

Mr. President: The question is :

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

The amendment was negatived.

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

The question is :

“That article 279 stand part of the Constitution.”

The motion was adopted.

Article 279 was added to the Constitution.

Article 280

Mr. President : Then we take up article 280.

Amendment No. 3028—Dr. Ambedkar.

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

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

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

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

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

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

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

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

Mr. President : You may move your amendments.

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

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

The next one is—

“That in 3028 of the List of Amendments in the proposal article 280, for the words ‘any right’ the words ‘any such right’ be substituted.”

And lastly,

“That in 3028 of the List of Amendments in the proposed article 280, for the words ‘the order’ occurring at the end, the words ‘that order’ be substituted.”

Sir, if these amendments were accepted by the House, the proposed article, would read as follows:—

“Where a Proclamation of Emergency is in operation, the President may, by order and subject to the approval of a majority of the total membership of each House of Parliament, declare that the right to move any Court for the enforcement of such of the rights conferred by Part III of the Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of any such right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in that order.”

Sir, shall I take my turn to speak after Prof. Saksena has moved his amendment ?

Mr. President: You may speak now. Prof. Saksena has only one amendment. You may finish your speech first.

Shri H. V. Kamath : All right Sir, thank you very much. While considering this article, the House has to view it from more than one angle. The fundamental question, the question which goes to the root of the matter, is the suspension of all the Fundamental Rights guaranteed under Part III of this constitution. What are Fundamental Rights as envisaged in this Part III ? They are, as far as I have understood them rights of the subject or individual as against another individual, and also the rights of the individual as against the State. And we wholly justified in suspending the exercise of these fundamental rights during the period when the Proclamation of Emergency is in operation ? I have studied the major constitutions of the world though not as carefully as Dr. Ambedkar might have done, but to my regret I have not come across any such wide and sweeping provision in any of the other constitutions. Turning to the U.K.—there is no need to harp on it overmuch, as it is an unwritten constitution—the other day Dr. Ambedkar or Mr. Krishnamachari referred to DORA (Defence of the Realm Act) which was passed by the British Parliament in 1919 or 1920. It is true that under that Act some of the rights of personal liberty and so on were suspended, but there was a very wholesome provision made in that Act against the abuse of power conferred on the executive. The Emergency Powers Bill of 1920 was condemned in England as the, first coercion Bill since the days of Castlereagh. But even that black Bill—as it was then called contained many safeguards which toned down the harshness and tyranny that might have resulted from the operation of that Act. I shall read some of these safeguards :

“Where a proclamation of emergency has been made by His Majesty the occasion thereof shall forthwith be communicated to Parliament and if Parliament is then separated by such adjournment or prorogation as do not expire within five days a proclamation shall be issued for the meeting of Parliament within, five days; and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.

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Any regulations so made shall be laid before Parliament as soon as may be, after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof.”

That is so far as England is concerned. In the U.S.A., from which we are proud to have borrowed much—there is, provision for the suspension of only one fundamental Right though it is of the highest importance, namely, right to

[Shri H. V. Kamath]

the writ of *habeas corpus*. The U.S.A. constitution provides that this right shall not be suspended unless in cases of rebellion or invasion, when the public safety may require it. But there are adequate safeguards in that regard, namely, the suspension can be authorised only by Congress, *i.e.*, by the Senate and the House of Representatives combined. But it is for the Supreme Court to say whether conditions existed which would justify the suspension of that right. In the well known Milligan case the Supreme Court stated that martial law cannot arise from a threatened invasion; the necessity must be actual and present and the invasion real. The point I sought to make out yesterday was that there should not merely be an imminent danger of external aggression or internal rebellion. The U.S.A. Constitution provides that. Further, the Supreme Court observed that what is true of invasion is true of rebellion also. It said that in order to meet the constitutional requirements the privilege of the writ of *habeas corpus* shall not be suspended unless in cases of rebellion or invasion the safety of the State requires it actually—and not simply a constructive necessity, made by a declaration of the legislature,—and the court will be the judge. I am sorry to say that though Dr. Ambedkar and others of his way of thinking proudly claim that they have borrowed so much from the U.K. and the U.S.A. some of the safeguards, obtaining there have not been incorporated in our Constitution. Even now if it is not too late I would appeal to Dr. Ambedkar and his team of wise men to look this matter closely and see whether some safeguards could not be provided against the abuse of the power vested in the executive by virtue of this article 280.

Then, Sir, coming to details, the article refers to fundamental rights guaranteed by article 13. The House will see in Part III that the fundamental rights are of various kinds; they are not of a uniform character. They are different in nature and in conception and they comprise various matters which are not interconnected with each other. Article 11 for instance.....

Mr. President : Does the honourable Member propose to go through the whole part, section by section, and sub-clause by sub-clause?

Shri H. V. Kamath : No, no : in so far only as they are relevant to any argument.

Mr. President : I think the Members are familiar with the fundamental rights and any general remarks the honourable Member may wish to make he may do so without going into details of each such fundamental right.

Shri H.V. Kamath : I shall abide by your ruling. I am referring to such articles as are relevant to my amendments. The amendment moved today is amendment No. 1, the new one where I have said that the enforcement “of the rights” should be substituted by “such of the rights conferred by Part III of the Constitution as may be specified in that order.”

The point of my amendment is that there are certain rights guaranteed by article 13 which cannot be abrogated in any eventuality, not even in case of the gravest emergency. There are some rights given by article 13 which cannot be abridged, abrogated or annulled. *e.g.*, article 11 abolishing untouchability. It is a very vital right. Do you mean to say that when there is an emergency we can permit the observance of these taboos and will not take any action those who enforce untouchability in any form on anyone else? Then there are the cultural rights and educational rights, but as I have just remarked, I do not wish to transgress your ruling and go into details. I shall only refer to untouchability, educational and cultural rights. If the House will study them closely and Dr. Ambedkar will give thought to the matter, he will find that there are certain rights

which cannot be suspended in any case, however grave the state of emergency may be. Therefore, I have sought to amend this article in this fashion—that the order must specify those rights which are sought to be annulled or abridged, or curtailed or suspended.

The other two amendments are merely verbal and I do not wish to speak on them. I leave them to the wisdom of the Drafting Committee to which mine is no match at all.

Amendment No. 3030 of the printed List of Amendments is a vital amendment, which is to the effect that the President's order declaring that the fundamental rights or any of them shall remain suspended—that order shall be subject to the approval of Parliament. We have already provided for that in articles 275 and 278. In 278 it is laid down that any proclamation made shall be laid before Parliament for its approval. In article 275, clause (2) (b) and (c), it is specifically laid down that the proclamation shall be laid before Parliament for its approval. Does this mean that once this proclamation is approved by Parliament the President is free to do by order as he likes? If that be so, it is a pernicious article. The suspension of fundamental rights is not an ordinary matter. It is a very grave matter. I will go so far as to say that it is even graver than the gravest emergency with which the State may be confronted. Do we in that eventuality empower the President to declare by order that these fundamental rights, conferred by article 13 shall be suspended? I hope that will not be done. I hope that is not the intention of this House. In whatever form this article may have been brought before the House today. I hope that the House will not adopt this in a hurry : on the contrary, that it will give it mature consideration. I trust that the House will consider this matter in greater detail and will amend it suitably so as to provide more safeguards. I only wish through my amendment to see that any order made by the President in this regard—namely with regard to the suspension of, fundamental rights shall, similarly to an emergency Proclamation, be laid before Parliament and if Parliament approves, well and good : if Parliament rejects it, then that order should not have any force. As I have stated, though we hope and pray that the President may be a wise man, there is no guarantee in the Constitution that a philosopher-king—whom my honourable Friend Mr. Brajeshwar Prasad wants to be in the highest office of the State—will be elected. Human failings and human imperfections there will be. If the President decrees that all the fundamental rights are suspended, there is under the proposed article no provision for Parliament considering the matter. My Friend, Prof. Saksena, has tabled a little more radical amendment. I for my part, will be satisfied that, if the President passes an order before Parliament is convened, that order is laid soon before Parliament for it to debate on and approve or reject it. We are pleading, Sir, in season and out of season, that we are passing through a crisis. I am sure that the Italian Constituent Assembly, when it met two years ago soon after World War II was over, was faced with no less grave a crisis. There was danger of upheaval within the State and Communist were rising against the State. Italy was a border State between the Russian bloc and the Western bloc and it was wedged in between the two, and it, was thus subjected to various stresses and strains. Even then, the Italian Constituent Assembly which adopted the Constitution in 1947 did not go so far as we are going today. What did they do? They were faced with a very grave crisis, the Communist near—insurrection within the State : and as we all read in the papers the other day, there were free fights within the Chamber of Deputies in the Italian Assembly when the Atlantic Pact was ratified. The Constituent Assembly adopted, however, an article, with a view to meeting the grave crisis confronting the State, but they provided adequate safeguards, and the relevant article in their Constitution reads thus :

[Shri H.V. Kamath]

“When in extraordinary cases of necessity and urgency, the Government on its own responsibility adopts provisional measures having the force of law, it must on the same day” (in the U.K. the Act provides that Parliament must be summoned in five days) “present it for conversion into law by the Chamber which, if dissolved, should be convoked for the purpose and assemble within five days. The decrees lose effect as on the date of issue if not converted into law within 60 days of their publication. The Chambers may, nevertheless, regulate by law political relationships arising from decrees not converted into law.”

Again the power is left to the Chamber.

I have placed before the House the constitutions of U.K., U.S.A. and Italy. I would like to place other constitutions also before the House but I do not propose to do so. I do not find in any constitution a similar provision of such sweeping character, as the provision in this chapter.

There is one more point and it is this. We have already provided in article 278 that even otherwise than on the receipt of a report from the Governor a proclamation can be issued by the President. I suppose under article 275 if India as a whole or even any part thereof is threatened by invasion, external aggression or internal disturbances, the President is empowered to proclaim a state of emergency. If the President issues a Proclamation of Emergency without receiving a report from the Governor and takes action subsequent thereto, annulling the fundamental rights, there is one grave danger. The Governor or the ruler of a State or other authorities within the State will feel that they have been bypassed or ignored and a very serious conflict may arise. The authorities within the State—the ruler, Governor, his ministers or other administrative apparatus in the State—God forbid they should,—may refuse to co-operate with the Central Government or President and refuse to execute or conform to the decrees issued by him as a sequel to or in pursuance of the Proclamation of Emergency. This is an eventuality or situation which, I am sure none of us desires to bring about. Therefore, bearing all these considerations in mind, and taking serious notice of these possibilities and dangers, I feel that article 280, moved as amendment 3028 of the List of Amendments, (which has been couched in rather unfortunate language) is to my mind fraught with grave consequences not merely to the liberties of the individual but also to the powers of the constituent units. I once again urge, in all humility and with all the emphasis at my command, that this House should deliberate very coolly upon this article and provide safeguards against the abuse of power by the executive which is very likely,—nay, I am certain will result—from the operation of the article if it is passed as brought before the House today.

Prof. Shibban Lai Saksena : Sir, I beg to move:

“That in amendment No. 3028 of the List of Amendments, in the proposed article 280 for the words ‘the President may by order declare’ the words ‘The Parliament may by law provide’ and for the words ‘the order’, occurring at the end, the words ‘that law’ be substituted.”

My amendment if accepted will read as follows :

“Where a Proclamation of Emergency is in operation, the Parliament may by law provide that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the proclamation is in operation or for such shorter period as may be specified in that law.”

I would have very much wished that this article was completely deleted. It is even more far-reaching than the preceding article to which I voiced my opposition. That article has not taken away the liberties guaranteed under article 13, but this is of much greater import. In fact it nullifies the subject’s right of constitutional liberties, which have been provided in the Constitution. I would Invite the attention of the House to article 25 which says :

“The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

The Supreme Court can always be approached whenever any of these rights is infringed. The second clause is even more important. It says :

“The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by this Part.”

Clause (3) says :

“Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.”

Clause (4) says :

“The rights guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.”

Here we are invading the powers of the Supreme Court in regard to the liberties of the subject, not only the liberties guaranteed under article 13 but all the rights plus the right of the subject to obtain a writ of *habeas corpus*. When I read this article I was transported back to the glorious revolution of 1942, when India waged her war of independence and we were thrown into dungeons on charges which were fantastic such as waging war against the King, etc. Even then the British Government did not suspend the power of the High Courts to issue writs of *habeas corpus* which is guaranteed by Section 491 of Criminal Procedure Code. I remember numerous detenus sent applications under the *habeas corpus* section and they had to go to a High Court and were heard there. But in this free India we are providing for the suspension of this most fundamental article and section 491 of the Criminal Procedure Code will not have any effect if the article is adopted. Supposing a war lasts for ‘ten years; is nobody to have the right to approach the Supreme Court with an application for a writ of *habeas corpus* during that whole period? This gives the bureaucracy the right to arrest any person without any cause whatsoever. One cannot even go to the Supreme Court for redress. I do not think that in any emergency this right of the Supreme Court to do justice should be taken away. After all, the Supreme Court which will be created under this Constitution will be presided over by a Chief Justice who will be nominated by the President on the advice of the executive and the other judges also will be eminent men appointed more or less in the same way. Cannot such gentlemen be trusted in an emergency ? I cannot conceive how we can trust the executive which can ride rough—shod over the liberty of the citizens. I can understand the provision of safeguards for an emergency, but not the complete suppression of the liberty of the citizen. I do not know of any parallel for this anywhere in the constitutions of the world. I, therefore, suggest strongly that this article should be removed from the Constitution; but if that be not possible, I would suggest that my amendment which gives power to the Parliament to make any law which it considers necessary for an emergency may be accepted. The President may order the issue of a proclamation and the executive will be supported by Parliament. I do not see what harm is there in giving the Parliament the right to pass laws for emergencies. Why should the President alone have the power which in effect means power for the executive behind him? The Parliament must have the right to say what sort of action should be, taken in an emergency. I do not think that this article is at all necessary. But if it is considered necessary, my amendment must be accepted and Parliament should be empowered to safeguard our freedom even in emergencies. Let, it not be said that we distrusted our sovereign Parliament and gave power to one single individual.

[Prof. Shibban Lal Saksena]

My Friend Mr. Kamath quoted many articles to show how foolish it is to suspend the entire Chapter XIII. I am surprised to see that the Drafting Committee considered this necessary. There are some articles in this Chapter that have nothing to do with an emergency. Why should they be suspended ? If this article comes into operation, discrimination can also be practised. And that would go against the spirit of the Fundamental Rights we have conferred on the citizens, such as non-discrimination between citizen and citizen, untouchability and other things. I do not think that this article has been drafted with proper care and with a proper understanding of the situation. I do not know what defence Dr. Ambedkar can have for this provision. In replying to my amendment in the previous article, he said that power had been given to all the States legislatures also to make laws in violation of article 13. That is something which can be understood. I wanted that Parliament should have this power and be said that the States also should have this power. But here the President only is given this power to issue orders and the question of States does not arise. I only want that Parliament by law should do this. Why do you want the President to be an autocrat ? If my simple amendment is not accepted and the fundamental rights of the people safeguarded, people will not have much respect for this Constituent Assembly; for the Constitution made by it, because this article cuts at the root of our freedom and should not be in the Constitution. It should at least be amended as I have suggested.

Mr. President : Pandit Kunzru has given notice of an amendment to article 280. That is No. 211 in the printed Supplementary List.

Mr. Tajamul Hussain (Bihar: Muslim): What about my amendment, Sir?

Mr. President : What is it?

Mr. Tajamul Husain : It is for deletion.

Mr. President : That is only negative. You can vote against the motion.

Shri H. V. Kamath : Yesterday, Sir, a motion for the deletion of an article was allowed by you.

Mr. President : Because it was moved by the Drafting Committee itself.

Shri H. V. Kamath : I suppose the rules must be the same for all.

Mr. President : The Drafting Committee has the right to ask for a deletion. In the case of Members, such a motion will not come in as an amendment.

Do you wish to move your amendment, Dr. Kunzru ?

Pandit Hirday Nath Kunzru: Yes, Sir. I move:

“That in amendment No. 3028 of the List of Amendments, for the proposed article 280 the following be substituted :—

‘280. Where a Proclamation of Emergency is in operation, the President may, by order, declare that the Suspension of the right to move any court for the enforcement of any of the rights conferred by the enforcement of certain articles 13, 14, 15, 16 and 24 of this Constitution and all proceedings pending in any court for the enforcement of any such rights shall remain suspended for fundamental rights during in any court for the enforcement of any such rights shall remain suspended for the period during which the Proclamation is in operation or for such period as Emergencies. may be specified in the order.’ ”

The object of this amendment is a very simple one. The amendment that Dr. Ambedkar has moved covers all the fundamental rights. What I want is to limit the operation of article 280 to certain rights only. It is not necessary that, when a Proclamation of Emergency has been issued by the President, all the fundamental rights should be suspended. Take for instance, the right of a man, to whatever caste he belongs, to stay in a hotel or go to a restaurant or

draw water from a public well. Is this right too to be suspended while a Proclamation of Emergency is in force ? All that is desired is that, so far as the right to free speech or the right to form associations or the right to assemble peaceably are concerned, it should not be enforceable through the courts of the land while a Proclamation of Emergency is in force. I am not entirely of the same opinion as Dr. Ambedkar in this matter, I share the opinion of his critics; but I each understand his desire that in times of serious trouble, the State should not be tampered by any formalities in the formidable task of restoring law and order. It is however not necessary for the purpose of quelling internal disturbance or meeting external aggression that we should deprive the people of all their fundamental rights. All that is necessary is that notwithstanding the rights conferred by this Constitution on the people, such of them is, if allowed to be exercised in an unrestricted manner, will create difficulties in the way of re-establishing peace, may not be legally enforced. I think this limited purpose will be gained if the amendment that I have moved is accepted. It does not seem to me to be at all necessary or desirable that the scope of the article should be wider than this. However serious the situation may be, the State will be armed with ample powers to bring it fully under control if my amendment is accepted. The entire suspension of the fundamental rights is neither necessary in any case nor desirable. Indeed, it would be deplorable. I hope therefore, that my amendment which gives the executive all the powers that it need possess in troubled times, will be acceptable to the House.

Shri Mahavir Tyagi (United Provinces : General) : Sir, in view of the fact that the House has already passed article 279 as desired by the Drafting Committee, I think, the passing of 280 is rather too serious. The House has already permitted the future governments to override important fundamental rights in the case of an emergency. Now, to go further and to allow the State to go beyond the powers of the Supreme Court is, in my opinion, too much. I agree with my Friends, Mr. Shibban Lal and Mr. Kamath, in their protests against this power being given to the future governments. An emergency has to be declared when there is danger to the peace or tranquillity of the country or to the existence of the government. But let us also understand that a Government is always poised as against the people it governs. So, while giving a Constitution to our country, we must not lose sight of the fact that the rights and privileges of the people being poised against the authority of the State, it is for us to see that the stress is not lop-sided. While assigning political rights, we should strike a balance between the governed and the governors. No doubt, in a democratic State, the government is necessarily formed in accordance with the will of the people, but even then, once a State is organised, the role of the people becomes passive. It is the people who are acted upon by the State. Now, for instance take our own case. It is the Members of the Constituent Assembly today who compose the State. In fact, all the State authority of India is in the hands of the Constituent Assembly (Legislative). We are wielding power. On whom are we wielding it ? We are wielding it on the people whom we claim to represent. Have our electors any hand in the administration ? Have they any say ? No. Let us not be under the impression that we would last for ever. It is always the case that when one occupies an office of responsibility, one thinks that that office to be effective should be armed with more and more powers, because one is too self-confident and therefore one honestly feels that one will not misuse the powers given to one's office, but the one must not also forget that that office is not for the one to occupy for ever. Another may occupy it tomorrow and misuse the power. So, while giving more powers to the State, we as the representatives of the people and also as the judges of the rights of the people, must bear in mind the fact that the state might also change hands. And that the future governments might not be so considerate towards the rights of the people, and that they might also misuse these powers. The only guarantee that the people have against the high-

[Shri Mahavir Tyagi]

handedness of their State is the Court. And so if in our enthusiasm we empower the State to go beyond the judiciary and override it, there will remain nothing but the law of the jungle. There will be nothing to control either the government or the people. Sir, my experience is only from India, while many of my honourable Friends, who have read books on foreign countries, and seen their politics too, have a different picture of democracy in their minds. I value their experience and knowledge, but to me it seems that their opinions are mostly borrowed. I would appeal to them to study the march of democracy in India. Are they satisfied with the manner in which we are running our democracy? Sir, my opinion is based on what I have seen with my own eyes. The present Government here and the governments in various provinces can claim to be known as the peoples' governments. Such people's governments are spread over the whole of India today; and also in such territories as used to be. Princes' States, the government is no doubt of the people but even then the fact remains that in practice the Government stands in opposition to its people. I do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the election were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. We have not got the right to recall the Government. People after once voting for the Government have no right of recall or to censure it unless there is a fresh election. So whatever rights we give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all. Their only privilege is that they have a free access to the Judiciary. People, who feel that their privileges or their rights, fundamental or otherwise are violated, can have resort to a court of law, and that is the only guarantee, that is the only safety under which the people may remain contented. If the people were to be told that the State is supreme in India, and that the Supreme Court is liable to be over-ridden, they will lose confidence of their security and existence. With an Independent judiciary, it is not only the people who draw a sense of security, against the tyranny of the State, but even an individual feels confident about himself, whenever his rights and privileges come in clash with the vagaries of society. If the society is hard on an individual, even that single individual must have the guarantee, must have the security to stand alone and to live alone. and he must have the guarantee that no wrong will come on him and that he will not be dealt with unfairly. That guarantee is there, only because he is confident the Court is Supreme. Even if the whole State pounces on him he has one guarantee, as a citizen of the land, to approach the Supreme Court for protection and relief. Therefore, Sir, I submit that this article will have an alarming reaction. It will shake an individual's faith that law will be justly exercised. It is through this faith that individuals cling to society. Devoid of this sense of security the society will diffuse and disperse like particles of sand. I submit, Sir, that the principle involved in the article under discussion is very pernicious. I for one cannot vote for it. Even if the whole House agrees to arm the Government with such powers even in the case of an emergency, I for one wish to bring it on record that I am opposed to this, now and ever. (Hear, hear). I think the rights of an individual to move the judiciary should not be taken away in any circumstances. And if we were to agree to the draft that has come before us then,—Sir, I do not know, my logic may be wrong, it is for the lawyers to say,—but I feel that no fundamental rights can remain protected and there would be no security of life or property or even of political rights and liberty. And having in view the poor training of political parties in their practise of democracy, I am inclined to

profess that we should not be surprised if individuals are ordered to be hanged for flimsy reasons of their not seeing eye to eye with the powers that be. All this will be done in the name of emergency. May be that Shri Alladi Krishnaswami Ayyar might find a way for the condemned to smuggle him into the court, but I do not see there shall remain a chance, because all fundamental rights or rights of *habeas corpus* shall stand suspended altogether. After seeing the people's government run for the past two years I am afraid it will take a long time, yet, for our representatives to know how to run the administration in the interest of the people. It is, indeed, wrong to say that even our government, however popular it may be, is really the people's government. Neither people have a voice in it nor are we able to interpret their wishes into action. We were elected long ago to fight with the British, and now by indirect election we have come here; people have not given us their sanction to make a Constitution for them. It is the British who gave us that sanction, and with that borrowed sanction of the foreigners we are constituting for the people. And this Constitution is going to be inflicted on the people without their expressed consent or legal sanction. Therefore to legislate or to constitute in a manner whereby the people's rights are disregarded, will be rather unfair and bad in law and in constitution. I therefore submit, Sir, that the Drafting Committee might please review their opinions and see if they could still bring some change to the effect that the supremacy of the judiciary is not interfered within the manner in which it is proposed in this article. Sir, people's government will still take time to come and it is not by vote that we can make the people's government really so. It is by our aptitude and method of administration and behaviour that the Government may become really people's government. It is not that the ministers belong to the people, but the government belongs to the people. It is the policy of the Government that should belong to the people, that that Government will be the people's government. I submit, Sir, the people have not yet received any power. And so long as the people are not rich enough in their rights to enforce their policies on the Government, the Government howsoever popular it be, can never be the people's government, And I am afraid if things go on at this pace, the tendency of the government, being towards arrogance, it will soon become tyrannous for people, and time would come when people will make their own government, because after all it is a democracy. People's voice cannot be subdued for long and people will exercise their free voice at last. But the day they choose to exercise their rights and act freely, they will at once have their own government and when. their own government comes and they begin to act there must crop up a party in opposition. But as I have seen we are not yet trained in democracy. Any opposition here even in this House is not seen, is not considered or treated with that much of generosity as in foreign countries opposite parties are treated. I submit that in India the generosity, the intellectual honesty and the strength of conviction has still to come, and so long as we are not trained to treat our opponents with respect and honour and so long as party bitterness exists in the politics of the country, I am afraid many rich and precious lives, the lives of many a learned and the patriots will be in danger if this pernicious article is allowed to creep into this Constitution; because as soon as there is war, the parties in power will try to exterminate their opponents. We must also remember the present century is a century of emergencies; there will be emergency at home, and emergency abroad all over the world; and these emergencies will be intermittent; they may repeat themselves very often; the future governments of most of the countries are going to be governments ruling under the emergency declarations. If times are really so 'disturby', if times are so unstable, then our country will have emergency proclamations for most of the time; with too much of power and with little fear of re-election, the government must tend to become tyrannous and beastly. The opposite party will have no safety. For God's sake, therefore, let not the individuals, let not your opponents be deprived of their basic right of approaching

[Shri Mahavir Tyagi]

the Supreme Court for the protection of their life, honour and liberty. I therefore submit, Sir, that this article may not be accepted and the Drafting Committee might be pleased to reconsider, and in the interests of democracy, in the interests of our future freedom, they will please revise it and amend it in such a manner that the future Governments might not be able to misuse it in any manner.

With these words, I oppose this article.

Prof. K. T. Shah (Bihar: General): Mr. President, coming to this grand finale and the crowning glory of this chapter of reaction and retrogression, I fear one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter. On the one hand, there is a desire, it seems to me, to arm the executive, arm the Centre arm the Government against the legislature against the units, and even against the people on the score of possible threat to internal peace, a possible danger of war or external aggression, or even any local disturbance. Looking at all the provisions of this Chapter particularly, and scrutinising the powers that have been given in almost every article, it seems to me, Sir, that the name only of Liberty or Democracy will remain under this Constitution. Every one of these articles, and ultimately this particular article,—suspending even the fundamental rights and the right of approach to the Supreme Court for the enforcement of those rights, merely on the ground that there is an emergency declared by the Head of the State, is, to my mind, a denial of any right of freedom or civil liberty of any kind that has been conferred in a previous chapter.

It seems to me, incidentally, that this article is inconsistent in spirit, if not in letter, with the articles previously passed, which require that while all other powers and functions may be arrogated to himself by the President, or may be, delegated to some other authority named by him, the powers and authority of the High Courts will not be interfered with. In this article, though directly the powers of the High Courts or of the Supreme Court or any court are not interfered with, inasmuch as the right of the individual to move the Supreme Court as guaranteed in article 25 will remain in suspension, if this article is accepted, it would follow that even the powers of the High Court, the Supreme Court or any court would be suspended. For, the courts cannot go to the individual aggrieved by such acts of the Executive, and say, “bring your troubles to us and we shall redress them”. The Courts must wait till any individual aggrieved comes to them, or raises the question of the Fundamental Rights under this Constitution. If that is not permitted, as this article seeks to do, then, I am afraid, the right of position of the court itself is put under suspension.

That, surely, should not have been the intention, and that should not be the purpose of a provision like this in the Constitution. The moment you introduce a provision like this in our Constitution, the moment you provide that the right to move the Supreme Court which has been guaranteed by a previous article shall be suspended by an order of the President, by an order of the Executive that moment you declare that your entire Constitution is of no effect.

Dr. Ambedkar takes credit, and I think he is fully entitled to it, that he has changed six into half a dozen; that is to say, instead of saying that the suspension shall remain operative during the period of the Proclamation And some time after, he now provides that the suspension shall remain in operation during, the period of Proclamation, or for a shorter period. To that extent, I repeat his amendment deserves congratulation. But the essence remains; that is to say, the suspension of the right to move the Courts of justice for an aggrieved citizen the only, right guaranteed by the Constitution, who is denied his Fundamental

Rights as conferred by the Constitution itself, remains untouched, even if the period of its duration may be shortened in the manner that Dr. Am has done.

So long, therefore, as this provision remains in the manner in which it has now been put forward, so long as it is the power of the Executive only to make such an order, and suspend the fundamental rights in effect, so long, I think, this provision would be and must be objectionable.

As an amendment here has suggested, if you really feel that some extraordinary measures are necessary, when an emergency is so grave that you cannot wait for the ordinary individual's rights to be enforceable, and the legal technicality of procedure to take effect, by all means act; but in such acting take the Legislature into your confidence, and make the Legislature enact the necessary law. Why should you assume that the Legislature should be so unresponsive, so callous, so indifferent and unaware of the real situation of the country, that it will not agree to such legislation as may be necessary for preserving peace and tranquillity inside the country, and guarding the country against any danger of external aggression ? After all, you have the example of Britain during the, last two World wars that she has fought in this century. Then under the so called Reference of the Realm Acts, again and again, certain rights what we call Fundamental Rights had to be suspended or denied; and nobody protested against any such legislation being passed. Why do you assume that the Parliament will be so unaware of the situation, or unwilling to pass the necessary legislation, that you must arm the Executive, the President on his own authority so to say, to pass such an Act by Executive Order, and go to the extent of stopping or suspending even the one guaranteed Fundamental Right of justice in the courts of law ?

I think this is an excess of power being given to the President, I think it is an excess, shall I say, of reaction against which the Draftsmen cannot be warned too strongly, cannot be warned too often. I would, therefore, suggest that if at all such a clause is necessary—for my part, I do not think it is necessary—it should be included as part of the powers of the Legislature. If at all you think that it is not possible to rely upon Parliament or upon the people's good sense, let the Executive take action face the consequences without an express provision in the Constitution to that effect. But it would be better if you make at least the legislature to pass a law giving these powers by a special provision in such an Act.

The difference between an executive order of the kind contemplated in this amendment and an Act of Parliament is quite obvious. Whereas in an executive order the President alone will act, or perhaps one or two of his Ministers will advise him and he will act on that advice without any further discussion, in an Act of Parliament, it would be unavoidable that the fullest searchlight will be thrown upon every provision and every word of the provisions. Not only the necessity for such special provisions would be laid bare, but also the limitations and restrictions that may be deemed necessary by Parliament to impose, before executive action of this kind can be allowed to take effect, and the conditions under which it takes effect. I, therefore suggest that instead of concentrating all effective power and authority and influence in the hands of the Executive, It would be better if at least the Central Parliament—I am not suggesting the local Legislature—of the country as a whole should have the right to discuss these matters, and pass the necessary legislation. If you have confidence if you really believe if the collective wisdom of the representatives of the people greater than your own wisdom as the Executive, then, I think there is no alternative but to accept the amendment which suggests that this power should be given by an Act of Parliament and not by Executive Order the President.

The Honourable Dr. B. R. Ambedkar : May I say a word? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President : This article may be held over.

Then we shall go to article 247.

Article 247

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

“That for the heading to the articles commencing with article 247, the following heading be substituted:—

‘General’ ”

Mr. President : I do not suppose any discussion of that is required.

The question is :

“That for the heading to the articles commencing with article 247, the following heading be substituted :—

‘General’ ”

The motion was adopted.

Mr. President : Amendment No. 2832.

Mr. Naziruddin Ahmad: Sir, I beg to move:

“That in article 247, the words ‘unless the context otherwise requires.’ be deleted.”

I submit that these words are not only unnecessary but somewhat misleading. In article 247 there are certain important clauses. Clause (a) defines “Finance Commission.” I submit that Finance Commission is a precise expression. It has only one meaning and it has been used throughout the Constitution in that specific clear meaning. In clause (b) ‘State’ has been clearly defined that it does not include a State for the time being specified in Part II of the First Schedule. ‘State’ has been clearly defined in the appropriate places and a State as specified in Part II has also been specifically defined without the possibility of any misunderstanding. So State here is clearly understood. In clause (c) it is said that “references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.” I submit part II of the First Schedule and Part IV are clear and therefore these explanations in clauses (a), (b) and (c) are absolutely precise and incapable of being misunderstood even with reference to any context. Therefore the words ‘unless the context otherwise requires’ are absolutely unnecessary. I shall ask the honourable Member to point out any place where the context can possibly ‘otherwise require’. In the Penal Code the definitions are very precise and therefore the misleading condition ‘unless the context otherwise requires’ is entirely absurd. The addition of these words will make the reader or Constitutionalist think