

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 118, it is merely a drafting amendment, and I should leave it to the draftsman.

Mr. President : Then I come to article 34 which is a new article, and we have a number of amendments to it, Mr. Das. That is for deletion.

Shri B. Das : Sir, I do not move it.

Prof. Shibban Lal Saksena: Sir, I Want to move it.

Mr. President : You want to move for its deletion ?

Prof. Shibban Lal Saksena : Yes, Sir, this article 34 is a new article. It says that when martial law is declared, then Parliament will have the power to indemnify the officers. I think that this new article should be ruled out of order. It was never passed by the Assembly before. Secondly, I think the provision of this article will encourage officers working in the martial law area to commit excesses and hope for indemnification by an Act of Parliament. Therefore, I say it is not proper. Martial law whenever proclaimed, should be proclaimed according to the law about it. It should not be permitted to go beyond the law. So I think this article is not necessary and it should be removed from the Constitution, and also as I said, it is out of order. I move :

“That article 34 be deleted.”

Shri. Brajeshwar Prasad (Bihar : General) : May I speak on this amendment, Sir.

Mr. President : We shall have all the amendments first, and then Members can speak.

Amendment No. 122, Mr. Kamath.

Shri H. V. Kamath : May I know move all the three amendments together ?

Mr. President : Yes.

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 122, 123 and 124.

“That in article 34, the words ‘or any other person’ be deleted.”

“That in article 34, for the word ‘order’ the words ‘public order’ be substituted.”

And the last one is No. 124 which says—

“That in article 34, for the words ‘done under martial law’ the words ‘done by such person under martial law’ be substituted.”

Sir, at the very outset, let me make it clear that I would welcome the deletion of any reference to martial law in the Constitution, as suggested by my Friend Prof. Shibban Lal Saksena. There are sufficient provisions in the Constitution for the maintenance of public order and peace and tranquility in the country. We have also adopted Chapter I dealing with emergency provisions in the Constitution. But once we accept, or assume that a situation may arise when martial law will have to be proclaimed, then certain consequences follow. There are certain acts done during the administration of martial law. We are all very well aware of the operation of martial law, and there are acts done by persons in charge, or in authority which strictly under the law of the Constitution may be illegal, and so those persons may have to be indemnified later on so as to safeguard their position against any undue penalty or punishment for acts done by them. It is with a view to this that I submit these amendments to the House.

Article 34, as moved by the Drafting Committee, seeks to indemnify any person in the service of the Union or of a State, and any other person also. I do not desire that we should go so far as to indemnify any person, whoever he may be. We may make an exception of persons who are in the service of the Union or of a State. But the change proposed is to insert a provision with

regard to all persons. Such a change is far too sweeping, and must not be allowed to find a place in the Constitution. Therefore, I have moved this amendment, that the words “or any other person” be deleted. If we indemnify at all, we should indemnify only those persons who are in the service of the Union or of a State during the administration of martial law in any area.

The other two amendments are, more or less, formal ones. The first one seeks to bring article 34 in conformity with the phraseology of article 33, where the words used are “public order” and therefore, I have suggested that this article also may be on the same lines as article 33 and the word “order” be replaced by the words “public order”.

The last amendment follows from the wording of the first part of article 34. When we refer to acts done by any person in the service of the Union or of a State, it is necessary to make it specifically clear in the latter part of the article as well, when we refer to the acts of such persons. Therefore, the word “such” in my judgment, is necessary so as to avoid any confusion with regard to acts done by any person other than the public servants referred to in the first part of the article.

Sir I move amendments Nos. 122, 123 and 124 and I commend them to the House for its earnest consideration.

Mr. President : As this is a new article altogether, the question arises whether I should allow it to be moved by way of an amendment. I think in all Constitutions, either written or unwritten, I do not know, but my idea is that all Constitutions allow such indemnity Acts to be passed after martial law has been in force; and difficulty might arise if there was no specific provision in our Constitution for indemnifying acts done during the period of martial law, if we do not have a specific provision here. And therefore, I allow this amendment of the Drafting Committee.

As regards the other amendments which have been moved, they are now for discussion. Members, if they wish, can speak now on this article as well as on the amendments which have been moved.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support this new article. I will not traverse the ground already covered, or repeat the arguments in favour of it, as you have, Sir, already admitted this article. The Drafting Committee had the power to suggest the necessary amendments. Therefore, I think that they have not gone out of the scope of their jurisdiction. I think, that when a revolutionary situation has arisen in the country, then the Government may be forced to resort to martial law. And extraordinary situations cannot be tackled by the ordinary law of the land. It is only when a revolutionary situation has arisen that martial law is enforced. Revolutionary situations can only be tackled by revolutionary methods. The danger that all officers will escape scot-free is not a real danger or a serious danger at all. I say this because Parliament has got the power to review such cases. If an officer has acted without jurisdiction, if he has exceeded the requirements of the martial law, then Parliament will not indemnify those officers. Parliament has got the full right to review the conduct of these officers who have acted in an arbitrary manner. But it is only in an arbitrary manner that you can tackle the situation which has arisen in the country when martial law has been enforced. I support this provision not merely on the ground that similar provisions exist in other Constitutions of the world but also because it is a necessary and desirable, provision. Having due regard to the facts of our political life, I heartily support this article.

Mr. President : Any other Member wishes to say anything about this ?