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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 3*rd August* 1949

The Constituent Assembly of India met in the Constitution Hall New Delhi, at Nine-of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 276

Mr. President : We shall now take up article 276. There are certain amendments of which notice has been given which are in Part II of the Printed List.

(Amendment No. 3002 was not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim) : May I point out that 3003 is a drafting amendment? It merely transposes a few words from one place to another.

The Honourable Dr. B. R. Ambedkar (Bombay: General): If that is so, I agree.

(Amendment Nos. 3004 and 3005 were not moved.)

Mr. President : No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

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

"That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

I also move :

"That in clause (b) of article 276, the words 'notwithstanding that it is one which is not enumerated in the Union List' be added at the end".

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President : There is no other amendment. Does anyone wish to speak?

Mr. Naziruddin Ahmad: Mr. President, Sir amendment 3006 for addition of some words at the end of clause (b), I submit, is already covered by the earlier part of the article. The words proposed to be added are :

"notwithstanding that it is one which is not enumerated in the Union List".

Some power are being given to the President arising out of a Proclamation of Emergency notwithstanding the fact that the subject dealt with is one not enumerated in the Union List. It gives power to the President to act on subjects in the Provincial List. But this safeguard is already there at the beginning of the article 276. Dr. Ambedkar proposes to transpose these words to the beginning of clause (a). But the sense remains the same because the article begins with the words "Notwithstanding anything contained in this Constitution", which includes the condition "notwithstanding that it is one which is not enumerated in the Union List." So there is no need to repeat them at the end. They are already implied by the general condition "notwithstanding anything contained in this Constitution" appearing at the beginning. If we are to mention special things like this in spite of the general words, then they will have to be exhaustive, but nobody

[Mr. Naziruddin Ahmad]

can be sure whether there will be other exceptions needing special mention. This amendment is unnecessary.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, I am afraid if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar's amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The thing has been clarified, in terms of the language used in the Government of India Act, section 126A. If he will read the section once again, be will find that there is no objection to the inclusion of these words in this article.

Mr. President : You do not wish to say anything. Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar: No Sir. It is not necessary for me to say anything.

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

The question is:

"That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of .clause (a) of the same article."

The amendment was adopted.

Mr. President: The question is:

'That in clause (b) of article 276 the words notwithstanding that it is one which is not enumerated in the Union List' be added at the end'.

The amendment was adopted.

Mr. President : Then I put the article as amended.

The question is :

'That article 276, as amended, stand part of the Constitution.'

The motion was adopted.

Article 276, as amended, was added to the Constitution.

Articles 188, 277-A, 278 and 278-A

Mr. President : Then we come to article 277.

The Honourable Dr. B. R. Ambedkar: I would like to hold article 277 back, for the present.

Mr. President : Shall we then take up article 277-A ? Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar : Sir, I think it would be better if three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278—A because they are cognate matters. They might be put separately for voting, purposes. But for discussion, I think, might be taken together.

Mr. President : Articles 188, 2/8 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

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

"That article 188 be deleted."

Sir, I move :

"That after article 277, the following new article be inserted:—

Duty of the Union to protect States against external aggression and internal disturbance.

'277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'."

And then, Sir, I move amendment No. 160 of List II, which reads as follows :

"That for article 278, the following articles be substituted:—

Provisions in the case of Failure of Constitutional machinery in States.

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler as the case may be, or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, Including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament.

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period. The Proclamation shall cease to operate at the expiration of thirty 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 Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty 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 Proclamation have been passed by both Houses of Parliament.

[The Honourable Dr. B. R. Ambedkar]

"278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent.

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

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

Shri H. V. Kamath : (C.P. and Berar: General): Article 188 also?

The Honourable Dr. B. R. Ambedkar : I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering the general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the, Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the provinces feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the

President is ultimately to take the responsibility of entering into the Provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted."

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them Plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we, propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. There is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It win be an act in fulfillment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clauses (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been

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such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes article 278, imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that big intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks, he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were, exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered; The twelve months is now divided into two periods of six months each and after the first ratification, the Proclamation could-run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (1) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article—that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

Shri Brajeshwar Prasad (Bihar: General): Sir, I am not moving amendment Nos. 158 and 159 (List II : Second Week).

Pandit Thakur Das Bhargava (East Punjab: General): I am not moving amendment No. 202,

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, may I, at the outset request you to tell the House what method or system you would like us to adopt—whether we should move the amendments to each article separately, or whether we shall move the amendments to all the four articles at once ?

Mr. President : I would like to have the amendments to all the articles moved together.

Shri H. V. Kamath : I do not, Sir, propose to move amendment Nos. 161 and 162 to article 278 (List II, Second Week). I shall first take up article 277-A and move the amendments that are relevant thereto. I invite the attention of the House to List IV, Second Week, amendments Nos. 220, 221 and 222.

Sir, I move :

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the word 'Union' the words 'Union Government' be substituted."

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the word 'and' where it occurs for the first time the word 'or' be substituted."

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted.

[Shri H. V. Kamath]

"Turning, Sir, to article 278 in the same list, I move, by your leave, the following amendments:—

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, the words 'or otherwise' be deleted."

'That in amendment No. 160 of List II (Second Week) of Amendments to Amendments in clause (1) of the proposed article 278, after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquility of the State and that' be added."

Will you permit, me, Sir, to clarify the importance of, these amendments by reading out to the House how the article would read in case the amendments are accepted by the House ? Article 277-A would read, in case my amendments are accepted by the House, as follows :

"277-A. It shall be the duty of the Union Government to protect every State against external aggression or internal insurrection or chaos and to ensure that the Government of every State is carried on in accordance with the provision of this Constitution."

Article 278 (1) would read, in case my amendments are accepted by the House, as follows:—

"278. (1) If the President, on receipt of a report from the Governor or Ruler of a State, is satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State and that Government of the State cannot be carried on in accordance with the provisions of this Constitution, he may, etc., etc."

So much for the formal reading of the amendments.

There are before the House today, four articles.

Mr. Naziruddin Ahmad: May I suggest that all the amendments to this article may first be moved and then general discussion held later on?

Mr. President: Very well. Prof. Shibban Lal Saksena may move his amendments at this stage. Mr. Kamath may speak afterwards.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I move:

That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, for the word 'Ruler' the words the Rajpramukh' be substituted."

I move:

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, for the first proviso to clause (4) of the proposed article 278, the following be substituted:—

Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

Shri Brajeshwar Prasad: Mr. President, I am not moving my amendment Nos. 122, 123, 124 and 125 to this article.

Shri H.V. Kamath : I am not moving my amendments Nos. 161 and 162.

Mr. President : These are all the amendments of which there is notice. Mr. Kamath may speak now.

Shri H.V. Kamath : I am deeply grateful to you, Sir, for giving me this opportunity of speaking on the matter brought before the House today by Dr. Ambedkar. These articles have a threefold object, though the various objects are inter-connected. Article 188 is firstly sought to be deleted and two new articles are sought to be inserted *viz*., 277-A and 278-A, and the old draft of article 278 is proposed to be modified in certain respects.

Taking up the motion for the deletion of article 188, may I invite the attention of Dr. Ambedkar and the House to certain observations made in the course of the debate on article 143 relating to the deletion of the provision concerning the Governor's discretionary powers ? Replying to the debate on that occasion on behalf of the Drafting Committee, Dr. Ambedkar said that the amendment in principle was welcome to him, but that there were certain difficulties with regard to the incorporation of the amendment in the Constitution. He said then that so long as articles 188 and 175 were not finalised, it would be difficult for him or the House to make up their minds finally about the amendments moved by me seeking to divest the Governor of discretionary powers conferred upon him by the Draft Constitution. May I remind him of what he said on that occasion? I am quoting from the official records of the Assembly. He said that article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. Proceeding, he said:

"It seems to me there are thee ways by which this matter of discretionary powers could be settled. One way is to, on the words suggested by Pandit Kunzru and others from article 143 and add such articles as 188 or 175 or such other provisions which the House may hereafter introduce vesting the Governor with discretionary powers, saying, notwithstanding article 143 the Governor shall have this or that power....."

"The other way," Dr. Ambedkar said, "would be to say in article 143 that, except as provided in articles so and so, specifically mention articles 175 and 188. I would be quite willing to amend the last portion of article 143 if I knew at this stage what other provisions the Constituent Assembly proposes to make with regard to vesting the Governor with discretionary powers. My difficulty is, that we have not yet come to articles 278 and 188 nor have we exhausted all possibilities of other provisions vesting the Governor with discretionary powers". "If I knew that", he said, "I would agree to amend article 143, but that cannot be done now."

The point of reference on an earlier occasion was this : That point was raised by me in an amendment which was hotly debated in this House and Dr. Ambedkar promised to reconsider the matter after articles 175 and 188 had been disposed of by this House. The time has come now for him to reconsider the matter. We have disposed of article 175(2) which divest the Governor of discretionary powers in regard to legislation and we are seeking to delete article 188 which seeks to specifically confer discretionary powers on the Governor. It is high time now for the House to revert to what both Dr. Ambedkar and Shri T.T. Krishnamachari said on that occasion. They said that after we disposed of this article we could come back and amend article 143 suitably.

Therefore, Sir, this consequential amendment is necessary to article 143 and I hope Dr. Ambedkar will bear in mind this fact and amend the article, suitably when the time comes for him to do so. That disposes of the amendment moved by Dr. Ambedkar for the deletion of article 188. I support it with the proviso that article 143 be amended suitably.

Now coming to article 277-A, we have laid according to this article certain duties upon the Union Government. Firstly, it should defend every constituent unit against any external aggression. Secondly, it should protect the State against internal disturbance, or I suppose Dr. Ambedkar and the Drafting Committee mean that the Union Government should prevent any internal disturbance from occurring in the State. Lastly, the duty is laid upon the Union Government to see that the Government of every State is carried on in accordance with the provisions of this Constitution. As regards the last, I am wholeheartedly in agreement with that provision that the Union Government should make it a point to see that every State honours and observes the Constitution in letter as well as in spirit. Also I have no quarrel with the provision regarding the defence of every constituent unit against external aggression. In

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my humble judgment, however, there is likely to be a difference of opinion as regards the middle provision of protecting the State against internal disturbance.

(At this stage Mr. President vacated the Chair which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.)

The crucial point to my mind in this connection is, what is internal disturbance and what is not. Will any petty riot or a general *melee* or imbroglio in any State necessitate the President's or the Union Government's intervention in the internal affairs of that State. If honourable Members turn to List II of the Seventh Schedule, they will find that item 1 lays the responsibility for public order (but not including the use of naval, military or air forces in aid of the civil power) squarely on the shoulders of the State. That will be within the jurisdiction of the State. It is not in the Concurrent List either Public order has been made expressly a responsibility of the State Government. Now the crux of the matter is this : You say that the State must maintain public order. But through a new article 277-A you say that the Union Government shall protect every State against internal disturbance. Let us be honest about what we are going to do. It is no use having mental reservations on this important point. If we are going to whittle down provincial autonomy, let us say so in the Constitution. Let us make no bones about it. It is dishonest on our part to say in one article that public order shall be the responsibility of the State and then in another article to confer powers upon the Union Government to intervene in the internal affairs of the State on the slightest pretext of any internal disturbance. Therefore, with a view to removing this difficulty, I have moved my amendment, No. 222 of List IV (Second Week). It seeks to substitute "internal insurrection or chaos" for "internal disturbance". "Disturbance" is a very wide and elastic term. A disturbance of the human organism may range from a little pain in the finger up to hyperpyrexia or coma. So also a disturbance within a State may range from two people coming to blows to a full-fledged insurrection leading perhaps to chaotic conditions. What are we, aiming at? Do we want to confer powers upon the Union Government to see that peace, order and tranquility in the State are not jeopardised, or are we going to confer powers upon the Union Government to intervene in the internal affairs of the State? I do not think that the latter is our objective. The Preamble says that we are going to constitute India into a sovereign democratic Republic. Dr. Ambedkar just now stated that the federal scheme envisages the sovereignty of every State within the field which is allotted to it. List II of the Seventh Schedule allots public order to the State. Now, this article seeks to divest, in howsoever small or large a measure, the State Government of powers conferred upon it by the Seventh Schedule. If this article 277-A is adopted without much consideration by this House, I foresee the destruction of provincial autonomy, the subversion of provincial autonomy by the Union Government, on the pretext of averting or quelling internal disturbance. If that is our objective, let us say so, and then let us pass this article. If we are not going to do it, if it is our aim to promote provincial autonomy—no doubt the, inevitability of gradualness comes in here let us be straight about it and let us provide as an interim measure, as a provision during the *interregnum*, during the transition we are passing through during the dangerous and critical times that we are living in, let us amend this article by saying that only in the event of an insurrection or chaos shall Union Government be empowered to intervene in the internal affairs of the State, and not for any disturbance that might arise in the State. For that the State has ample powers at its disposal, the police force, the Raksha Dal and all sorts of other subsidiary forces. Can we not trust the State Government to

look after its own public peace and order, to maintain tranquility within the borders of its own domains? Certainly I think that is the spirit of the Constitution which we are considering in the House and with that spirit in mind, let us not confer more powers upon the President and the Union Government than are warranted by the facts or the contingencies or the possibilities of any situation that might arise in future.

I have with regard to this matter moved three amendments; namely, 220, 221 and 222. The first is merely verbal. I thought that instead of the word "Union" the words "Union Government" would be more appropriate, because article 1 has defined the Union. Article 1 says that India shall be a Union of States. If we just say "Union" it may vague and it may mean also the various authorities in the Union. Are they required to intervene and to meddle in the affairs of the State in case of internal disturbance or external aggression or to see that the Government of the State is carried on in accordance with the provisions of the Constitution ? If Dr. Ambedkar's wisdom can appreciate this amendment of mine, I would request him to change this word "Union" to "Union Government". It is almost a verbal amendment and I leave it to their cumulative wisdom, which I am sure, is superior to mine.

The next, amendment is 221 and this also though verbal has got some substance in it. The article as it has been brought forward by Dr. Ambedkar before the House today provides that the Union Government shall protect every State against external aggression and internal disturbance. According to legal terminology or constitutional parlance, I think this is rather inaccurarte. This might mean that when both these things happen then only the Union can intervene. My lawyer friends will appreciate the distinction between the words "and" and "or" and it will mean that article 277-A as it stands today will mean that unless. there is both external aggression and internal disturbance the Union cannot intervene in the affairs of the State. But if you say "or it will mean that in any of these contingencies, either external aggression or internal insurrection or chaos, the Union Government is competent to intervene.

With regard to amendment No. 222, I have already made a few observations as to why it is necessary, and with a view to be honest about what you mean about the scheme envisaged in the Constitution, the scheme of a sovereign democratic republic, seeking to promote not merely provincial autonomy, but seeking to develop *Gram Panchayats* as well right from the village panchayats up to the apex of Provincial autonomy. Thus the provision to confer upon the President, or the Union Government powers to intervene in any internal disturbance will be contrary to the spirit of the whole Constitution. Only in the event of an insurrection or chaos should the President of the Union be empowered to intervene in the affairs of the State.

Now coming to article 278, I would appeal to the House to listen closely and carefully if they are so minded. This article 278 is a lineal descendent of the articles that have gone before in Part XI and of the articles that have been moved by Dr. Ambedkar today. They have got to be considered together, as Dr. Ambedkar remarked in the course of moving the amendments before the House just a little while ago. There have been certain changes embodied in the new draft brought before the House today, changes in relation to article 278 as it stood in the Draft Constitution, This article 278 now before the House seeks to confer more powers upon the President than were envisaged in article 278 of the Draft Constitution. Firstly, the President is empowered to act under article 278 not merely if he gets a report from the Governor or the Ruler of the State but also otherwise. What that "otherwise" is, God only knows. Reading all these articles since yesterday and the amendments moved today, it seems to me that we are not going about the business in an honest fashion. We here

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repersentatives of a democracy, just liberated from foreign slavery, sitting in solemnity and dignity to frame the Constitution of our motherland, we are adopting subterfuges to nullify and set at naught, certain articles of certain provisions which we have already adopted. To my mind, this is not the way to go about business. It may be all right if we said that "if the President receives a report from the Governor or the Ruler of a State", well and good. After all we have already decided that the Governor shall be the nominee of the President. If that be so, cannot the President have confidence in his own nominees? If he can not have this trust and confidence in his own nominees, let us wind up our Government and go home; let us wind up this Assembly and go home. This is not the place for us; let us go to the market-place and, let us go into the streets; let us go wherever we like, but not here in this Assembly. In that case Government should be wound up and it will have no right to function. I am using strong words, hard words, but I believe no occasions such as this, hard words are very necessary. Sometimes it is very necessary to be cruel, to be kind, and if I am hard today the House will pardon me. I have therefore, Sir moved amendment number 224 seeking to delete the words "or otherwise". I want that the President should be empowered to act only in case the Governor or the Ruler of a State informs him that a situation has arisen or that an emergency has arisen etc. etc. but not otherwise. What is this 'otherwise'? Do you mean to say that the President, even granting that he is to act upon the advice of the Council of his Ministers, can intervene solely on the strength of his own judgement, perhaps butteressed or reinforced by the advice of his Council of Ministers at the Centre but without a report from the State Governor or Ruler? No, I shall not be a party to this transaction. This is a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided for in this Constitution, and I shall pray to God 'that He may grant sufficient wisdom to this House to see the folly, the stupidity, the criminal nature of this transaction.

Shri L. Krishnaswami Bharathi (Madras: General): Criminal? What is the crime?

Shri H.V. Kamath : It is a constitutional crime to empower the President to interfere not merely on the report of the Governor or Ruler of a State, but otherwise. 'Otherwise' is a mischievous word. It is a diabolical word in this context and I pray to God that this will be deleted from this article. If God does not intervene today, I am sure at no distant date. He will intervene when things will take a more serious turn and the eyes of every one of us will be more awake than they are today.

I was saying that the President should be empowered to act only on the receipt of a report from the Governor or Ruler of a State. I would say here that we have deliberately altered the language as it stood in relation to article 188 and made it far more elastic. The original draft article 278 stated that on receipt of a Proclamation, issued by the Governor of a State under article 188, if the President is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution etc., etc.... Let us turn to article 188 and see what it stated. It is now sought to be deleted and I hope it will be deleted; there is no quarrel about that. If the House will have the patience to turn to article 188, that article stated that the Governor of a State must be satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State and that it is not possible to carry on the Government of the State in accordance with the provisions of this Constitution. That was the scheme visualised in article 188 and article 278

was a sequel to article 188. Today, article 278 does not, to my mind, to my untrained legal or constitutional mind, bear the full impress of article 188. In the proposed new article, it is sought to be laid down, "if the President is satisfied on receipt of a report from the Governor or Ruler of a State or otherwise that the government of the State cannot be carried on in accordance with the provisions of this Constitution." There is no reference to the peace and tranquility of the State being jeopardised. Therefore, in this connection, I have got my amendment No. 225 of List IV (Second Week), which seeks to include these words that the President must be satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State, and that-not 'or that'—the government of the State cannot be carried on in accordance with the provisions of this Constitution. There are grave dangers lurking in the article brought before us today. The dangers are that on the pretext of resolving a ministerial crises or on the pretext of purifying or reforming maladministration obtaining in a particular State, the President may have recourse to this article 278. I am sure this article is not intended for resolving any ministerial crisis that might arise in a particular State. For that the remedy lies elsewhere; the remedy lies in the dissolution of the legislature by the Governor and a reference to the electorate. The Governor is empowered by article 153 to dissolve the legislature and order fresh elections. A mere crisis or a vote of no-confidence in the Ministry by the legislature, even a repeated vote does not, cannot empower the President of the Union Government to intervene and proclaim an emergency. Nowhere in this world has this been done. If you are going to set up a new precedent, you are welcome to do it; but let us beware of the catastrophes that have followed in the wake of arming the executive with unnecessary, uncalled for, tyrannical, dictatorial powers. What has been the experience of the countries where the Executive have been armed with such powers? Yesterday, my honourable Friend Mr. T. T. Krishnamachari observed that these emergency provisions bear some resemblance to the Weimar Constitution, article 48; but he missed the point that I made. I had sought to show that the very article 48 of the Weimar Constitution of the Third Reich of Germany, was used by Herr Hitler to destroy democracy in Germany and to establish his dictatorship. All right; if we are aiming at that objective, if we in this country want dictatorship, I have no quarrel with them. Have it by all means; but say so; be honest; be straight; do not adopt subterfuges do not be crooked about your business. It does not behove us, it does not conform to our dignity to say one thing in one article and say quite a different thing and seek to annul it by another article. I therefore think that this clause (1) of article 278 should not stand as it is. I hope the House will bestow earnest consideration very serious thought, bring to bear its mature judgement upon the provisions of this clause (1) of article 278 and amend it suitably. Otherwise, we are in for serious trouble in the future. We are laying ourselves open to snares and traps in our path wherein we shall be caught beyond any rescue. This whole Constitution will be in danger not so much from those who are agitating in the streets as from those who are in power, in case these articles are adopted as they are. If the House wants such a thing to happen, let it say so. Let us not say in the Preamble that we shall have a democratic republic. We are here seeking to destroy the foundations of democracy. About 278-A I have no amendment as such but I would only say that Proclamation under article 278 is issued only on rare occasions, *i.e.,* when the President is satisfied on receipt of report from Governor or ruler of a State. "Or otherwise" should go. Otherwise the Ruler or Governor will be a mere sham and a mockery. Secondly, the report must satisfy the President not merely that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, but also it should satisfy him that there is grave danger to the peace and tranquility of the State. Only in that eventuality should the President be clothed with this power to intervene in the affairs of a constituent State and not otherwise.

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Article 278-A is an enabling article in respect of various matters that follow in the event of Proclamation by the President under article 278, and therefore if the conditions I have laid down are satisfied, I have not much to quarrel with 278-A which merely seeks to clarify and further expand the provisions of article 278.

Summing up, regarding article 143 the discretionary power of the Governor must go, now that we have disposed of articles 175 and 188. Perhaps the House has forgotten that Dr. Ambedkar gave an assurance that after articles 175 and 188 this matter will be taken up. We have already passed 159 for deletion of discretionary power to summon, or dissolve the Assembly. The only other articles that remained were 175 and 188. 188 we have deleted and as for 175 we have there divested the Governor of discretionary power. So 143 must be amended. I moved at that time an amendment which has now full force, which now comes into play, and I hope that that amendment will be suitably incorporated by the Drafting Committee finally.

Regarding 277-A and 278 the House is faced with a grave situation. I appeal to the House to deliberate coolly, earnestly, seriously, deeply and dispassionately upon the provisions of articles 277-A and 278 and amend them in such a manner that the Constitution that we are framing will do us credit and will not detract from the high principles enunciated in our Charter of Freedom which Pandit Nehru moved in December 1946, and will not deviate from the nobility of those ideals, from the integrity of the high canons which were laid down in the Charter of Freedom; and above all that this Constitution which we are ushering in in the last year of the first half of this century, next year, will be the crown and glory of the labours and sufferings of millions of our compatriats, and will be the foundation of a real democracy that will set an example to other countries of the World.

Prof. Shibban Lal Saksena : Mr. President, we are considering three articles together, 188, 277-A and 278 and I think these articles are of the utmost importance in this Constitution. I personally feel happy that article 188 is being deleted. In fact, I had given an amendment which is No. 160 in the printed list suggesting that the Governor should not be given the power to issue Proclamation and that it should be only the President who should have the authority. So I agree with the deletion, but with this deletion article 278 has been made more sweeping. In fact, article 188 had said that if at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of a State, then alone he was empowered to issue a Proclamation and article 278 was only to conform to that declaration. But the new draft does not take this fact into consideration. It says that if "the President on receipt of a report from the Governor or otherwise is satisfied", he can take action under this article. This gives very sweeping powers to the President. There need not be any grave emergency. If only the President is satisfied that the Government cannot be carried on in accordance with this Constitution, then he can issue a Proclamation under article 278. Article 277-A puts upon Parliament the responsibility of protecting every unit of the Union against external aggression and internal disturbance so that here also it is only external aggression and internal disturbance, and internal disturbance is too wide a term. The article does not say chaos or even grave emergency. Personally I feel that the powers given in article 278 are far too sweeping. I am glad that the ultimate authority lies with the Parliament, and therefore, we cannot say that these articles nullify the entire autonomy of the State. That of course, is a very important safeguard, because, after all has been done, ultimately the Indian Parliament remains a sovereign body and the final authority responsible for the administration of the province. The President also cannot do anything without putting the matter before Parliament, although

he has two months time in which he can have his own way. I therefore think that I cannot condemn the article as strongly as my Friend Mr. Kamath has done. But I feet that by these articles we are reducing the autonomy of the States to a farce. These articles will reduce the State Governments to great subservience to the Central Government. They cannot have any independence whatsoever. I do not want the State to pull in one direction and the Centre in another, still there must be some autonomy for the States and I say articles 277-A and 278 take away this autonomy. I feel that even if these articles are omitted, there are articles 275 and 276 and these two articles give the executive all the powers necessary to deal with an emergency. If there is an emergency, you can issue a Proclamation under article 275, and by 276 you can legislate on matters relating to the Provinces. So articles 275 and 276 are quite sufficient. The introduction of articles 277-A and 278 is not desirable and these articles, in fact, lay us open to the charge that we are reducing provincial autonomy to a farce. In fact, what does article 278 say? If you see the Government of India Act, 1935, you will find that this article is almost a word for word reproduction of section 93 of that Act; only for the Parliament of England, you have substituted the Houses of Parliament in India and for the period of six months, you have put down two months in this article. The rest is all identical. And what is more interesting is that in the Government of India Act, 1935 as amended, and which is now in force in this country, this particular article is omitted. So in a way the present Government of India Act under which we are now being governed, is more progressive than the article which we are now going to pass, because in this present Government of India Act, there is no section 93, and we are re-introducing it in our new Constitution. I surely think that this is a retrograde step. I should have been much happier if these particular articles were not there. Even if you must put in these two articles I would strongly plead that at least the word "otherwise" be taken away. There is no justification for the President to interfere with a State until at least the Governor who is his own nominee has reported to him. But here he has power to interfere of his own volition even though the Governor may not be of that opinion, and the Provincial Ministers may disagree with him.

Shri Brajeshwar Prasad: Sir, I would like to have elucidation on one point. If the Governor of a Province is forcibly arrested by some people, then how can he ever inform the Centre?

An Honourable Member: A Governor cannot be arrested.

Shri Brajeshwar Prasad: Sir, I am sorry for the word "arrested". He may be kidnapped, and what happens then?

Prof. Shibban Lal Saksena: If such a situation arises, then article 275 is there under which the Proclamation can be issued. But here, there is not even consultation with the Governor. You do not proceed on his report, but the President proceeds on his own whims. I feel also that even if you put these two articles on the Statute Book, no President will dare to act upon them, because it will create chaos. The people will rise and ask him, "Why should you interfere, even when the Governor himself does not think that it is necessary?" So he cannot take action under this article. So I appeal to the Drafting Committee that the word "otherwise' should be removed. The President should proceed on the report of the Governor, who is his own nominee. The Governor is not put by the Legislature. He is the President's own nominee. If the President wants, he may remove the Governor and post another. At least, let there be some semblance of autonomy and democracy. If a Governor becomes hostile, him and put another in his place; but let him make a report before you proceed to proclaim an emergency. The President must be able to say that he had

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proceeded on the report of the Governor. So the word "otherwise" should go, and that will at least give the Governor some execuse for interference.

Then, Sir, I find that this article scraps the State Legislature and the Council of Ministers as well as the Governor, and the President and Parliament become the rulers of the Province. I would not have minded, if you had frankly said, "We are framing a unitary constitution." That would have been better. You could have had 250 counties in the country and one single Central Parliament.

Shri Brajeshwar Prasad: Hear, hear.

Prof. Shibban Lal Saksena: But now we have rejected such a formula and we have adopted this federal constitution with autonomous States. Therefore you must at least treat the States with some respect. I would, therefore, suggest that you must modify this article 278. Under this, you have given the power that Parliament can confirm the Proclamation after every six months and thus for three years the Proclamation could be continued. What happens during these three years? Take for instance my own province of the United Provinces. Suppose the President decided—I do not know on what grounds, may be on information from the C.I.D.—suppose the President decided to proclaim a state 'of emergency, divested the Ministry and the Governor and the Legislature of all power and took all powers to himself and to the Parliament, then he might put some nominee of his own to rule that province. Now, for three years he can go on in this manner and after every six months he can get the Proclamation passed. But what happens after three years? After three years, when his powers are exhausted, will that same legislature and the same ministry come in? Suppose you commenced this process after six months of the commencement of the legislature, and you carry on for three years. So three and a half years are over. Then one and a half years remain and afterwards the same Governor will come in and the same Ministry will come in. After having been divested of power for three years, do they become abler and wiser then? I think there is a very grave lacuna in this Constitution. We are just seeing the trouble in West Bengal; we are hoping that new elections will be held there and a new Ministry formed. Therefore I want that the President should be authorised to dissolve the legislature, to have new elections held and to have a new Ministry formed there, so that after eight months at least that Province might have a better and new Ministry. The same legislature, the same Ministry, which was supposed to be incompetent for three years, whose powers have been taken over by the President, will it be able to govern the Province for a single day? If it is not, where is the power to dissolve the legislature or put in another Ministry? There is no such power. There is a grave omission in this article and it should be rectified. I therefore suggest an amendment by adding a proviso to clause (4) which says :—

"Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

What happens is this. The President has taken over authority to himself because either he has found a grave emergency in the State or some disturbance which the Ministry is not able to quell and therefore his intervention is necessary. If that Ministry was competent, he then restores it after the emergency; but if he feels that it is not competent then what he does is that he orders dissolution of the legislature and holds a new election. That is probably what we are doing in West Bengal. I think we should take a lesson from that.

I therefore think that even if we take these powers, we must give the provinces some democracy. So, for God's sake remove this proviso to clause which gives powers to the President to deprive that province of autonomy for three years continuously without making any provision as to what will happen afterwards. The Drafting Committee should carefully consider this question. I am not the only person, nor my Friend Mr. Kamath is, but even many of our leaders in this House are of this opinion. I find that no less a person than Pandit Govind Ballabh Pant had tabled an amendment to this article. So had Dr. H. N. Kunzru. Such men too were 'for deletion of this article. I hope they have not changed their minds since and will support me in this matter.

Col. B. H. Zaidi (Rampur-Banams States): Mr. President, Sir, I am not here to enter into any detailed controversy regarding the provisions of these articles. There is only one thing which I should like to say briefly and it is this. On the occasion of a very tragic event in the history of the world, George Bernard Shaw was reported to have said that it is a dangerous thing to be too good. Now to be good is not a bad thing but in Shaw's opinion it is a dangerous thing to be too good. I feel that similarly it may be a very dangerous thing for our country to be too democratic. Let us have a little, realism about our discussions and about our Constitution-making. We go on dissecting, analysing things purely from the point of view of a lawyer or an advocate. There is much too much of this hair-splitting as it is in our temperament, but this hair-splitting and this tendency to be too legalistic may be divorced from the realities of administration and the handling of political crisis. What has been the trouble in our country in the past? Have we or have we not suffered from fissiparous tendencies? Have the various units not tried to break away from the Centre again and again? The greatest danger, as I dimly look into the future, may be, not that the Centre will interfere too much, but that the units may resent the guidance of the Centre. Of the two things, I do not believe that the President, will be inclined to depose Governors, but that Provinces may have mal-administration over a long period and may come to grief over it unchecked by the Centre. The last speaker said, "suppose the President, on the basis of a report he receives from the C.I.D., decides that law and order has broken down and there is a grave, emergency in a certain Province. he can then proceed to take the Government of that Province into his own hands and be the absolute ruler of that Province." Well, Sir, if that can happen in my country, then we are not fit for democracy. Let there be a perfect human body with all the limbs intact, with everything looking perfectly all right, but if the spirit has departed, that body is no good, the hands cannot work, the feet cannot walk, the tongue cannot speak because the spirit has departed. If we have the finest constitution in the world but if the democratic spirit is not in the country, then that Constitution is bound to break down. What do we mean by saying that the President may take the powers into his own hands and may become an absolute dictator? And will the 'thirty-two crores of Indians sit quietly and knuckle under? If they would, then they would do that anyhow, no matter what Constitution you frame. We seem to think that our political salvation lies purely in laws, not in a, public opinion, which is wide awake, well-informed and vigilant. I feel that if we are going to pin our faith only on the written Constitution without bringing about the education of our new masters—the masses and the people, of India then we are going the wrong way about it. No Constitution which exists only on paper can mean the salvation of a country. What we must work for is the proper democratic spirit, the realization that everyone of us is responsible to see that the country is governed properly along enlightened, progressive, democratic lines. If that spirit and that vigilant watching of the Government of our country is not there, then no Constitution on God's earth, even if framed by Archangel Gabriel, is going to succeed. So I feel that instead of being too critical and putting the most unwarranted suspicions at the door of our would-be Presidents of the future, we should take the historical tendencies of our country into consideration and

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see what is likely to happen in the future and then in a realistic way, in a way which means political sagacity and wisdom and balance, we should proceed to the task of framing the Constitution. Take England, Sir. Does England put its trust wholly and solely in the written Constitution? Much more than the written Constitution, they make use of conventions. But we seem to forget that there is anything like conventions or public opinion and we go the legalistic extreme of conjuring up most weird and fantastic visions of the future and trying to provide for everything that we can possibly think of. I think, Sir, that the provision is sound, healthy and necessary in the light of our historic past and in the light of the tendencies that are staring us in the face and the fears expressed this morning are unwarranted and unjustified.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, Sir, I am glad the Honourable Dr. Ambedkar expected the House to have a full-dress debate on this important provision. As the House has already seen, there has been a very important change from the first draft to the present proposals and the main and fundamental change is that we have left no powers with the Governor of a province to act in an emergency. We have concentrated all emergency powers in the hands of the President and the Parliament of India and have made the Governor merely a reporting authority so far as emergency and its Proclamation are concerned. Now this, I have no hesitation in saying, is a very radical change and a change which is neither in conformity with federation nor is likely to be administratively beneficial or even practicable. There are at least two arguments which have been suggested by the Honourable Dr. Ambedkar himself in his speech which support my contention. The one is that the spirit of this change is against the idea of federation, and secondly we would be over-burdened in the Parliament with responsibilities which naturally should be delegated to another authority. Some of my friends will probably say that when I am in favour of a unitary government, why do I not like the President or the Parliament having larger and larger powers. My answer to that is that this is neither fish nor fowl; it is neither a unitary government nor a federal government. If you wish to retain the least possible vestige of a Federation, you must not deprive the head of the unit or the State of all authority in such matters. As has been already pointed out by two previous speakers, you are going not only to override the discretion or the power of the Governor who is your own nominee, but you are going to set at naught the Ministers, the Cabinet in the State as well as the State legislatures.

Shri Mahavir Tyagi (United Provinces : General): But, does my honourable Friend realise that the Governor is not an elected officer? He will be a nominated one.

Dr. P. S. Deshmukh: That is all the more reason why there should be more confidence in the Governor by the President as well as the Parliament, because he is not elected on the vagaries of the electorate of the province but is a person considered to be fit and competent and qualified by the President in his discretion, and that being so, it is all the more reason why before his tact and ability are exhausted, the President should not act. Even if the powers that were originally supposed to be exercised by the Governor were to last only for a fortnight, even that was necessary because that would mean giving chance to the man on the spot for doing his best to improve the situation, of which he has a far more intimate knowledge than the President or the Parliament is likely to have.

Then, Sir, coming to the practical nature of the suggestion, we find there are likely to be insurmountable difficulties in the way of the proper administration of the province. If the Governor is not clothed with this emergency power all that he will do is that he will report to the President that an emergency his arisen and a Proclamation should be issued. After that, the responsibility falls not merely

on the President but the Parliament also and as soon as a body like the Parliament, consisting of hundreds of members, comes into play, one can imagine the state of affairs that is likely to result. So I think it is hopelessly unwise. My Friend Mr. Kamath, has used vehement language, but his speech, although it was very slow in delivery, did contain cogent reasons and I hope that neither the vehemence of his language nor the exuberance of his gestures would detract from the weight of his speech. I have much sympathy with what he has said and I agree with a substantial portion of his speech. I think it is not fair either to the Governor or to the provincial governments or to the Ministers, for the President to jump in all at once without exhausting the talent and the ability that is possessed in the province either by the Governor or his advisers.

Then I would like to come to article 277-A. Article 277-A proposes that 'it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'. It is a very intriguing provision. We are dealing with emergency powers. I cannot see what place this article can have logically in the discussion that we are having. But it is necessary simply because we have an amended draft which is article 278 where in part (b) of clause (1) it has been stated "declare that the powers of the legislature or the State shall be exercisable by or under the authority of Parliament' and then further in sub-clause (c) "make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to, the objects of the proclamation *including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in that State*". This pious provision of 277-A has no connection whatsoever with any emergency. It is merely a pious expression on the part of the Union Government that they are going to try their best to uphold the Constitution and not interfere unduly in the Constitution which has been laid down in this Act. I not think this sort of assurance was necessary at all, if we had not provided that the President will have the power even of setting at naught the Constitution by which the existence and the continuance of the unit or the State have been guaranteed.

So, Sir, this article 278 comes in only because we are clothing the President with powers for overriding at his own sweet will the provisions of the Constitution itself. If it was not necessary to give these powers to the President, and if we were content with retaining the powers which the Governor has been enjoying in virtue of section 93 of the Act of 1935—and on which really the original article 188 was based—there would have been no necessity to make this change and to bring in article 278. I, therefore, suggest that it is far better that we retain the powers of the Governor and give him such powers as we consider necessary and as were given by section 93 of Government of India Act, 1935, although this section has now been deleted from the adaptation which governs us. I think that it is absolutely essential that we should not impose this burden on the President and the Parliament and make it difficult for them to manage the affairs. Supposing more than one State is in this condition, supposing more than half a dozen States in India are in this, condition, what will the President and the Parliament do? Will they be doing their normal duties, or dealing with these States? I do not think that it is practical politics; nor does it show any appreciation of the realities of the situation. As my Friend Mr. Zaidi said, let us be more realistic and not imagine situations which may not arise at all. After all, Sir, section 93 has worked well for the last so many years and it has not been found necessary for either the Central Government or the Governor-General to intervene, in spite of the fact that we have gone through a war of colossal dimensions. If we have survived on the strength of section 93 and passed through such critical times as we have done during the last decade, I do not think an emergency is likely to arise where it

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would be necessary for the Parliament to interfere. On the whole, therefore, I think it would be far better to reconsider the whole matter and to leave the whole power of acting in an emergency in the first instance to the Governor. In case the situation deteriorates still further and there is no alternative left for the Parliament and the President but to interfere, then alone should the Centre intervene. Nobody could have any objection to that.

My learned Friend, Dr. Ambedkar, has quoted the American and Australian Constitutions in support of artilce 278. Fortunately or unfortunately, there is no mention of any emergency either in the Australian or American constitution. He quoted them probably to show that there will be no encroachment from the Centre so far as the units are concerned. That assurance exists in the Constitution itself. Every section of the Constitution is framed in such a way as to respect the autonomy of the units. If we mean this Constitution to work, the Centre will have to respect the autonomy of the provinces whether we specifically say so or not. If we at the Centre do not respect the provisions of the Constitution how could any one else be expected to do so? There was therefore hardly any point in the Honourable Doctor trying to derive support from foreign constitution. It would have been some consolation if he could have cited an appropriate parallel to the whole scheme now unfolded for the first time. That he could not do. Here we are taking away all the powers of the Provincial Governors and the Provincial Administrations; I do not think, Sir, this is wise or likely either to work well or be in the interest of sound and beneficial administration.

Shri Raj Bahadur (United State of Matsya): Mr. President, Sir, my only justification for encroaching upon a little of the valuable time of this august House is the provocation given by certain remarks that have dropped from the lips of my honourable Friend Mr. Kamath. He has waxed eloquent in certain pet phrases of his—I think the stock-in-trade-that he carries about. I shall begin by analysing the amendments that he has proposed to article 277-A. He wants us, in the first instance, to add the word "Governor' after the word "Union". As a matter of fact, even a cursory reading of article 277-A would reveal that it simply incorporates a principle, whereas article 278-A provides for the machinery to implement that principle. I suppose, Sir, that it is the function of the entire Union, and the entire nation and not only the Government to protect every State against external aggression or against internal disturbance. So the word "Government" would be superfluous.

Secondly, he says that for the word "and" in the second line of the proposed article 277-A the word "or" should be substituted. I may assume him that it is not a question paper in which a choice may be given to an examinee to attempt one question or the other. As a matter of fact in both emergencies, whether it is external aggression or internal disturbance, it is the duty and function of the Union and the nation to protect every State.

Lastly he wants us to replace the word 'disturbance' by the words 'insurrection and chaos'. I do not think it is easily possible to draw a line—a film line of discrimination—between 'disturbance' and 'insurrection and chaos'. Insurrection and chaos are only the culmination of a disturbance. As matter of fact, whenever there is a danger we should take adequate and early steps then and there.....

Shri. H. V. Kamath : Will my friend prescribe a surgical operation for a mere cold or catarrh?

Shri Raj Bahadur : I would have been glad if Mr. Kamath had made some constructive suggestion. I think there is none in the House who will deny the wisdom of incorporating in the Constitution certain safeguards to be used

in case of an emergency. We can easily contemplate the possibility of a breakdown not only on account of a disturbance or chaos, but also on; account of other reasons. Consider for a moment the state of affairs obtaining in France, where there is a change of Government almost every other day. In such situations it will be profitable to ask the President to come in and take power in his hands until the elections are held. Similarly we can also contemplate the possibility of a financial break-down in a Province or State. The example of the then dominion of New Found land is before us. New Found land found it difficult to carry on on account of a financial break-down with the result that she had to petition to the British Parliament to come to her aid and enable her to stand on her feet. The Parliament intervened and the ultimate result has been that on her own choice Newfoundland has now become a province of Canada. Such contingencies may arise in our country as well. Again I see no reason why we should distrust our President, who has not yet even come into being. After all who shall be the President? The President shall be our own countryman. He shall be elected by us; he will be the keeper of our democratic conscience. He shall be the guardian angel of our liberty and freedom. He shall be the first citizen of the country. I fail to understand why Mr. Kamath should be so much suspicious about him. The time has come when we should break through the cyst of our suspicious and superstitions. Obviously enough we are living in the pre-1947 era. We talk of revolutionary spirit and revolutionary ideas. But it appears that we have not yet reconciled ourselves to the change that has taken place in the country. Why should we forget that we are the masters of our own house now? The President is to be elected by us and we should not distrust him. Cannot we put our trust in him for a brief two months in the case of an emergency? Without giving any reasons for the view held by him, my friend went on saying ‘that this article is merely a “subterfuge to nullify the democratic freedom”. I say it is just the opposite and the antithesis of what he has said. It is to protect and safeguard democracy and freedom that such a provision has been made to meet certain emergencies. He has taken exception to the use of the word “otherwise” in the proposed article 278. The proposed article runs:

> “If the President, on receipt of a report from the Governor or ruler of a State or otherwise, is satisfied .... he may be proclamation. . . .”

I would like to know from Mr. Kamath whether he wants to restrict the powers of the President under this article only to the case where he receives a report from the Governor and to no other contingency. There may be other contingencies also. The President should be empowered to act under this article in those cases also where he receives information from other sources. Surely he must be allowed to act on the advice of his Cabinet or Government. I do not think that by seeking to eliminate the words “or otherwise” he would be making an apt amendment in this provision.

Mr. Kamath, in the course of his speech invoked God’s mercy to give this House the wisdom to see, what he has been pleased to call, “the stupidity the folly, the crime” in vesting the President with the powers under this article. On my part I would say, let God grant us wisdom to see all this in the proper light. Let Him also grant us common sense and balance enough not to criticise merely for the sake of criticism. We should see that we make certain provisions in the Constitution which may stand us in good stead when unseemly or awkward situations arise in our land. My honourable Friend seems to think that we can ran the administration of our country and defend our freedom and democracy merely by indulging in pious platitudes and flimsy fulminations. The House knows that one cannot do that and fore I would request honourable Members to see that the amendments proposed by my friend are rejected, Sir, I conclude.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, I would like to say a few words in support of the motion moved by Dr. Ambedkar in regard, to both the articles.

In the first place, I would explain the reason why the article has been put in making it the duty of the Union "to maintain the Constitution." The primary thing concerning the nation and the Union Government is 'to maintain the Constitution'. If the import of that expression is fully realised, it will be noticed that there cannot be any, intention to interfere with the provincial constitution, because the provincial constitution is a part of the Constitution of the Union. Therefore, it is the duty of the Union Government to protect against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper manner both in the State and in the Union. If the Constitution is worked in a proper manner in the provinces or in the States, that is, if responsible government as contemplated by the Constitution functions properly, the Union will not and cannot interfere. The protagonists of provincial or State autonomy will realise that, apart from being an impediment to the growth of healthy provincial or State autonomy, this provision is a bulkwark in favour of provincial or State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained. Such a provision is by no means a novel provision. Even in the typical federal constitution of the United States where, State sovereignty is recognised more than in any other federation, you will find a provision therein to the effect that it is the duty of Union or the Central Government to see that the State is protected both as against domestic violence and external aggression. In putting in that article, we are merely following the example of the classical or model federation of America. Then again, there is a similar provision in section 60 of the Australian Commonwealth Constitution to the effect that it is the duty of the executive government to maintain the Constitution. These observations are with reference to the first article which has been introduced by my Friend Dr. Ambedkar.

Then I come to the consequential provision casting upon the Union Government the primary duty to see that the Constitution in the different 'parts of India is made to work and properly observed. If there is in any unit any difficulty with regard to the proper working of the Constitution, it would be the obvious duty of the Union Government to intervene and set matters right. It is only when there is a failure or breakdown of the constitutional machinery that the Union Government will interfere.

The salient features of the provision are that immediately the proclamation is made, the executive functions are assumed by the President. What exactly does this mean ? As Members need not be repeatedly remind on this point the President means the Central Cabinet responsible to the whole Parliament in which are represented representatives from the various Units which form the component parts of the Federal Government. Therefore, the provincial machinery having failed, the Central Cabinet assumes the responsibility instead of the provincial cabinet. That is the first point.

Then, so far as the executive government is concerned, it will be responsible to the Union Parliament for the proper working of the Government in the province. That will be the effect of the first part of the article.

The next point is, how is legislation to be carried on. The primary authority, in regard to legislative matters is vested in Parliament. But, at the same time, having regard to the multifarious work in which Parliament is engaged, and the, exigencies of Indian conditions, it will be impossible for Parliament to carry on the daily work of legislation, though the ultimate responsibility will be that of Parliament. Therefore the provision enables Parliament to discharge its primary duty of legislation by delegation of any or all of its powers.

This power to delegate is incidental to the plenary power of sovereignty vested in Parliament. But, in view of some doubt that has been cast in a recent decision of the Federal Court, it has been found necessary to make it quite clear that the Parliament can delegate its function to other body or bodies having regard to the exigencies of the situation. Immediately the Proclamation is made, the duty is cast on the President to place it on the table of the House. It is to last only for a temporary period. Thereafter the Parliament is in a position to judge the situation in the particular part of the country. Parliament can exercise its control and supervision over the Cabinet which has undertaken the responsibility of the executive functions of the State. In the Parliament itself all the various Units are represented. There, is no correspondence whatever between the old section 93 and this except in regard to the language in some parts, Under 93 the ultimate responsibility for the working of section 93 was the Parliament of Great Britain which was not certainly representative of the people of India, whereas under the present article the responsibility is that of the Parliament of India which is elected on the basis of universal franchise, and I have no doubt that not merely the conscience of the representatives of the State concerned but also the conscience of the representatives of the other Units will be quickened and they will see to it that the provision is properly worked, Under those circumstances, except on the sentimental objection that it is just a repetition of the old section 93, there is no necessity, for taking exception to the main principle underlying this article. We are in grave and difficult times. The units are of different dimensions and responsible government has not been at work, in some of the Units at any rate, for a very long time. Even suffrage is unknown in certain States, and we have introduced responsible government into the States not all of which are like the advanced Units of 'what might be called the old British Indian provinces. Under those circumstances, in the interest of the sound and healthy functioning of the Constitution itself, it is necessary that there should be some check from the Centre so that people might realise their responsibility and work responsible government properly. Under those circumstances there is absolutely no reason why any exception should be taken to the principle under lying the present article. It is well thought out and my friend has taken all an aspects of the matter into consideration. He has even differentiated between executive and legislative functions. On the legislative side, plenary power is vested in Parliament. At the same time it makes room for administrative convenience. There is nothing to prevent Parliament from taking the Ministry to task if they misbehave in the matter of taking over the administration of any particular Unit or State. I have great pleasure in supporting the amendment moved by my Friend, Dr. Ambedkar.

Shri B. M. Gupte (Bombay: General): Mr. President, Sir, I support the deletion of article 188. With regard to article 278, I sympathise with the amendment of Mr. Kamath, No. 225. Also I would have supported the amendment of Professor Shibban Lal Saksena if it were necessary. But in my opinion, Professor Shibban Lal Saksena's amendment is not necessary at all, for if the President is so minded, there is no bar to order a general election and in that event the President himself would cancel the Proclamation. In fact I expect that opportunity would be given to the electorate to set matters right before drastic action under this article is taken, and therefore in my opinion Professor Saksena's amendment is not necessary.

As far as Mr. Kamath's amendment is concerned, though I sympathise with it, I will explain later on why under the present circumstances it cannot be pressed.

Now, with regard to my support to the deletion of article 188; it might appear strange to those who remember that I was the author of the amendment which

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constitutes article 188, but I am sure it will not surprise those, who also remember my speech made at the time when I moved the amendment. My argument at that time was that there was a grave emergency in the State which threatened the peace and tranquillity of the State, and at such a time there was on the spot a man who was elected on the widest possible franchise and who therefore, enjoyed the fullest confidence of the people. I therefore asked why such a man should not be entrusted with the emergency powers till the Centre was seized of the situation. That was my Plea and that was accepted by the House at the time. Now, elected Governor has been substituted by a nominated Governor, and therefore the foundation of my argument is taken away. I have therefore no hesitation in supporting the deletion of article 188.

Though I support the deletion of article 188, I am not very happy about the new article 278. I am not happy because the scope of the new article is far wider. Article 188 came into operation only when the peace and tranquillity of the State was threatened, while this article 278 comes into operation even though there is no law and order emergency but there is mere failure of the constitutional machinery. I can understand drastic power being given when the very existence of the State is threatened. But I do not like extraordinary power being given for a mere constitutional failure or a constitutional evil. This is a very much less serious and non-urgent matter and in such matters I do not like that extraordinary power should be given. Of course, critics might say and it has been said that we are merely reproducing the hated section 93, but I do not agree with that criticism, because there is a very great difference between the two. Yesterday one of the honourable Members said that article 275 was a reproduction of section 93. I see no connection between the two because article 275 and 188 refer to peace and tranquillity. While section 93 referred to constitutional failure. Article 278 comes closer to old section 93, even though there, is still great difference. The obvious difference is that in the place of the irresponsible Governor and the Governor-General, the elected responsible government is substituted. But in my opinion, the more important point is that the sovereign popular legislature will be ineffective control of the situation. Parliament must be consulted in two months and thereafter it will be the Parliament that will govern the situation. This is the great difference between section 93 and the present article 278. But in spite of this defence, I cannot help observe that if it were possible, we should not disfigure our Constitution with such a provision. That was our desire, but we cannot have it our own way. Unfortunately the circumstances in the country are such; we are living in times which may perhaps prove critical to our infant democracy. In France sometimes three Governments fall in two days; in a mature and old democracy they can go in for that luxury, but ours is an infant democracy; and though we do not like it, we shall have to tolerate thing, which in normal times we may have rejected. Though, of course I have given support to this article, I only hope that it may remain a dead letter and no ocassions will arise for the exercise of these extraordinary powers.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir, article 278 and 278-A are in some respects the most important articles of this Constitution. There is no doubt that at first sight they look rather unpleasant as they appear to be a re-entry of the old and hated section 93. My honourable Friends, Messrs. Alladi Krishnaswami Ayyar and Gupte have explained that whatever the appearance may be, in substance they are vitally different from section 93 (a). Sir, I shall not repeat their arguments, but I would like to point out that the essence of section 93 was three-fold. Firstly, the powers are to the exercised by the Governor in, his discretion. Secondly, when the Governor is acting in his discretion, he was not responsible to any authority, any party or any representative from the province in question. Thirdly, he was nor responsible or

accountable to any authority in India at all. Therefore if we are to confuse this with section 93, we must examine it in the light of these three tests. Is there any authority which has the right to supersede a provincial Constitution in its discretion? In the old draft of article 188 for two weeks the Governor was given the power to supersede it in his discretion. I think it was a very wrong provision and it is very fortunate that the old article 188 is being deleted. Otherwise, an erratic Governor who is reckless of consequences may upset the Constitution before either the people of the province or the Parliament of India can come to their rescue. There are bad people in the country and it is not impossible that one, such might get into the gubernatorial *gaddi* and make havoc. Mr. Alladi Krishnaswami Ayyar has already pointed out that the word "President" is used in the constitutional sense. The President cannot act under this article at his discretion. He has to be guided by the Central Cabinet. Therefore neither in article 278 nor in article 278-A is there any super session of democracy as such. Whether the power is exercised by a local legislature or by Parliament is a matter of convenience and the actual essence or principles of democracy are not involved. In this case, while ordinarily certain powers and functions are exercised by the provincial legislature, when the State Constitution breaks down these powers and functions come back to the Central executive and Central Legislature, which are as popular and as democratic as the State Governments and legislatures. It must also not be forgotten that in the Central Parliament the representatives of the State whose government is to be superseded, will be here. After two months every Proclamation will become null and void, unless it has been approved by resolution of both Houses of Parliament. The Upper House consists of delegates elected by the local legislatures and the Lower House includes representatives from the constituencies of the States concerned, elected on adult franchise. Therefore, the government of the State is not taken away even from the representatives of the State concerned. Only the representatives of the State concerned have to govern the State in co-operation with the representatives of other parts of India. That is the only limitation which is being placed and this limitation is necessary because the Constitution has broken down in a particular State. Therefore, it is not as an infringement of the principles of democracy that these articles can be objected to. It is rather from the scope of the article that they have to be properly scrutinised because articles 278 and 278-A come into operation when the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Now, let us broadly analyse the circumstances in which these articles can come into operation. There may be a physical breakdown of the Government in the State, as for instance, when there is widespread internal disturbance or external aggression or for some reason or other, law and order cannot be maintained. In that case, it is obvious that there is no provincial authority which can function and the only authority which can function is the Central Government, and in that contingency these articles are not only unobjectionable but absolutely essential and without it the whole thing will be in chaos. Then there may be political breakdown. This is a point which requires careful analysis. A political breakdown can happen when no ministry can be formed or the ministries that can be formed are so unstable that the Government actually breaks down. Normally according to the Constitution when there is great instability of a Ministry, the proper procedure will be to dissolve the Lower House and reconstitute it. If after a dissolution also, the same factions are reproduced in the local legislatures and they make a ministry impossible, it will then be inevitable for the Centre to step in according to the provisions of 278 and 278-A. In this it is necessary to evolve proper conventions. For instance, it is necessary to evolve the convention that before these article are resorted to on account of political breakdown, there should intervene a dissolution of the Lower House of the State Legislature. Without a dissolution the Centre should not step in and

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that should be one of the conventions which we shall have to evolve; but it is not wise to put it in the article itself, because there may be extraordinary circumstances in which even the local elections may have to be conducted by the Centre and temporarily the Centre may have to take charge.

Then there is the third contingency of economic breakdown. Suppose for instance in a State the Ministry is all right, but it wants to make itself popular by reducing or cancelling all taxes and running its administration on a bankrupt basis. Suppose the Government servants are not paid and the obligations are not met and the State goes on accumulating its deficits. Of course this also is a difficult case. The Centre will have to be very careful and indulgent; it will have to give the longest possible rope but at some time or other in the case of economic breakdown also the Centre will have to step in, because ultimately it is responsible for the financial solvency of the whole country and if a big province like the United Provinces goes into bankruptcy it will mean the bankruptcy of the whole country. Therefore this contingency also will have to be dealt with under articles 278 and 278-A and in this matter also we shall have to evolve proper conventions as to what will be the proper amount of deficit which each State may be allowed to incur without invoking these articles, 278 and 278-A. Therefore, the objection to articles 278 and 278-A relates really to the possibility of proper conventions not being evolved. In themselves, they are unobjectionable and they are essential. But, of course, if the Centre acts upon the strict letter of the law, anything may be deemed to constitute a breakdown of the Constitution, and it is possible that interference of the Centre may be frequent and objectionable. After all, when we are constituting the Parliament on the basis on which it is being constituted, we may trust to the Popular House elected on adult franchise and the Second Chamber based on delegation from the legislatures to see that the State autonomy is not interfered with. Of course, a difficult case may happen when some States are governed by political parties which are different from the political party which is governing at the Centre and the majority of the other States. Then, it is possible through political prejudice some unnecessary or intolerant action may be taken under articles 278 and 278-A. The only remedy is through the growth of healthy conventions. If there is peace and democracy is allowed to grow in this country, I have no doubt whatsoever that these conventions will grow and all these articles will be utilised for the legitimate purposes for which they are intended.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I am really very glad that the framers of the Constitution have at last accepted the view that article 188 should not find a place in our Constitution. That article was inconsistent with the establishment of responsible Government in the provinces and the new position of the Governor. It is satisfactory that this has at last been recognised and that the Governor is not going to be invested with the power that article 188 proposed to confer on him. It is, however, now proposed of achieve the purpose of article 188 and the old article 278 by a revision of article 278. We have today to direct our attention not merely to articles 278 and 278-A, but also to article 277-A. This article lays down that it will be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of this Constitution. It does not merely authorise the Central Government to protect the State against external aggression or internal Commotion; it goes much further and casts on it the duty of seeing that the Government of a province is carried on in accordance with the provision of this Constitution. What exactly do these words mean? This should be clearly explained since the power to ensure that the provincial constitutions are being worked in a proper way makes a considerable addition to the powers that the

Central Government will enjoy to protect a State against external aggression or internal disturbance. I think, Sir, that it will be desirable in this connection to consider articles 275 and 276, for their provisions have vital bearing on the articles that have been placed before us. Article 275 says that, when the President is satisfied that a grave emergency exists threatening the security of India or of any part of India, then he may make a declaration to that effect. Such a declaration will cease to operate at the end of two months, unless before the expiry of this period, it has been approved by resolutions passed by both Houses of Parliament. If it is so approved, then, the declaration of emergency may remain in force indefinitely, that is, so long as the Executive desires it to remain in force, or so long as Parliament allows it to remain in force. So long as the Proclamation operates, under article 276, the Central Government will be empowered to issue directions to the government of any province as regards the manner in which its executive authority should be exercised and the Central Parliament will be empowered to make laws with regard to any matter even though it may not be included in the Union List. It will thus have the power of passing laws on subjects included in the State List. Further, the Central Legislature will be able to confer powers and impose duties on the officers and authorities of the Government of India in regard to any matter in respect of which it is competent to pass legislation. Now the effect of these two articles is to enable the Central Government to intervene when owing to external or internal causes the peace and tranquillity of India or any part of it is threatened. Further, if misgovernment in a province creates so much dissatisfaction as to endanger the public peace, the Government of India-will have sufficient power, under these articles to deal with the situation. What more is needed then in order to enable the Central Government to see that the government of a province is carried on in a proper manner. It is obvious that the framers of the Constitution arc thinking not of the peace and tranquillity of the country, of the maintenance of law and order but of good government in provinces. They will intervene not merely to protect provinces against external aggression and internal disturbances but also to ensure good government within their limits. In other words, the Central Government will have the power to intervene to protect the electors against themselves. If there is mismanagement or inefficiency or corruption in a province, I take it that under articles 277, 278 and 278-A taken together the Central Government will have the power—I do not use the word 'President' because he will be' guided by the advice of his Ministers—to take the government of that province into its own hands. My honourable Friend, Mr. Santhanam gave some instances in order to show how a breakdown might occur in a province even when there was no external aggression, no war and no internal disturbance. He gave one very unfortunate illustration to explain his point. He asked us to suppose that a number of factions existed in a province which prevented the government of that province from being carried on in accordance with the provisions of this Act *i.e.,* I suppose efficiently. He placed before us his view that in such a case a dissolution of the provincial legislature should take place so that it might be found out whether the electors were capable of applying a proper remedy to the situation. If, however, in the new legislature the old factions—I suppose by factions he meant parties—re-appeared, then the Central Government in his opinion would be justified in taking over the administration of the province. Sir, if there is a multiplicity of parties in any province we may not welcome it, but is that fact by itself sufficient to warrant the Central Government's interference in provincial administration ? There are many parties in some countries making ministries unstable. Yet the Governments of those countries are carried on without any danger to their security or existence. It may be a matter of regret if too many parties exist in a province and they are not able to work together or arrive at an agreement on important matters in the interests of their province; but however regrettable this may be, it will not justify in my opinion, the Central Government in intervening and making itself jointly with Parliament res-

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ponsible for the government of the province concerned. As I have already said, if mismanagement in a province takes place to such an extent as to create a grave situation in India or in any part of it, then the Central Government will have the right to intervene under articles 275 and 276. Is it right to go further than this? We hear serious complaints against the governments of many provinces at present, but it has not been suggested so far that it will be in the ultimate interests of the country and the provinces concerned that the Central Government should set aside the provincial governments and practically administer the provinces concerned, as if they were Centrally administered area. It may be said, Sir, that the provincial governments at present have the right to intervene when a municipality or District Board is guilty of gross and persistent maladministration, but a municipality or a District Board is too small to be compared for a moment in any respect with a province. The very size of a province and the number of electors in it place it on a footing of its own. If responsible government is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance, with their best interests. If the Central Government and Parliament are given the power that articles 277, 278 and 278-A read together propose to confer on them, there is a serious danger that whenever there is dissatisfaction in a province with its government, appeals will be made to the Central Government to come to its rescue. The provincial electors will be able to throw their responsibility on the shoulders of the Central Government. Is it right that such a tendency should be encouraged? Responsible Government is the most difficult form of government. It requires patience, and it requires the courage to take risks. If we have neither the patience nor the courage that is needed, our Constitution will virtually be still-born. I think, therefore, Sir, that the articles that we are discussing are not needed. Articles 275 and 276 give the Central Executive and Parliament all the power that can reasonably be conferred on them in order to enable them to see that law and order do not break down in the country, or that misgovernment in any part of India is not carried to such lengths as to jeopardise the maintenance of law and order. It is not necessary to go any further. The excessive caution that the framers of the Constitution seem to be desirous of exercising will, in my opinion, be inconsistent with the spirit of the Constitution, and be detrimental, gravel detrimental, to the growth of a sense of responsibility among the provincial electors.

Before concluding, Sir, I should like to draw the attention of the House to the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947. Section 93 which formed an important part of this Act as originally passed, has been omitted from the Act as adapted in 1947, and I suppose it was omitted because it was thought to be inconsistent with the new order of things. My honourable Friend Mr. Santhanam said that in the Government of India Act, 1935, the Governor who was allowed to act in his discretion would not have been responsible to any authority. That, I think, is a mistake I may point out that the Governor, in respect of all powers that he could exercise in his discretion, was subject to the authority of the Governor-General and through him and the Secretary of State for India, to the British Parliament. The only difference now is that our executive, instead of being responsible to an electorate 5,000 miles away, will be responsible to the Indian electors. This is an important fact that must be clearly recognise, but I do not think that the lapse of two years since the adapted Government of India Act, 1935, came into force, warrants the acceptance of the articles now before us. The purpose of section 93 was political. Its object was to see that the Constitution was not used in such a

way as to compel the British Government to part with more power than it was prepared to give to the people of India. No such antagonism between the people and the Government of India can exist in future. Whatever differences there may be, will arise in regard to administrative or financial or economic questions. Suppose a province in respect of economic problems, takes a more radical line than the Government of India would approve. I think this will be no reason for the interference of the Government of India.

Shri T. T. Krishnamachari (Madras: General): What happens if the provincial government deliberately refuses to obey the provisions of the Constitution and impedes the Central Government taking action under articles 275 and 276?

Pandit Hirday Nath Kunzru : No province can do it. It cannot because it would be totally illegal. But if such a situation arises the Central Government will have sufficient power under article 275 and 276 to intervene at once. It will have adequate power to take any action that it likes. It can ask its own officers to take certain duties on themselves and if those officers are impeded in the discharge, of their duties, or, if force is used against them—to take an extreme case—the Central Government will be able to meet such a challenge effectively, without our accepting the articles now before us. I should like the House to consider the point raised by my honourable Friend Mr. Krishnamachari very carefully. I have thought over such a situation in my own mind, over and over again, and every time I have come to the conclusion that articles 275 and 276 will enable the Government of India to meet effectively such a manifestation of recalcitrance, such a rebellious attitude as that supposed by Mr. Krishnamachari. In such a grave situation, the Government of India will have the power to take effective action under articles 275 and 276. What need is there then for the articles that have been placed before us ?

Sir, one of the speakers said that we should not be legalistic. Nobody has discussed the articles moved by Dr. Ambedkar in a legalistic spirit. I certainly ‘have not discussed it in a narrow, legal way. I am considering the question from a broad political point of view from the point of view of the best interests of the country and the realization by provincial electors of the important fact that they and they alone are responsible for the government of their province. They must understand that it rests with them to decide how it should be carried on.

Sir, even if the framers of the Constitution are not satisfied with the arguments that I have put forward and want that the Central Government should have more power than that given to it by articles 275 and 276, I should ask them to pause and consider whether there was not a better way of approaching this question for the time being. In view of the discussions that have taken place in this House and outside, it seems to me that there is a respectable body ,of opinion in favour of not making the Constitution rigid, that is, there are many people who desire that for some time to come amendments to the Constitution should be allowed to be made in the same way as those of ordinary laws are. I think that the Prime Minister in a speech that he made here some months ago expressed the same view. If this idea is accepted by the House, if say for five years the Constitution can be amended in the same way as an ordinary law, then we shall have sufficient time to see how the Provinces develop and how their government is carried on. If experience shows that the position is so unfortunate as to require that the Central Government should make itself responsible not merely for the safety of every Province but also for its good government, then you can come forward with every justification for an amendment of the Constitution.

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But I do not see that there is any reason why the House should agree to the articles placed before us today by Dr. Ambedkar.

Sir, I oppose these articles.

Shri L. Krishnaswami Bharathi (Madras : General): Sir, I felt impelled by a sense of duty to place a certain point of view before the House, or else I would not have come before the mike. I feel the need for a brief speech. I accord my wholehearted support to the new articles moved by Dr. Ambedkar, but I am not at all convinced of the wisdom of the Drafting Committee in deleting article 188. It is this point of view which I want to emphasise.

Sir, that article has a history behind it. There was a full-dress debate on it for two days when eminent Premiers participated in it. We must understand what article 188 is for. It is not for normal conditions. It is in a state of grave emergency that a Governor was, under this article, invested with some powers. I may remind the, House of the debate where it was Mr. Munshi's amendment which ultimately formed part of article 188. In moving the amendment Dr. Ambedkar said that no useful purpose would be served by allowing the Governor to suspend the Constitution and that the President must come into the picture even earlier. Article 188 provides for such a possibility. It merely says that when the Governor is satisfied that there is such a, grave menace to peace and tranquillity, he can suspend the Constitution. It is totally wrong to imagine that he was given the power to suspend the Constitution for a duration of two weeks. Clause (3) provides that it is his duty to forthwith communicate his Proclamation to the President and the President will become seized of the matter under article 188. That is an important point which seems lost sight of. The Governor has to immediately communicate his Proclamation. The article was necessitated because it was convincingly put forward by certain Premiers. There may be a possibility that it is not at all possible to contact the President. Do you rule out the possibility of a state of inability to contact the Central Government? Time is of the essence of the matter. By the time you contact and get the permission, many things would have happened and the delay would have defeated the very Purpose before us. The, honourable Mr. Kher said that it is not necessary to keep this article because we have all sorts of communications available. In Bombay I know of instances where we have not been able to contact the Governor for not less than twenty-four hours! What is the provision under article 278? The Governor of Madras says there is a danger to peace and tranquillity. Assuming for a moment that the communications are all right, the President cannot act. He has to convene the Cabinet; the members of the Cabinet may not be readily available; and by the time he convenes the Cabinet and gets their consent the purpose of the article would be defeated. Therefore, it was only with a view to see in such a contingency where the Governor finds, that delay will defeat the very objective, that article 188 was provided for. I see no reason why the Drafting Committee in their wisdom ruled out such a possibility. It is no, doubt true that the article was framed two years ago, but since those two years many things have happened that show that there is urgent need for the man on the spot to decide and act quickly so that a catastrophe may be prevented. Today there is an open defiance of authority everywhere and that defiance is well-organised. Before the act, they cut off the telephone wires, as they did in the Calcutta Exchange. That is what is happening in many parts of the country. Therefore, when there is a *coup d'etat* it is just possible they will cut off communications and difficulties may arise. It is only to provide for this possibility that the Governor is given these powers. I do not think there will be any fool of a Governor who will, if there is time, fail to inform the President. I would like to have an explanation as to why this fool-proof arrangement has

been changed and why we have become suspicious that the Governor will act in a wrong manner. According to the provision, he has to forthwith communicate to the President and the President may say, "Well, I am not convinced; cancel it." You must take into consideration that the Governor will be responsible, acting wisely and in order to save the country from disaster. The President comes into the picture directly, because the Governor has to communicate the matter forthwith according to clause (3) of article 188. As Mr. President said, it is sheer common sense that the man on the spot should be given the powers to deal with the situation, so that it may not deteriorate. I am not at all convinced of the wisdom of the change. The provision as now proposed is not as fool-proof as it ought to be.

Besides, I would like to have an explanation as to why the Drafting Committee goes out of the way to delete the provision which was considered and accepted by the House previously. In my view it is improper, because the House had decided it. If we appoint a Drafting Committee, we direct them to draft on the basis of the decisions taken by us. Is this the way in which they should draft ? Their duty was to scrutinise the decisions already arrived at and then draft on that basis. Therefore, I would like to have an explanation—a convincing explanation—as to what happened within these two years which has made the members of the Drafting Committee delete this wholesome, healthy and useful provision.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think that the amendments moved by Dr. Ambedkar constitute startling and revolutionary changes in the Constitution. I submit a radical departure has been made from our own decisions. We took important decisions in this House as to the principles of the Constitution and we adopted certain definite principles and Resolutions and the Draft Constitution was prepared in accordance with them. Now, everything has to be given up. Not only the Draft Constitution has been given up, but the official amendments which were submitted by Members of the House within the prescribed period which are printed in the official blue book have also been given up. During the last recess some additional amendments to those amendments were printed and circulated. Those have also been given up. I beg to point out that all the amendments and amendments to amendments which have been moved today are to be found for the first time only on the amendment lists for this week which have been circulated only within a day or two from today. So serious and radical changes should not have been introduced at the last minute when there is not sufficient time for slow people like us to see what is happening and whether these changes really fit in with our original decisions and with other parts of the Constitution as a whole. I submit that the Drafting Committee has been drifting from our original decisions, from the Draft Constitution and from our original amendments. It would perhaps be more fitting to call the Drafting Committee "the Drifting Committee". I submit that the deletion of article 188 is a very important and serious departure from principles which the House solemnly accepted before. Some honourable Members who usually take the business of the House seriously have attempted to support these changes on the ground that some emergency powers are highly necessary. I agree with them that emergency powers are necessary and I also agree that serious forces of disorder are working in a systematic manner in the country and drastic powers are necessary. But what I fail to appreciate is the attempt to take away the normal power of the Governor or the Ruler of a State to intervene and pass emergency orders. It is that which is the most serious change. In fact, originally the Governor was to be

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elected on adult suffrage of the province, but now we have made a serious departure that the Governor is now to be appointed by the President. This is the first blow to Provincial Autonomy. Again, we have deprived the Upper Houses in the States of real powers;. not merely have we taken away all effective powers from Upper Houses in the Provinces, but also made it impossible for them to function properly and effectively. We are now going to take away the right of the Ministers of a State and the Members of the Legislatures and especially the people at large from solving their own problems. As soon as we deprive the Governor or a Ruler of his right to interfere in grave emergencies, at once we deprive the elected representatives and the Ministers from having any say in the matter. As soon as the right to initiate emergency measures is vested exclusively in the President, from that moment you absolve the Ministers and Members of the local legislatures entirely from any responsibility. The effect of this would we that their moral strength and moral responsibility will be seriously undermined. It is the aspect of the problem to which I wish to draw the attention of the House.

This aspect or the matter, I submit, has not received sufficient or adequate consideration in this House. If there is trouble in a State, the initial responsibility for quelling it must rest with the Ministers. If they fail, then the right to initiate emergency measures must lie initially with the Governor or the Ruler. If you do not allow this, the result would be that the local legislature and the Ministers would have responsibility of maintaining law and order without any powers. That would easily and inevitably develop a kind of irresponsibility. Any outside interference with the right of a State to give and ensure their own good Government will not only receive no sympathy from the Ministers and the members, but the action of the President will be jeered at, tabooed and boycotted by the people of the State, the Members of the Legislature and the Ministers themselves.

This was exactly what happened in India some time back. During period of dyarchy in 1921-1937, responsibility was given to the Ministers in the Provinces without any power. The power was kept by the British Government and responsibility was given to popularly elected Ministers on transferred subjects. The result was that they became irresponsible. This is the verdict of competent British thinkers. The happenings of Calcutta have been brought forward as an argument for tightening the hands of the Centre. I suppose I can claim to know a little more about Calcutta than any outsider can possibly do. In Calcutta the situation is not exactly what it is supposed to be. There is no desire on the part of the citizens at large to support illegalities or law-breaking on an organised scale. The defeat of the Congress candidate, to speak very frankly, was due to the unpopularity of the Government. Besides that a variety of other minor reasons and circumstances contributed to the result, which it is not here necessary for me to go into. The majority of the people of West Bengal desire that the Government must be strong and efficient. I find that the decision of the Congress High Command to hold fresh elections has been extremely popular and is the only possible and sensible decision that could be taken. This has thrown the entire responsibility for bringing about conditions to ensure the maintenance of law and order in the Province at once upon the shoulders of the electors themselves. If the Ministers were wrong the people will get an opportunity of having an effective say in the matter. I have every reason to believe that, provided the Congress sets up competent candidates, their success is assured. In fact, there is nothing against the Congress Government, but people want men of ability and experience, and at the same time men who can exercise authority. So, the happenings of Calcutta or East Punjab, or those in

Southern India should offer no justification for departing from the normal and salutary principle that the responsibility for law and order must normally and initially be that of the Provincial, and States Ministries and that Ministries in order to function effectively should have sufficient power and responsibility in their hands. The conferment of full responsibility for law and order without giving full powers to the States will work havoc and will create considerable amount of dissatisfaction in the States and I submit this House will play into the hands of the Communists and other law-breakers if they adopt this course. I do not deny that the President should have overriding powers, but he should not have the exclusive power to initiate and incur much unnecessary unpopularity and blame in the process. While the Centre should necessarily have the power to intervene in times of emergency, it should not take the initiative in the matter. The Governor acting in consultation with the Ministers will be in a better position to make the declaration. This declaration may be ratified or changed in any way the President thinks fit. It does not derogate from the overriding power of the President. On the other hand, by placing the responsibility on the local administration the matter will be brought to a head. The evil will produce its own remedy. If they fail to discharge their functions properly it will be a good reason for dissolving the Assembly and ordering fresh elections.

Pandit Thakur Das Bhargava : I think the constitutional machinery cannot be regarded ordinarily to have failed unless the dissolution powers are exercised by the Governor under section 153.

Mr. Naziruddin Ahmad : I can quite appreciate my honourable Friend's apprehension. I am not happy about the drafting. It is impossible in three or four days to go through all these anomalies. I am not satisfied that the President should proceed exclusively on a Proclamation of Emergency by the Governor. That is due to faulty and hasty drafting. I submit, therefore, that article 188 should not be deleted altogether. The power of the Governor to initiate any emergency measures should remain and that will make the Ministers and the Legislature responsible and at the same time the responsibility being there, will produce its own remedy. If we interfere with the ultimate right of States to deal with emergencies it will reduce Provincial Autonomy to a farce. I think there has been enough encroachment on Provincial rights. In fact in the provincial list a great deal of enroachment has already been made. I think we are drifting, perhaps unconsciously, towards a dictatorship. Democracy will flourish only in a democratic atmosphere and under democratic conditions. Let people commit mistakes and learn by experience. Experience is a great tutor. The arguments to the contrary which we have heard today were the old discarded arguments of the British bureaucracy. The British said that they must have overriding powers, that we cannot manage our affairs and that they only knew how to manage our affairs. They said also that if we mismanaged things they will supersede the constitution and do what they thought fit. What has been our reply to this ? It was that "Unless you make us responsible for our acts, we can never learn the business of government. If we mismanage the great constitutional machinery, we must be made responsible for our acts. We must be given the opportunity to remedy the defects". This argument of ours is being forgotten. The old British argument that they must intervene in petty Provincial matters is again being revived and adopted by the very opponents of that argument. In fact, very respected Members of this House are adopting almost unconsciously the old argument of the British Government. I submit that even the hated British did not go so far as we do. I submit our reply to that will be the same as our respected leaders gave to the British Government. I submit, therefore, that too much interference by the Centre will create unpleasant reactions in the States. If you abolish

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provincial autonomy altogether that would be logical. But to make them responsible while making them powerless would be not a proper thing to do.

Then, Sir, article 277-A has been described by the honourable Dr. Ambedkar as a thing which is not a pious wish. I think Dr. Ambedkar was repelling the suggestion which naturally arose in his own mind. I believe that article 277-A is a record of pious wishes. At least it lacks clarity. It says practically nothing. It says almost everything. It enables the Centre to interfere on the slighest pretexts and it may enable the Centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the Drafting Committee for its vagueness and evasions. The article says :

> "It shall be the duty of the Union to protect every State against external aggression."

Of course it is so. But it is expressed in a pious form. It says : "It shall be the duty. . . . . " Instead of that we should have expected some machinery provided and the occasions clearly stated on which that machinery should come into operation. Then again, they say in the article, "and to ensure that the Government of the State is carried on in accordance with the provisions of this Constitution". This is also equally vague. I think if an article is inserted to the effect that "the Union Government will have the power to interfere with the day-to-day administration of the Provinces to see that they are carried on properly" it would have been better. I think if an article was enacted to the effect that the Union Government should have the power to see that domestic economy of each family is carried on in accordance with certain principles it would have been equally good. This article 277-A is of the vaguest description and I submit there is want of clarity or probably deliberate avoidance of clarity in order to get an excuse for interference in Provincial and States matters. This again will create bitterness and dissatisfaction and the popularity of the Union Government which has been built up with long sacrifices and suffering, will considerably suffer. I therefore, submit that excuses should not be deliberately provided through vagueness of language to interfere with the domestic management of the Provinces. In fact, if it is the desire to interfere on certain grounds, the grounds should be stated precisely and the occasion for the exercise of those powers should be clearly defined and laid down and not kept vague. As I understand it, this will be used by the enemies of the Central Government as propaganda against the Central Government. This article should have been introduced to the detriment of the Central Government at the instance of their enemies, the Communists. That would have been more appropriate. For the Central Government to resort to this vagueness of language where precision is possible is highly dangerous. Then I come to article 278. Here the word 'otherwise' has been objected to. My Friend Pandit Thakur Das Bhargava rightly pointed out the difficulty of acting on anything like the provision in 278(1) where it is said that the President may act on a report or otherwise. I submit the whole thing is wrong. He should act not only on information but also on Proclamation of Emergency. I think this wording in the article should not be taken advantage of just to corner a speaker who objects to it. I object to the wording, and the conception of the article. I submit that the word 'otherwise' in the context would make it extremely vague. The least excuse will be taken to make the act of the Union Government unpopular. If that is the intention, it may be justified. But the article will be rightly objected to on account of the phraseology in which the idea is embedded—

Then I come to the proviso to clause (1) of article 278. It safeguards against the rights of the High Court in dealing with matters within their special jurisdic-

tion. A Proclamation of emergency will not deprive the High Court of its jurisdiction. That is the effect of this proviso. But it conveniently forgets the existence of the Supreme Court. While it takes care to guarantee the rights of the High Courts against the Proclamation, the rights of the Supreme Court are not guaranteed. I only express the hope that the absence of any mention of the Supreme Court in the proviso will not affect the powers of that Court.

Shri T. T. Krisnamachari: It is not necessary because the Central Government is subject to the jurisdiction of the Supreme Court under all conditions.

Mr. Naziruddin Ahmad: As the honourable Member himself has on a previous occasion said, this Constitution would be the lawyers' heaven. Speaking from experience, I think that this proviso will lead to much legal battle, and lawyers alone will be benefited by this. I wish that the interpretation put forward by Mr. T. T. Krishnamachari is right, but it is not apparent to me. When we come to clause (2) of article 278, in this clause it is stated that any such proclamation may be revoked or varied by a subsequent proclamation.

An Honourable Member : It is already one o'clock.

Mr. President : How many minutes more are you likely to take?

Mr. Naziruddin Ahmad : About ten minutes more.

Mr. President : The honourable Member may continue his speech tomorrow. The House stands adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 4th August 1949.