights which were not taken away even by the Britishers. After all, liberty is the sweetest thing in the world and you cannot take it away so easily. The end of all Government is the prosperity and well-being of the people. We have had enough of the police state. If under any Government or any constitution a state of emergency arises so often, that Government and that constitution must be ended. If the State is strong and the people are prosperous there can arise no such emergency. You cannot rule by curtailing the rights of the people; you can maintain the constitution only if the people are prosperous and law-abiding. By resorting to police methods no State can continue. Therefore I submit that this proposed article 280 will serve no purpose whatever and it has no precedent in any constitution. Even if there are precedents you have to look to the time and the circumstances in which these constitutions were framed. By enacting this measure you will only give a handle to people who are out to create chaos and anarchy. Sir, you cannot suppress liberty and do away with the authority of the courts. I submit that this article would serve no useful purpose and it should not be passed.

**An honourable Member :** The question may now be put.

**Mr. Vice-President :** The question is:

“That the question be now put.”

The motion was adopted.

**The Honourable Dr. B. R. Ambedkar :** Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matters and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but—I am also prepared to say—with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

Therefore my friends who have spoken against that article will, I hope understand that I am in no sense an opponent of what they have said. In fact I respect their sentiments very much. All the same I am sorry to say that I do not find possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries—and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries—the position is this. As to the suspension of the right of what is called habeas corpus the matter under the English law must of course be dealt with by law. It is not open to the executive to suspend the right of *habeas corpus*. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of habeas corpus, the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President' they will find that that is the position.

**Pandit Hirday Nath Kunzru :** Will you let me interrupt him, Sir? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book.

**The Honourable Dr. B. R. Ambedkar :** Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

**Pandit Hirday Nath Kunzru :** It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of habeas corpus vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

**The Honourable Dr. B. R. Ambedkar :** Yes. My submission is that in the United States while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I have made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you and in the United States, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and, our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees is concerned, my submission is that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton manner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No. 74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amendment to article 280. What he wants

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is that any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the ceasing of the Proclamation. I think that is what he wants so far as amendment No. 74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which gives power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that 'all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the same period'. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be inoperative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.

**Pandit Thakur Das Bhargava :** In article 227 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

**The Honourable Dr. B. R. Ambedkar :** The State there means both, because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

**Pandit Thakur Das Bhargava :** Whereas in 227 (1) the reference is only, to Parliament.

**The Honourable Dr. B. R. Ambedkar :** That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No. 78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

**Pandit Thakur Das Bhargava :** But it is very fundamental difference.

**The Honourable Dr. B. R. Ambedkar :** That is a very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before the Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

**Pandit Thakur Das Bhargava :** Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation?

**The Honourable Dr. B. R. Ambedkar :** I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise? Where is the difficulty? I do not see anything with regard to the amendment.

**An honourable Member :** It is one o'clock now.

**Mr. Vice-President :** We are going to finish this article.

**The Honourable Dr. B. R. Ambedkar :** Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No. 78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible". Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

**Mr. Vice-President :** I now place the amendments before the House.

Amendment No. 3028—Volume II Printed List.

**The Honourable Dr. B. R. Ambedkar :** I withdraw that, Sir.

(The amendment was, by leave of the Assembly, withdrawn.)

**Mr. Vice-President :** Amendment No. 3030.

**Shri H. V. Kamath:** I withdraw that amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

**Mr. Vice President :** I now place before the House amendment No. 211 of Pandit Kunzru in the printed Consolidated List.

**Pandit Hirday Nath Kunzru :** I withdraw that amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

**Mr. Vice-President :** I place before the House the amendments in List No. 1.

The question is:

“That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure ‘Part III’, the words and figures ‘articles 13 and 16’ be substituted.”

The amendment was negatived.

**Mr. Vice-President :** The question is:

- “(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘the President may by order declare’ the words ‘Parliament may by law provide’ be substituted.
- (ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘mentioned in the order’ the words ‘specified in the Act’ be substituted.
- (iii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘the rights so mentioned’, the words ‘any of such rights so mentioned’ be substituted.
- (iv) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words ‘in the Order’ occurring at the end of the clause, the words ‘in the Act’ be substituted.
- (v) That in amendment No. 15 above, for clause-, (2) and (3) of the proposed article 280, the following clause be substituted :—  
 ‘(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament.’ ”

The amendment was negatived.

**Mr. Vice President :** The question is:

- “(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the word ‘mentioned’ where it occurs for the first time, the word ‘specified’ be substituted.
- (ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for words ‘the rights so mentioned’ the words ‘any of such rights so mentioned’ be substituted.
- (iii) That in amendment No. 15 above for the clause (1) of the proposed article 280, the following be substituted:  
 “An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.”
- (iv) That in amendment No. 15 above, after clause (3) of the proposed article 280, the following new clauses be added:—  
 (4) An order made under clause (1) of this article may be revoked by a subsequent order.  
 (5) An order made under clause (1) of this article may be renewed or varied by a subsequent order, subject to the provisions of clause (3) of this article.

- (v) That in Amendment No. 15 above, at the end of the proposed article 280, the following, new clause be added :—

‘Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of *habeas corpus*, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament.’

The amendment was negatived.

**Mr. Vice-President :** Amendment No. 19 falls because it is based on amendment No. 18.

Amendments Nos. 23, 24, 25 and 26 all fall because Amendment No. 3028 has been withdrawn.

Then I proceed to List No. 2.

The question is:

“That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added :—

“ 279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall ensure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force.” ”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, for the proposed article 280, the following be substituted :

“280. Any law made or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force.” ”

The amendment was negatived.

**Mr. Vice-President :** The question is :

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in, clause (1) of the proposed article 280, after the words ‘a Proclamation of Emergency’ the words, figures and brackets ‘under article 275(1) of the Constitution’ be inserted.”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end :—

‘for a period during which the Proclamation is in force or for such shorter period as may be specified.’ ”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added :—

‘(2A) Any such order may be revoked or varied by a subsequent order.’ ”

The amendment was negatived.

**Mr. Vice-President :** The question is :

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following be added at the end :—

‘and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

[Mr. Vice-President]

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of, one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament.' ”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words ‘when it meets for the first time, after such an Order’ be added thereafter.”

The amendment was negatived.

**Mr. Vice-President :** Amendment No. 86 does not arise.

The question is:

“That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, at the end of clause (3) of the proposed article 280, the following words be added:—

‘and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately.’ ”

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That for article 280, the following article be substituted

280. (1) 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 such of the rights conferred by art III of this Constitution as may be mentioned in the order and all proceedings in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.

The amendment was negatived.

**Mr. Vice-President :** The question is:

“That article 280, as amended, stand part of the Constitution.

The motion was adopted.

Article 280, as amended, was added to the Constitution.

**Shri H. V. Kamath:** This is a day of sorrow and shame. May God help the Indian people.

**Mr. Vice-President :** The House will now adjourn to Monday 9 a.m.

The Assembly then adjourned till Nine of the Clock on Monday, the 22nd August 1949.