

Mr. President : Then we will take up amendment No. 52 standing in the name of Dr. Ambedkar.

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

“That with reference to amendment No. 2728 of the List of Amendments, for article 214 the following article be substituted:—

- ‘214. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.
- (2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order continue unchanged.’ ”

There is nothing new in this article except that the two parts in this are separate while they were lumped together in the original article.

Mr. President : Then amendment No. 142 standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: Sir, I am not moving it.

Mr. President : Then there are amendments Nos. 181 and 190 standing in the name of Prof. Shibban Lal Saksena. He is not present in the House.

There are no other amendments to article 214. Does anybody wish to say anything about this article ?

I will put the article to vote. The question is:

“That proposed article 214 stand part of the Constitution.”

The motion was adopted.

Article 214, was added to the Constitution.

Article 275

Mr. President : Then we go to article 275. Amendment No. 111, Dr., Ambedkar.

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

“That for article 275, the following article be substituted :—

5. (1) If the President is satisfied that a grave emergency exists whereby to security of India or of any part of the territory is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.
- Proclamation of Emergency.
- (2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as ‘a Proclamation of Emergency’)—
- (a) may be revoked by a subsequent Proclamation;
 - (b) shall be laid before each House of Parliament;
 - (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses, of Parliament;

[The Honourable Dr. B. R. Ambedkar]

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of 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.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were "war or domestic violence". The present clause as amended would read as "war or external aggression, or internal disturbance." It was thought that it was much better to use these words rather than the word "domestic violence" because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (c) of clause (2). originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

Shri Brajeshwar Prasad : I do not wish to move any of the amendments standing in my name.

Shri H. V. Kamath (C.P. & Berar: General): Sir, may I move the amendments standing in my name all at once, because there are some in the printed list as well ?

Mr. President : But is it necessary to move them now?

Shri H. V. Kamath : The new article, except for certain portions, is the same as the old one, with the result that some of the amendments in the Printed List are relevant.

Mr. President : No. 2989 is only a verbal one; so also No. 2990; No. 2991 does not arise.

Shri H. V. Kamath : I do not propose to move 2994 and 2995.

Sir, I move :

“That in sub-clause (a) of clause (2) of article 275, after the words ‘may be revoked’ the words ‘or varied’ be inserted.”

Then I come to List II, Second Week.

I move, Sir :

“That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 275, after the word ‘President’ the words ‘acting upon the advice of his Council of Ministers’ be inserted.”

Sir, I move :

“That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, the words ‘by war or by external aggression or’; be deleted.”

Sir, I move:

“That in amendment No. 111 of List I (Second Week) of Amendment to Amendments, in clause (3) of the proposed article 275, for the words ‘occurrence of war or of any such ion or disturbance’ the words ‘occurrence of such disturbance’ be substituted.”

Before proceeding with these amendments, Sir, you will kindly permit me to make a few general observations on this very important article 275. I have ransacked most of the constitutions of democratic countries of the world—monarchic or republican—and I find no parallel to this Chapter of emergency provisions in any of the other constitutions of democratic countries in the world.

The closest approximation, to my mind, is reached in the Weimar Constitution of the Third Reich which was destroyed by Hitler taking advantage of the very same provisions contained in that constitution. That Weimar Constitution of the Third Republic exists no longer and has been replaced by the Bonn Constitution. But those emergency provisions pale, into insignificance when compared with the emergency provisions in this chapter of our Constitution. I urge therefore that this House should bestow its earnest consideration and mature judgment and all its wisdom on a consideration of this chapter. The chapter as it proceeds to its grand finale annuls to a very large extent even the fundamental rights conferred by part III of the Constitution. I shall deal with it anon when that article is reached; for the present we are concerned with this article 275.

As Dr. Ambedkar remarked, there have been two or three changes made in the Draft now before the House. The first is that besides “war” the words “external aggression” also have been inserted. It is possible in these days, when guns go off even without a formal declaration of war, that there may be external aggression without actual declaration of war. The second world war began in that fashion. Hitler did not declare war on Poland, but subsequently however Chamberlain declared war on Germany. The war in China waged by Japan since 1931 was also an undeclared war. Therefore this Proposed change is very necessary and the trends of the modern world perhaps justify it, because war today can be distinct from external aggression. So it is, to my mind, necessary.

The second change refers to time-limit. Whereas the original article 275 restricted the operation of this proclamation of emergency to six months, it has now been reduced to two months. In the light of that I have not moved my amendment which sought to restrict it to six weeks.

The other changes are of a minor nature; for instance, “domestic violence” is replaced by “internal disturbances”.

[Shri H. V. Kamath]

Coming to the provisions of this new Draft I shall take up my amendments seriatim, one by one. My first amendment seeks a change in sub-clause (a) of clause (2) of this article, which refers only to the revocation of the Proclamation. It is conceivable that circumstances may so change that a Proclamation may not completely be revoked but may be varied in a certain measure. Therefore to my mind it will be more comprehensive to include a contingency of variation along with one of revocation.

My next amendment (No. 147) deals with a very important point to which I wish to draw the earnest attention of the House. The draft article lays down that if the President is satisfied he might issue a Proclamation of emergency. Sir, when this House was discussing article 102 which deals with the Ordinance making power of the President, you, Sir, raised a very vital issue as to whether under this Constitution the President would be bound by the advice of his Council of Ministers. The Constitution provides for the President a Council of Ministers to aid and advise him in the exercise of his functions, but there is no injunction laid upon him to accept their advice. In reply to that Dr. Ambedkar observed that that matter would be gone into by the Drafting Committee and suitable changes would be made, but up till now, so far as I know, no changes in that direction have been brought before the House. Therefore that lacuna still exists. Today this new article invests the President with an extraordinary power which, as I said before, finds no parallel to the powers exercised by the executive head—nominal, figure-head, titular or otherwise—of any other democratic State in the world, monarchic or republican. Therefore this safeguard is to my mind absolutely necessary. The President must not act on his own but must consult his Council of Ministers and act upon their advice. If they advise him that such a grave emergency has arisen, then only should he be empowered by the Constitution to issue a Proclamation to that effect. He must not be invested with the sole and absolute right to issue a Proclamation by merely stating that he is satisfied. etc. This is not a mere academic point. This is a moot point. It is conceivable—God forbid that such a Thing should arise—that the President and the Council of Ministers may not be seeing eye to eye with each other on various matters; there may be friction between them and the President may act on his own in the event of an emergency, without consulting his Council of Ministers. If that should happen, I shudder to think of what might befall our country. If the President goes ahead setting at naught the Council of Ministers, then the way will be paved for, firstly, a dictatorship and then perhaps to revolts and revolutions and things of that kind. It has been recognised by students of politics that the very provisions in the Weimar Constitution of the Third Republic of Germany giving extensive powers to the executive, coupled with the use made of the Power of dissolution contributed to the rise of Herr Hitler and paved the way to his dictatorship resulting in what we all know. Compared to that article 48, of the Weimar Constitution, the provisions we are making under Chapter XI are far more drastic. I therefore earnestly appeal that this Chapter should not be passed in a hurry. It should be amended in such a way that not merely the liberty of the individual. But also the freedom and powers of the constituent units are not unduly suppressed. We should alter and revise the Chapter so as to see that the liberties guaranteed in this Constitution are real.

Then, Sir, in passing, I would like to make one observation. In this Constitution we have already provided for the ordinance-making power of the President. When Parliament is not in session the President has been empowered to issue ordinances if he is satisfied that the circumstances so require. Now I want to show how such powers can be abused. We, in good faith, pass certain articles giving certain powers hoping that they will be rightly used;

but in connection with this ordinance-making power, a couple of days ago, a certain thing happened which, from my meagre knowledge of the provisions in the Government of India Act as adapted. Is an abuse of the power vested in the Governor-General. Now I am not speaking of the merits of the particular Ordinance. The Ordinance for the Recovery of Abducted Persons was repromulgated on Sunday last, two days ago. Here I would invite your attention to the Government of India Act as adapted by the India Order of 1947. The relevant section concerning ordinance-making does not provide for the repromulgation of an Ordinance before the date of its expiry. The Ordinance expired last Sunday; but the day before, that is, Saturday, a Press Note was issued to the effect that the Ordinance will be extended from Sunday itself and that too when the Assembly was in Session. So far as the Constituent Assembly is concerned, the India Act makes no difference whether it functions as a Constitution-making body or as a legislature. Therefore it would have been in the fitness of things if that Ordinance had been brought before this Assembly sitting as the legislature for a day for the purpose of considering that Ordinance. If that had been done it would have been far better than this re-promulgation. This, Sir, is one of those instances which show how powers conferred can be misused, have been misused and will be misused. We must, as far as possible provide for safeguards against the abuse of power by Governments or organisations.

Then I come to the next amendment of mine, viz., 154 of List II of Second Week. It relates to clause 3 of the proposed article 275, amendment No. 111 moved by Dr. Ambedkar. This amendment must be read with amendment 156. They go together. If these two are accepted, this clause (3) would read as follows :—

“A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by internal disturbance may be made before the actual occurrence of such disturbance if the President is satisfied that there is imminent danger thereof.”

The object of these two amendments 154 and 156 is to make a distinction between war and external aggression on one hand and internal disturbances on the other. If the article with clause (3) as moved by Dr. Ambedkar were to remain, will it not be competent for the President, even acting within the four walls of the Constitution, to proclaim an emergency when there is no war actually and there is only preparation for war and rumours of war? Modern wars in this century have been replete with such preparations for war. Even today you can say that war is imminent. Who dare say that war cannot break out any moment? If we look at the way things are developing in Europe and in America, the danger of war seems to increase *pari pasu* with the years. Supposing then, a President has been installed in office who has got a lust for power and he wants to exercise it without regard for the interests of the State or the people ? We have not, as it is, provided any safeguard that he shall be bound to accept the advice of his Council of Ministers. Though there will be a Cabinet to aid him, nowhere have we laid down that he must accept the advice of the Council of Ministers. If that safeguard goes, the President may take it into his head “I have got this power. Who can stand in my way”? There will not be any check on him. Today even if a man in the street says that war will perhaps break out shortly, nobody can say ‘No’ to it. Therefore if this article is passed as it is today, the President can very well take advantage, unfair advantage, or abuse of the power vested in him and proclaim an emergency when there is no actual war, just because he wants to abrogate to set at naught, to nullify, to destroy the Constitution of the State. Are we, sitting in this House as representatives of a democratic country, prepared to face a situation like that where the President might be in a position to subvert the Constitution ? We are all talking of subversive elements. Let us remember that a Constitution can be subverted not merely by agitators, rebels and revolu-

[Shri H. V. Kamath]

tionaries, but also by people in office, by people in Power. Therefore, Sir, these amendments of mine deserve support. They are Nos. 147, 154 and 156. The first seeks to make it obligatory on the President to act on the advice of his Cabinet, and the other two amendments do not vest this power of issuing a proclamation of emergency when there is no actual war or aggression. The President cannot say, "There is a prospect of war breaking out in the Far East or in Europe or America. Therefore I feel that a state of emergency exists. Somebody is making preparations for war not far from our borders". It is true we have no enemies but other States may regard us as their enemies. As we pass into the second half of the twentieth century, the world situation may worsen, may aggravate so far as war is concerned. We are making a Constitution which will be promulgated in the last year of the first half of this century, and we will enter upon our life as a Republic in the second half of this century, a period to my mind pregnant with possibilities, pregnant with dangers, but pregnant also with great hope and good faith. Sir, let us beware of the dangers and pitfalls in our path. Let us see to it that the Constitution that we are framing today is honoured, is observed and not subverted, not merely by agitators, rebels and revolutionaries but also by those in office or in power.

One word, more Sir, with regard to the last two amendments. Nos. 154 and 156. It is, as I said, difficult for the President, a human President, who is guided by human intellect, to judge solo, for himself, as to whether there is imminence of internal disturbance that would warrant the issue of a proclamation. Have we not vested enough power in the States, so as to avert any danger to the States by internal disturbance ? We have got adequate police forces. We have always proclaimed from the house-tops that the military will not ordinarily be called in to quell any internal disorder. The army is there to fulfil its natural function of fighting external aggression. We have got police forces in all States to put down internal disorder. If that be so, why then, when there is an imminence of any disturbance which is referred to in clause (3) of this article, should the President be empowered to issue a proclamation merely because he is satisfied that disturbance is imminent ? After a disturbance breaks out, and the conflagration spreads out, then I can appreciate that the security, peace and tranquility of India might be jeopardised. But a riot may break out somewhere in a small State. Why should the President take upon himself the responsibility of issuing a proclamation of emergency when the Constitution does not lay down that he will be guided by the advice of his Cabinet ? I think that in these matters the power vested in the Governors, in the Cabinets of the constituent units, is sufficient. I therefore feel that clause (3) as a whole is a very unwise provision and I shall be happy if this clause is deleted. If not, I would be grateful to the House if after mature consideration they agree with me that the President must be invested with this power only when there is imminent danger of internal disturbance, and-not when there is an imminence or fear of an outbreak of war or external aggression, because that is a contingency which nobody can assess, which human ingenuity cannot foresee with any degree of finality. Preparation for war may be there but there may not be any imminent danger of War. There may be thunder and lightning, but rain does not necessarily follow every thunderclap that we may hear. There is a sloka in Sanskrit which brings out this idea beautifully.

अंबोधा बाहवोबसन्ति गगने सर्वेऽपि नैतादृशाः।

केचिद् वृष्टिभिरर्दयन्ति धरणीं गर्जन्ति केचिद् वृथा ॥

*Umbodha Bahavo Fasanti Gagane Sarve pi Naitadrishah.,
Kechid Vrishtibhir ardayanti Dharaneem. Garjanti Kechid Vritha.*

You may hear speeches made by statesmen or others, speeches of warmongering, sabre-ratling, but that is not out-break of war. In those, circumstances, it is unwise, it is contrary to the spirit of our Constitution to invest the President with such wide, sweeping powers to which, in my judgment, there is no parallel in any other democratic constitution of the world. I commend my various amendments for the serious consideration of the House.

Mr. President : There are certain other amendments to this article No. 2996 by Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces: General): In view of the revised Draft, I do not wish to move that amendment.

(Amendment Nos. 2997, 3000 and 3001 were not moved)

Mr. President : All the amendments have been moved. Now the article and the amendments are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, I have very carefully listened to the speech of my honourable Friend, Mr. Kamath, on this important article about the emergency powers of the President. In fact this section seems to be frightful and it seems as if the President becomes an autocrat under this article; but after reading articles 276 and 277, I do not find there is any real apprehension for such a fear. Article 276 only provides that in this emergency the Union executive shall have power to give directives to the executives of the States and that the Union Parliament shall have powers of legislation over those subjects which are the close preserve of the provinces or the States. Article 277 only gives rights to the President and the executive to take powers in regard to financial matters provided for in articles 249 to 259. If this article had said, as article 276 has said that the operation of all the provisions of the Constitution shall be suspended and the powers of the executive of the State shall be vested in the President, of course, then there would have been some reason to oppose this article. I think our own experience in the last war has been that the war could not have been prosecuted unless the Centre had the power to make the provinces fall into line with it. There was a big famine in Bengal because the Centre had not enough powers to interfere in food arrangements in the province.. I therefore think that, particularly today when our democracy is a nascent democracy, we should vest the Centre at least with these limited powers in an emergency. I personally feel that already the article is fairly moderate, the powers of the Union executive as well as Parliament are only concurrent with those of the State legislatures and if there is a war or any internal insurrection or something like that, then these powers will be the minimum that the Centre must have. We have been always fighting for a strong Centre. I think this article gives you what we have wanted so far. We will have a strong Centre and in an emergency we shall be able to make a declaration of emergency for the welfare and the defence of the State. I do not think any person who takes the present position of the country into account can oppose this article. I have my doubts about article 278 and the powers taken therein; but about articles 275, 276 and 277, I am sure nobody can have any objection, because they have been very carefully drafted and no change is necessary. My honourable Friend, Mr. Kamath quoted the Constitution of Germany, the Third Reich, but probably that he could have said about article 278 and not about this article. This does not give the Centre that power which the Weimar Constitution gave to the Centre in that Constitution. Here we have got only the essential power required to carry on the administration when there is a war on or where there is an internal insurrection. I do not think any Central Government can carry on and can defend the country if it is not armed at least with these powers. I therefore think it will not be proper to compare it with the Weimar Constitution. Even in America we know that during the Great War from

[Prof. Shibban Lal Saksena]

Which we have just emerged they did not take away the powers of those States, but we must remember that in America the President is the chief of the Executive, and he himself has got powers which no other person in the world has and our President will not have those powers. I was surprised to hear Mr. Kamath telling us that in the issue of proclamations the President should be guided by his Council of Ministers. That, of course, will always be. It may not be laid down in words in the Constitution, but I think many things will have to be done by conventions. I do not think that any President will be able to do anything against the advice of his ministers and in no case, I am sure, he will be able to make a proclamation if his ministry is not with him. I feel that this article is very necessary. Now the period in the article has been reduced from six to two months and that is a great improvement, and that is the minimum in which any Act can be passed by the two Houses of Parliament.

Clause (3) says :—"A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof." I do not think that this clause is superfluous or goes too far. If we have to face, a war which we foresee and if we do not prepare beforehand, I do not think we shall be wise. In fact America entered into the war fairly long afterwards but by its lendlease policies had become prepared for war. It was fully ready when Japan made that attack. So the question arises that if India becomes involved in a World War I think it is only proper that the President should have the power to declare an emergency and to give the Central Government power to send directives to the executive and also to enable Parliament to make laws on subjects which are at present within the jurisdiction of the States. I think this article is very necessary and there is not any portion which can be objected to. I do hope this article will meet with the acceptance of the House.

Shri Brajeshwar Prasad : Mr. President, Sir, I am in entire agreement with the principles involved in the provisions of this article. I consider this article to be very, very necessary in the interests of the people of this country, but I feel that the provisions are too inadequate, halting and insufficient to meet the needs of the hour. As far as clause (1) of the article is concerned, I feel that it requires amendment. The House should change this Clause (1) in a way that may be in accord with the necessities of the hour. I feel, Sir, that after the words, "threatened whether by war or external aggression or internal disturbance" some other words ought to be inserted. I am in favour of inserting the words "economic crisis or subversive movement". If these words are incorporated, then, there can be some facility for the President to act, and a wider sphere will be available to him. I feel, Sir, that if these two words are not acceptable to the House, then one word at least should be added and that would meet the requirements of the situation. I feel the words "or otherwise" should be inserted after the words "or internal disturbance." That would be sufficient to meet the exigencies of the moment.

Mr. President : The honourable Member has not moved any amendment.

Shri Brajeshwar Prasad: I am only suggesting to the House.....

Mr. President : How can the House accept that unless there is an amendment ?

Shri Brajeshwar Prasad : It can be done in one way, *i.e.*, by asking for reconsideration of clause (1). That is a method left open to the House. There is

a third way of amending this clause (1). I feel, Sir, that these words “whether by war or external aggression or internal disturbance” are redundant and these words ought to be deleted altogether. Then, this clause will read thus: “if the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened? he may by proclamation make a declaration to that effect.” After all, the vital thing is security of India. We do not know how that security of India is going to be threatened. Is it our intention that the security of India should not be protected if it is threatened by means other than what has been prescribed here ? I do not consider that these words “war or external aggression or internal disturbance” exhaust the entire universe of thought. There are other possibilities too by which ‘the security of India’ can be threatened. The argument will be raised that if the security of India is threatened by any other method, the result must be internal disturbance, and therefore the words ‘internal disturbance’ are comprehensive. I do not accept this view of things. It only means that the President must remain a silent spectator of a rapidly deteriorating situation in the country and he has not to act unless it has resulted in internal disturbance on a large scale and magnitude. The power must be vested in the President without any restriction, the power to act if he feels that there is an emergency in this country. Internal disturbance is the climax of the drama. Is it our intention that the security of India should not be safeguarded unless the danger has reached its zenith ? I want the President to act if he feels that the growth of subversive movements has reached the proportions of an emergency even though there be no danger of internal disturbances. The mischief should be nipped in the bud. It is bad politics to wait and act only when the evil has become widespread; then it may be too late to mend matters. Let us look at China. What is happening in China should be an eye-opener to all of us. I feel we are actually passing through a period of emergency. What is happening in Bengal ? What is happening in Bengal is more or less true of the other provinces in India as well. Therefore, I am in favour of these words being deleted. I feel, Sir, that these words ought to have been added. These words were placed before the Drafting Committee in the form of an amendment in the printed list by some other Members. Probably, the reason is that those people who stand for State rights feel that if these words are incorporated, then the whole concept of provincial autonomy will become illusory and unreal, because, in the name of economic crisis or with a view to ward off subversive movements, the President can do anything he likes. But, I feel, Sir, that the security of India is a matter of far greater importance than provincial ‘autonomy’.

Coming to clause (2), the provision is : “A Proclamation issued under clause (1) of this article shall be laid before each House of Parliament.” I want to know why. Why should it be laid before Parliament ? Is it because of the fact that we have got a lurking fear in our mind that the President may become a dictator ? Is it because of the fear of dictatorship that we have made this provision in the Constitution ? If you say so, then I say that this safeguard is not real. It is not by making any constitutional provisions that we can ward off the danger of dictatorship in this country. On the other hand, I feel that by hedging in the powers of the President, by circumscribing his sphere, of activity, we are weakening the hands of the executive and thereby paving the way for the establishment of dictatorship in this country.

Sir, I am also opposed to Parliament having any say on this question, because I fear that a House elected on the basis of adult suffrage will consist mostly of persons who are illiterate, and raw. Is it desirable that the question of security of India should be determined by such a House ? I want to know this from the Members of the House who are opposed to me on this question. Suppose Parliament says there is no danger to the security of India, then, should the

[Shri Brajeshwar Prasad]

security of India be jeopardised because the members of Parliament do not consider that there is an emergency ? I think the President is in a better position to judge. He is a better judge of the situation.

There is one other point which I would like to mention. I was hesitating in my mind whether to say this or not, but I feel that it is far better I express myself very clearly. I am opposed to Parliament because I feel that I cannot trust the members of Parliament. Look at France; look at history. Nazis penetrated into all organs of the State. Ministers, legislators, army officials, all categories of servants of the States were infected with the virus of Nazism and they brought about the collapse of the State. How can Parliament elected on adult franchise be a judge of the question of security of India ? They may become fifth columnist; they may become agents of a foreign power. The growth of subversive movements is a very real one. I have more faith in the Executive than in the legislators. Therefore, I support this article with this suggestion that the words that I have suggested should be incorporated and the question of placing the Proclamation before the Houses of Parliament should not find a place in the article.

Mr. President : I did not like to interfere with the honourable Member's speech. He was speaking on an amendment of which he had given notice but which he deliberately refused to move.

Shri Brajeshwar Prasad : I would like clarification of this point.

Mr. President : No clarification is required. We all understand it. You had given notice of an amendment which wanted inclusion expressly of those words which you mentioned should be included in the article; you deliberately refused to move that amendment. And then you came forward and delivered a speech asking that the Drafting Committee should incorporate these words. I do not think it is right.

Prof. K. T. Shah (Bihar: General): Mr. President, I have been viewing the tendency, noticeable throughout this Draft Constitution, of arming the Central Executive Government with excessive authority, with deep misgivings. In this particular clause there seems to be incorporated even stronger authority and worse features of centralised authority than was found in the original article to which this is an amendment.

There are several points on which I think this amendment not only breaks new ground, but seeks to invest the President with authority and power that cannot be consistent with democratic, responsible Government as we have been taught to believe.

In the first place, Sir, the substitution of the term 'internal disturbance' for the original expression 'violence' fills me with deep concern and misgiving. These are terms not only very difficult to define; but the contrast, whatever may be the implication, seems to me to suggest unjustifiable invasion of democratic freedom. The slightest disturbance, slightest fear of disturbance in the internal management of the State, so to say, or any part of it, may entitle the President to declare a State of Emergency, and issue a proclamation on that account.

This, I think, is more serious and is brought out more prominently when we see the third part of the amendment, where it is not even the actual occurrence that is sought to be guarded against, but even a possible danger of it. The mere apprehension of it in the minds of the executive is made good ground for a proclamation of this kind to be issued. Now I feel that this is utterly indistinguish-

able from the series of Ordinances which were issued in 1942, wherein not only the occurrence of commission of an act was made punishable but even the likelihood of such an act being committed was made liable to action under the Ordinance. If this Government that we are constituting now, if the State that we are setting up under this Constitution, is not to be distinguishable for liberalism, for tolerance, for freedom of thought and expression to the citizen, in any way from the preceding Government, except that the complexion of the rulers would be different,—then I am afraid we are not being true to the pledges that have been given to the people of this country, *viz.*, that *Swaraj* would be really *Ram Raj* on this earth.

I feel, Sir, that the same tendency is noticeable in another part of this amendment where a Proclamation of Emergency is said to be possible to extend or uphold if by Resolution the two Houses of Parliament approve of it. There is, however, no provision, so far as I can see, for the Houses being able to *disapprove* or reject the Proclamation, to declare that there was no occasion for such a Proclamation, and that as such it should be null and discontinued. It is quite possible that, at a given moment, the President, who by the way is not always obliged to accept the advice of his Ministers, acts on his own and declares a state of emergency. This may happen particularly, when a Parliament is on the eve of dissolution, and when party passions run high, and when, there is a possibility of other Ministers or Party coming into power expressly intending to discontinue the programme of the Party preceding in power, including the Proclamation of Emergency. If at that time advantage is taken of a provision like this, and acting on the apprehension that there may be “disturbance” internally in any part of India, the President should act upon his own, or even upon the advice of an aggressive Minister, to declare a state of emergency, what would happen. The new House may not like to continue, such a state of emergency. The House may want to disregard or disapprove of the proclamation. Under those circumstances, this Constitution, with all its supposed loyalty to the Lower House, makes no provision that an Emergency declared by the President can be disapproved by the Legislature. Nor is the Lower House entitled to say that there is no ground for such apprehension, and, therefore, there should be no such proclamation.

I consider this a very serious omission, even accepting the *bona fides*—and I do not doubt it—of the draftsmen in making this provision. I think the omission of the contrary provision that the Houses would be entitled to reject or disown a Presidential Proclamation leaves very serious ground to fear that all the power is to be Centralised in the Executive and the Parliament is to be reduced to be only a sort of Registration office which has to say ditto to whatever the Executive has done. I do not think this is consistent with the ideals and ambitions on which we would be inaugurating a government in the country on a democratic basis. It is indistinguishable from the series of Ordinances under which we had to live before; and under which we are liable perhaps still to continue if a provision of this kind goes unnoticed.

The danger of substituting such a thing as ‘internal disturbance’ for ‘violence’ is very serious, because *disturbance* can be defined according to the mood of the moment, especially if any General Election is impending, and feelings are running very high, and public sentiment is strained to very high pitch. At such a moment disturbance may occur anywhere. Such disturbances ought not to be regarded under any free constitution as a source of Emergency in which the Chief Executive would be entitled to issue a Proclamation and suspend the Constitution. Considering it also in the light of subsequent articles, and the effect of such a Proclamation, it would perhaps amount to denial of freedom to the individual or to whole units of their right to self-Government. This therefore, is a

[Prof. K. T. Shah]

provision to which I think too strong exception cannot be taken; and I hope the House will be inclined to reconsider this position, and see that some at least of the points I am putting forward—such, for instance, as the right of the House to disapprove of any Proclamation—are included, and the security of the State should not be made an excuse—as it appears to me to be the case here—for excessive authority being vested in the Chief Executive.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, after listening to the debate on this article I am very much inclined to support the amendment moved by my Friend Mr. Kamath so far as consultation of the Council of Ministers has been urged by him. This is one of the most important articles in the whole Constitution. We are clothing one particular individual with enormous powers and the powers of emergency can be utilised in his own individual discretion. There is nothing in the Draft article which has been placed before the House to show that it would be necessary for him to consult anybody or to lay down any criteria of emergency before he acts. It is a matter of complete individual discretion, and as we know individual discretion and judgements can err very often. It is for that reason that I think it is very necessary to provide that before an emergency is declared, the advice of the Council of Ministers should be sought.

Pandit Thakur Das Bhargava : It is implicit.

Dr. P. S. Deshmukh : I had already thought of that. I know it would be argued that it is unthinkable that the President would act independently without consulting his Council of Ministers. But all the same, the actual provision as it stands is such that a not very punctilious President may exercise taking the word of the Constitution and declare an emergency even when the Council of Ministers may differ from him. If such a contingency arises, I do not know what exactly would happen. The reason why I urge that explicit provision for consulting the Council of Ministers is necessary is—as Professor Shah pointed out—that we are providing for a responsible Government. Our appropriate parallel would be England and not America. And although it may be unthinkable that any President would be so irresponsible as to act without the advice of the Cabinet Ministers, it is not inconceivable, that in a given set of circumstances, he may definitely come to the conclusion, irrespective of the concurrence of the Council of Ministers, that an emergency does exist. Even if he obtains the advice of the Council of Ministers, the situation can be bad enough. It is possible, as has been pointed out by Prof. Shah, that the Ministers themselves might utilise the powers vested in the President for electioneering purposes and declare an emergency just on the eve of the elections and thus choke off the other party, and utilise the powers which are in the hands of the President for party ends. But if the President acts, irrespective of, the advice of the Council of Ministers, what will be the situation in the country? I have nothing to say if honourable Members are convinced that there is sufficient guarantee that the President will consult the Council of Ministers every time, and that every time the Council of Ministers will be with him; but I cannot and I am not able to follow that. If they merely rely upon the commonsense of the President, I do not agree with them, that in an important Provision like this we should trust to luck, or to chance, in a thing that is likely to affect the future destiny of India. So I would very much urge that such a thing ought not to be left to the individual judgement of a person. After all mentalities differ. An individual President may be a nervous person and just because one particular meeting does not disperse at the order of the Magistrate or solitary incidents of violence take place he may think that there is sufficient reason to declare an emergency. There are, as we know,

such nervous temperaments. And there are people who are brave enough to face the worst of calamities. So it is not proper that we should take any risk and depend upon individual temperaments and not specifically lay down something here in the Constitution, specially because it is a responsible government that we are providing for, that the President shall act only on the advice of the Council of Ministers in this respect also. My Friend Shri Brajeshwar Prasad said that the President must have the power to act and that he must have also discretion. But suppose he differs from the Council of Ministers and declares an emergency. What are his powers and how is he to act ? If the Council of Ministers differ from him, what will be the situation. There would probably be chaos, probably mutiny in the army and probably civil war in the country. God alone knows where such a thing will lead us so I do not think it is in any way undesirable to provide in the Constitution that before he declares a state of emergency, the President shall, consult the Council of Ministers. There is nothing derogatory in this. After all, even after the declaration of emergency, if the President wants to control the emergency, he must seek the assistance and aid of the executive and the Council of Ministers. There is no fun in leaving it all to individual discretion or to rely on good luck. I very strongly urge that the amendment proposed should find a place in the article.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. President, Sir, I think the amendment moved by Dr. Ambedkar is of too sweeping a character, At least I do not find in any constitution in the world a provision parallel to the one now proposed to be enacted. In the American and English Constitutions there is absolutely no provision regarding any emergency law. However, I think, Dr. Ambedkar is probably, nervous about the West Bengal situation. We are enacting the provision at a stage in the country when we feel that a situation might arise in a province which may not be acceptable to the Centre. Mr. Brajeshwar Prasad goes to the extent of saying that he could not trust the Members of Parliament and that the matter should not be laid before Parliament. It is a very unique idea which may not be accepted by many, and I think it is not in keeping with principles of democracy. The executive that would be formed after the elections to the first Parliament or any other Parliament would be formed in keeping with the opinion of the House and any executive that does not command the confidence of the House will be thrown out. Sir, clause (3) of the amendment moved by Dr. Ambedkar lays it down that the President can suspend the Constitution of a province if there is danger of internal disturbance terrorism, subversive movements, and crimes of violence. I think these are very flimsy grounds which have been mentioned in clause (3). Internal disturbance may be between two parties. There may be quarrels in a province at the time of the election. As Prof. Shall said, passions may be roused and people might fight and quarrel. This will be internal disturbance, but surely internal disturbance should not be a ground for suspending the Constitution. Then comes "crimes of violence." Even dacoities may be crimes of violence. We have to define as to which are the sufficient grounds for setting aside the Constitution. Merely saying that crimes of violence will be one of the grounds to suspend the Constitution is quite insufficient. In every constitution in the world in which such provisions are enacted, the words, "war or rebellion or threat of war or rebellion" are mentioned. So the grounds which are now mentioned, according to me, Sir, are not sufficient for suspending the Constitution of a province. It is really very unfortunate that there is no provision in this amendment for consulting the members of the Cabinet or the provincial executive. If this amendment is accepted, then provincial autonomy is only a sham institution. Suppose, for instance, in West Bengal, the party which is in opposition to the Centre is elected; then even though the Government of West Bengal may feel that the internal disturbance in West Bengal is not sufficient for suspending the Constitution, still the will of the Centre will be imposed and the

[Kazi Syed Karimuddin]

ideologies of the Centre will be imposed on that State. In other words, this who mean that no party which is in opposition to the Centre will be allowed to rule in a Province. That situation is bound to arise. For instance in West Bengal there is internal disturbance. There are subversive activities and crimes of violence. But the Constitution has not been superseded because there is a Congress Government which is in keeping with the views of the Central Government. But suppose for instance any other party were in power in West Bengal or in any other Province. The result will be that immediately when there is any disagreement and there is internal disturbance, the President who will be a person elected by the majority party at the Centre will declare an emergency situation in that Province' Such a situation will mean the negation of democracy, and so the suspension of the Constitution on the grounds mentioned in clause (3) will not be justifiable. This would mean that by enacting clause (3), we are laying down no principle of democracy. 'there is a nervousness in our mind that if any province goes against the Centre, then this provision is so arbitrary, so unprecedented that no party can be allowed to rule in a province, but that on the slightest pretext of crimes of violence or subversive activities, the whole provincial constitution may be superseded. Therefore, my submission is that we should not enact any such provision in a state of nervousness and the amendment moved by Mr. Kamath is I think, justifiable and I support it.

Mr. Naziruddin Ahmad : Mr. President, Sir, I think clause (1) of article 275 as it is moved in the present amended form is a most important provision in the whole Constitution. Many honourable Members have expressed the fear that this might be used for suppressing the legitimate aspirations of the people and suppressing democratic institutions. But I submit that this gives merely the power to issue a Proclamation of Emergency. It does not compel or induce the President to act without much serious thought. The parallel of other countries has been cited. But I submit that democratic institutions in many other countries are well established and the people are highly law-abiding and there is very little danger of internal disorder as there is likelihood in India. I submit that we must take not a theoretical view of the affair but rather a practical view. I submit that there are real dangers threatening the internal peace of the country, apart from the fear of external aggression. The fear of war is not a mere speculation today. War may break out in any part of the globe on the slightest pretext and a little explosion in any part of the world might lead to a world-wide conflagration in which India would necessarily be involved much against her wish. I, therefore, submit that so far as war and external aggressions are concerned, a power like this is absolutely necessary. Then the question of internal disorder requires to be very carefully considered. There are many dangers lurking in the way of the establishment and maintenance of democracy in this country. In India the proposed Constitution is a new experiment in democracy. There are forces of disintegration and disorder already visible everywhere. There is corruption, nepotism, favouritism and inefficiency in many parts of India today. These may lead to small disorders and gradually to misgovernment and grave general disorder, and it is necessary to guard ourselves against general disorders of that kind. The instance of Calcutta has been cited by one honourable Member, but the fact that the emergency has not been declared so far as Calcutta is concerned is due simply to the fact that the disorders that are taking place there can be quelled by the Provincial Government. If the disorder grows wider, becomes too much to be controlled by the local authorities or even by the employment of the military, I think a Proclamation of Emergency may be necessary, although the Congress Government is in power. Forces of disorder are visible everywhere in the land. I am told by some honourable Members who have knowledge, that life is very insecure in many parts

of East Punjab. On open highways, there are dacoits and robbers who are plying their trade with impunity. It is only the other day that in Agra, a small boy of about 6, the son of a rich man, was kidnapped at night. Some time later it was discovered that the boy had vanished. A number of men, including the police, set out in search parties in different directions but The boy was not to be found. Information then came to the father that the boy was in the hands of a band of dacoits safely entrenched in a dense jungle and they would give up the boy on the payment of Rs. 60,000. There were negotiations in which the police also took part and they arrived at a compromise of Rs. 30,000. With the consent of the police the amount was paid through a confederate who had been asked to approach the dacoits alone and the boy was recovered. This is not certainly an instance upon which Proclamation of Emergency should be issued, but these are instances, pointers, to show that these may develop into a general breakdown and then a Proclamation of Emergency may be necessary. During the infancy of our democracy, such a power is theoretically necessary. I wish, as other honourable Members in the House wish, that the Proclamation of Emergency would never be declared and issued, but the necessity for such powers cannot be denied. I submit that the power should remain.

Then a question has been raised as to whether the action of the President should be preceded compulsorily by the advice of the, Ministers. I submit this condition is more or less academic. So far as the issue of Ordinance is concerned, the matter is not urgent; perhaps the advice of Ministers would-be necessary, but in this case, a Proclamation of Emergency may have to be issued at very short notice. It may be that the President is on tour and he is advised that a grave emergency arises and he has to act on the spur of the moment and he should have the power even without the advice of the Ministers to issue the proclamation. But I hardly fancy that such a situation would arise. I think that when the President gets a drastic power, he would in every case and in all conscience act on the advice of the Ministers to strengthen his own hands. There is no doubt that he would consult his Ministers, but I think it is not necessary to make it a condition precedent and I should leave the matter at that.

Then there are questions of revocation. It is provided specifically that an emergency proclamation may be revoked by the President. Mr. Kamath has pointed out that the power to vary the proclamation is not specifically given, but I think it not absolutely necessary. In fact, there is nothing preventing the President from revoking the proclamation and issuing it in an altered form. That would provide for variation and I therefore submit that the article impliedly provides for variation of the proclamation.

Then there is the condition that it should be laid before the legislature for ratification. I submit that there is no occasion of questioning the prestige of the President by enacting this provision. This is very necessary because I think that if there is a Proclamation of Emergency and if it is placed before the House the House in all probability, if there is any seriousness about the situation would support the Proclamation of Emergency. It is to ensure the support of the members, who have the authority of the people that is behind this provision. Then, if the legislature does not support it, the Proclamation of Emergency dies a natural death within thirty days from the time when the House first sits. In these circumstances, I submit that the article is well conceived. There is no defect anywhere and as a theoretical power, this should be accepted in the form in which it is prosecuted.

Mr. Tajamul Husain: Sir, this matter to my mind is very important and serious. There cannot be the least doubt that the President must have wide powers

[Mr. Tajamul Husain]

in case of an emergency—that is when the country at large or a particular part of the country is in danger. But, Sir, I submit that while I agree that wide Powers must be conferred on the President to protect the country, there must be some safeguards for the people at the same time. I have read the amendment moved by my honourable Friend, Mr. Kamath, in which he wants that unless there is actual war or an actual internal disturbance, the proclamation by the President should not issue. I quite appreciate his contention because there is a danger in issuing a proclamation when there is an apprehension that the country is in danger. For instance, even now, Sir, I tell you that the country may be considered to be in danger. It may be invaded by some foreign power. We hear that the country is internally in danger. But simply because the country appears to be in danger and the President is satisfied that the country is likely to be in danger this is not sufficient reason for him to issue a proclamation. Therefore, I suggest that some safeguards should be inserted in this article and I do think that this article should be reconsidered very carefully. As it stands, I am afraid, the people's liberty may not be safe in the hands of the President. I therefore support the amendment moved by my honourable Friend, Mr. Kamath—amendment No. 154. I am so much in favour of giving the President this extraordinary power, that I am prepared to say that even if the Legislature is sitting, he should have this power. Supposing the country is actually invaded by a foreign power and the Legislature is sitting. In that case the Legislature is bound to take some time before it passes a Bill into an Act. But for the President to issue a proclamation will take no time. So even if the Legislature be in session, the President should have that power. I think this is the only course open to us in case of actual danger. There is no other course. Something has to be done; otherwise if there is no such power there may be chaos. But if the Assembly is in session and the Proclamation is issued, it should immediately see whether it agrees with the proclamation or not. But if the Legislature is not sitting, then I submit that it should be summoned at once. There should be no delay. I do not want this Proclamation to last two, three or four months.

Shri Brajeshwar Prasad : On a point of information, I would like to know this : suppose the unfortunate condition occurs that the capital of the country has been occupied by a foreign power. How and where will the Legislature be summoned ?

Mr. Tajamul Husain : If this capital is unfortunately occupied by a foreign power, perhaps there will not be a President : why talk of the Legislature !

Shri Brajeshwar Prasad : The President will go to some other place and carry on. This happened in some countries in the second World War.

Mr. Tajamul Husain : I am very glad that the President can run away, as it did happen in the second Great World War when capitals of Russia shifted from Moscow and of France from Paris. Similarly I say to my honourable Friend, that the whole Legislature can go where the President goes. If the President can run, we too can run after him. We are not going to leave him alone. After all, it is the House of the People and if the people want the country to go to the dogs well let it go. So the people are, after all in all.

I hope I have satisfied my friend that it is absolutely essential in the interests of the people that the Legislature must be summoned immediately after the proclamation has been issued.

Now, Sir, there is another amendment moved by my Friend, Mr. Kamath—which is amendment No. 147—which says that this proclamation must be issued on the advice of the Council of Ministers. I suppose that the President

will always act on the advice of the Ministers and will not go against it. But I do think it should be explicitly mentioned in the Constitution that the President is compelled to act on the advice of his Ministers. After all, the President is the nominee of the people, but the real nominees are the Council of Ministers. If they advice him to do a particular thing, he is bound to act upon that advice. Therefore. I think in a matter like this—which I consider very serious and very important—it should be inserted in the book of the Constitution that the Prime Minister and his Cabinet must be consulted by the President before the issue of a Proclamation.

Now, Sir, as regards a disturbance, internal or external, in a unit. What is to happen ? I have always been in favour that the Centre must be very strong and the Centre must control the Unit. If there is a disturbance in a particular unit, that unit is bound to take help from the Centre. Now the President will issue a Proclamation as regards the unit concerned. I agree that, as has just now been argued by Mr. Karimuddin, there is a slight danger as regards issuing a proclamation in connection with a unit which may be in danger. He has mentioned the case of Bengal. I may also mention the case of Bengal or any other units. At the moment, you will find that in all the provinces in India the party that is in power is the same as the party at the Centre. Now there are other parties trying to come to the fore, such as the Communist Party and the Socialist Party. It does not matter which party is in power. A time will come when the Communists will be in power. The Congress cannot last for ever. No political party can last for ever. It will go as happened in England where we have had the Conservatives, Labour and the Liberals. Suppose the Communists are in power all over India and the Congress want to come back to power. But they have no power in any of the units. Now the Communists want to crush the opposition. They can very well tell the President that there is a great danger in their unit that he must help. So there must be a safeguard. This is the only danger. See what is happening in Bengal now. Whichever party it may be you must give full freedom, at the time of the next general elections, both to their agents and others to talk about things and criticise the Congress administration as much as they like. Unless this is done, this is not a free country. I admit, as I have said before, that the President must have power, but I want my honourable Friend Dr. Ambedkar to reconsider the matter in the light of what I have suggested and see that the interests of the people are safeguarded. He will see that the proclamation is not issued to crush a party which wants to come into power.

Shri Mahavir Tyagi : Sir, I rise to support the amendment moved by Dr. Ambedkar. My support is slightly weak, because the amendment itself, in my opinion, is weak. I want that the Centre should be strong by all means. It is only this clause which will maintain a permanent relationship between the Centre and the units. The only other way is the taxes that we collect or grants that we give them. There is no other formal contract or agreement between the Centre and the Units. After all, our conception of democracy is quite different from the conception in the West. No one mould of democracy can fit us here. Just as Mr. Attlee's that will not fit our Prime Minister here nor the latter's Gandhi cap fit Mr. Attlee's head. Democracy is a conception which cannot be brought and implanted here as it is found in other countries. It has to adjust itself or adapt itself according to our geography, history and our psychology. Our country; our people, our economics, our military and our strategic position and other similar considerations are all to be taken into account and democracy has to adjust itself accordingly. The only cardinal point in democracy is that the administration must be carried on according to the wishes of the people as a whole. The will of the people must prevail and so long as that is guaranteed democracy is not disturbed at all. In this case if disturbances were to go on and the Centre has no right to

[Shri Mahavir Tyagi]

interfere, there will be a tendency towards disintegration. If there is a party wedded to violence and there is a revolt in a unit against the Centre this emergency power will be of use. Even if there is peace and no war and the government of a unit revolts from the Centre, I think we must have provision to meet even such cases of revolts against the Centre. If a State government does not want to have any connection with the Centre and wants to go out of the union or acts in conjunction with a neighbouring province or a foreign country the emergency has to be resorted to, and I am sorry that Dr. Ambedkar for fear either of my radical friends here or some of his colleagues in the Cabinet has made the provision slightly halting from this point of view.

Even in these words there seems to be one legal point and I hope eminent lawyers like Pandit Pant will look into it and see if there is any chance therein of accommodating my wishes also. The wording of the article is :

“If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance he may, by Proclamation, make a declaration to that effect.”

Whether by war or external aggression or internal disturbance are only three instances given by way of explanation, but it does not limit these categories. There may be other variety of emergencies too when the article could be resorted to. The main condition of the clause is that the President should be satisfied that a grave emergency exists and at once this article shall be made use of. These three categories mentioned in the article are, not exhaustive, and if it were so Dr. Ambedkar should say that only in these three emergencies the article would be made use of. There may be other emergencies, say for instance a revolt by a State. I hope in this very article there is a chance of other emergencies also being included. This should be made clear and I would like Dr. Ambedkar to make it clear. I want him to make it clear that these three emergencies are not the only ones and that there may be many others. Why cannot other emergencies also be accommodated. There should be no objection to this article, because the democratic rights of the people are guaranteed rather than usurped. The people are not disturbed at all. It is for the protection of the State that the President takes the action. A State is but a composition of the democratic rights of the people and it is for that purpose that States exist. When the very existence of a State is in danger it is for the Centre to see that the State, which is the symbol of the social guarantee of the democratic rights of each citizen under it, is protected and it is for the protection of these rights of the individual that the Central Government jumps in.

Then again, the President is elected by the whole of India. He is the sole custodian of the rights and freedom of the people. He is the person in whom the whole of India vests its confidence. So it is he who is the biggest symbol of democracy who will declare an emergency. How then will democracy be in danger ? I do not understand. Wherever the President is mentioned it means the Government at the Centre. The word President includes consultation of the opinion of the Government at the Centre. So it is the Central Government which takes over and proclaims this emergency. Again, these administrative powers are not vested in a dictator of the old days, like the Governor-General, Governor or the Secretary of State for India or any other authority nominated by him. The President's office is an elected office. The highest democratic dignity and honour are vested in the President, and it is the President along with the Cabinet who announces the emergency. So, if we do not agree to arm the Centre with this emergency power, I am afraid our country, whose prestige is not yet very high and whose power is not yet big and whose neighbours on either side are enemies,

will soon come to grief. We have to see that the whole of India faces her problems as one unit. This is the only article that unites all units and this is in fact a sanction behind the Union. After all there is no contractual agreement between the units and the Union. This clause is the only thing that binds the units together and prevents the people of one unit acting in a manner prejudicial to the interests of the country as a whole. Even the tendency to act in such a manner has to be curbed. Under democracy we have to act and live together. If one finger is cut off the whole body will get the pain. The Union is such a body, I conceive India as one unit and so if there is trouble in one part of the Union, the whole Union will suffer. Therefore it is for the Centre to see that there is absolute peace in all India, and to take prompt action when that peace is threatened. Sir, clause (3) which has been opposed by some friends is again very important. It is no use issuing orders after a disorder has actually started. The emergency powers must be resorted to before the emergency actually arises. So clause (3) is the most important clause as it enables action to be taken in advance. I therefore lend my whole-hearted support to it. Although my friends think that this is a reactionary provision, I do not agree with them. We must all support it. I only want that some more categories must be added to the three categories mentioned in the article. There may be other emergencies besides the three provided for. I support the amendment.

Shri Jagpat Narain Lal (Bihar: General): Sir, I have come to give my wholehearted support to the amendment moved by Dr. Ambedkar. I think there will be general agreement that this emergency power is very necessary. Those who are watching the situation in the country, especially at the present time, after we have achieved independence, will agree that there is greater need in our country for emergency powers now than at any other time.

There are friends who have compared this article to Section 93 of the Government of India Act. There can be no comparison between that section which was calculated by a foreign Government to snatch away the little power that was given to us and the present provision giving the power to the President to preserve our national independence. The preservation of the independence which we have achieved is very important. My Friend, Mr. Tyagi, who supported the amendment, drew the attention of the Mover to the fact that the three categories mentioned in the clause were not exhaustive enough. May I say that they are exhaustive enough and point out that war is one actual contingency, external aggression is another which exhausts every contingency and internal disturbances also cover every contingency which can be imagined to arise within a State. I therefore see no reason for adding further categories to it. The Drafting Committee.....

Shri Brajeshwar Prasad : Why not delete it ?

Shri Jagat Narain Lal : Deletion will make the clause much wider in scope. I do not like to give more powers. The Drafting Committee have improved the original draft article. They have, instead of retaining emergency powers for six months reduced them to two months. They have also added a provision to the effect that when the legislature is dissolved, within one month after. It meets if it does not approve of it, the Ordinance would automatically cease to operate I think these provisions are enough. If, within these provisos, we are not prepared to grant emergency powers to the President, we need not grant any emergency powers at all. As a previous speaker already stated, the Ordinance is likely to have approval of the Central Cabinet. In a situation like this, I would even go further and say that, if the Central Cabinet also does not realise that an emergency has risen and fails to rise to the occasion, the President in whom the entire nation reposes its confidence should possess this power.

[Shri Jagat Narain Lal]

I do not want to add much more to what has already been said. I accord my wholehearted support to the amendment moved by Dr. Ambedkar I hope the House will adopt it unanimously.

Shri T. T. Krishnamachari : Mr. President, my excuse in intervening in the debate at this late stage is that I do not like the public in this country to get the impression that we are putting into this Constitution something which is wholly unconstitutional or something which is going to be the means of subverting the Constitution or something which is going to nullify all the rights and privileges given to our citizens under this Constitution and concentrate in the hands of the executive of the Centre enormous powers which will ultimately make them virtual dictators in this country.

Sir, I am one of those who believe that it would be well if we could frame a Constitution without providing therein powers to the executive to abridge at any time the liberty of the citizens or do anything which is either unconstitutional or extra constitutional. I heard with attention the speech of my Friend Mr. Kamath, a very eloquent speech in which he took objection to the entire part 9 and asked whether there is any constitution in the world in which similar provisions had been embodied. He did very wisely make an exception in regard to the Weimar Constitution in which article 48 contained some provisions of this sort. Surely, the framers of any Constitution at the present day would be failing in their duty if they do not take note, in times like this, of the difficulties that abound around every country. Not merely are there threats of wars and undeclared wars and internecine disturbances, but there are also other calamities which are likely to arise partly because of economic conditions that exist within the countries and economic maladjustments which demand immediate settlement and partly because, there are forces in the world that wish to make the economic maldistribution the basis for subversive political action and in the result making these worse than what they actually are. Therefore if the Constitution framers do not provide safeguards for protecting the Constitution in times of emergencies that might arise, I feel that the framers of that Constitution would be guilty of a grave dereliction of duty. Sir, I feel that that is the excuse for our putting in this Constitution this Part IX entitled Emergency Provisions. It is not that the Drafting Committee has merely borrowed the wording of Section 102 and Section 126-A of the Government of India Act 1935. They have bestowed great thought and care to see that the Government has adequate powers to face an emergency to face an emergency which may very well threaten this Constitution, which may practically make this country come under a rule which is entirely unconstitutional. They have at the same time provided enough safeguards to see that the popular voice would be heard, that the popular will will dominate whatever might be the conditions under which we will have to function under these emergency provisions.

There is another aspect of this matter which those who are critics of this Constitution should note, viz. that this, as a written Constitution, has got therefore all the defects, incidental to it. If we do not envisage the possibility of there being some disturbance in the future which will upset the Constitution and provide against that contingency, it may be that the powers that be, whoever may happen to be in power at the time would find themselves unable to act because there are no powers given to them to deal with the emergency. I would ask my friends, both Mr. Kamath and Professor Shah, to read the history of the American Constitution and to spend some time and thought over that portion of the Constitution which gives the President the powers of the Commander-in-Chief and also go into the history of that country during the years 1861 and thereafter when the whole country and the Constitution which in very many respects served as a model Constitution

for us were made safe only because of a very wide interpretation of the duties, obligations and powers that the President had by virtue of the fact that he was also the Commander-in-Chief. The literature on that particular clause, the clause which gave powers to the President as the Commander-in-Chief to maintain law and order, to fight aggression and also to lead the country in times of war, is enormous. In fact, on a subsequent occasion when America came into the First World War, it was by virtue of these powers, though exercised in a different manner and though the methods followed were totally different, that President Wilson was able to get the entire economy of the country geared up to war effort. Yet, why should we, with all that experience before us, omit to put in explicit terms such safeguards in the Constitution that will protect the Constitution in times of grave danger ? Is it wise for us to come here and indulge in heroics and say "Here is something which is being sought to be done which would result in unconstitutional action being made constitutional, which will put so much power in the hands of the President and in the Central executive that will make them completely autocratic." What is the pleasure, may I ask, for those who are drafting this Constitution, in empowering somebody who is to come later on some years or perhaps some decades hence, with whom they might probably have no connection whatever, in clothing them with such extraordinary powers unless it be that their only consideration is that the Constitution that we are framing here today must be safeguarded in all circumstances ? To use a phrase which has come into vogue, it may be that the President and the executive would be exercising a form of constitutional dictatorship, acting under the provisions of Part 9. But as I said before such dictatorship would be very necessary in order to safeguard the constitution and it is a grim fact from which we cannot escape so long as the world is what it is today with the threat of war, aggression and internal strife, arising out of various causes, mainly economic, as I understand it that are ever-present. I would ask my friends who criticise these provisions, Who would like, the people outside to know that they are the champions of the liberty of the people by telling them that those who have drafted this Constitution want to encircle this country by a Constitution which gives the executive so much power that a dictatorship would result, I would ask them to consider why in several Constitutions, particularly in the French Constitution between the years 1813 and 1853, provisions have been made for the declaration of what was called a state of seige, which perhaps was the counterpart of the constitutional dictatorship envisaged in article 48 of the Weimar Constitution. Not even a country like England is completely free from the possible exercise of such emergency powers After the First World War England passed the Emergency Act of 1920 wherein they gave full powers to the Executive to deal with the situation as they liked and to issue proclamations of emergency subject only to Parliamentary approval and subject to a limited duration. In fact, that particular Emergency Act was not brought into being for the purpose of meeting a foreign enemy, it was not brought into being for the purpose of meeting any force which would threaten or upset the Constitution as such but in order to meet the grave economic consequences that would arise if the Government were not acting. That was the justification for a country like England framing an Act like the Emergency Act of perhaps surpasses in its scope and comprehension any of the Acts that have been passed by the British Government in India when they were in power. I would ask my friends who criticise us for inserting, this provision to look at history. Do they really want us not to provide the means by which this Constitution would be saved ? This emergency provision is merely intended to meet one purpose namely that all our efforts all these years spent in Constitution making may not go in your and those people who will be in power in the future would be adequately empowered to save the Constitution. I would ask the House to consider this chapter as a sort of safety valve, which is intended to save the Constitution. Sir, with regard to the wording of the article that is before us it happens to be the central provision governing not merely provisions contained in articles 276, 277, 179 and 280 but of another set of provisions as well. Care has been taken in framing

[Shri T. T. Krishnamachari]

these articles that as soon as it would be physically possible the Parliament should be summoned and its ratification should be obtained and even the exercise of the powers under article 276, 277, 279 and 280 cannot be done without Parliament giving some kind of *imprimatur* to the action initiated by the executive. After all we are not suspending by means of these provisions sittings of Parliament. We are not suspending Parliament's powers over the Constitution and Parliament has always the right to call the executive to order; and if they find that the executive had exceeded their powers in regard to the operation of any of the provisions enacted under the emergency laws, they can always pull them up; they can dismiss the Ministry and replace them, so that it would appear on examination that we have taken very great care to see that Parliament's powers shall be kept intact and Parliament shall be summoned with the least possible delay. In fact, it may be a question of argument amongst the members of the House whether the two months that is allowed before Parliament can be summoned and their approval can be obtained which is the maximum that is allowed to the executive, is not erring on the liberal side. In a country of distances there is no point when we are enacting a statutory prohibition against the continuance of a proclamation beyond a specified period to put it under a very strait jacket, when it might be well high impossible for the Parliament to be summoned in time which is perhaps ordinarily less than a month and Parliament might need a month to discuss the various provisions that will arise as a consequence of the emergency being declared. So long as we have safeguards that the ultimate control of Parliament will remain intact these provisions really fall into their proper perspective, and there is nothing very seriously objectionable in them.

One point was raised by Mr. Kamath which has been answered by other Members, and that is that we should put in a provision somewhere here that the President cannot act except on the advice of his ministers. The whole scheme of this Constitution has been envisaged on the basis that the President is a Constitutional head even though we have not put it in so many words within the Constitution about which you rightly asked some time back. The fact still remains that the President is only a Constitutional head and nothing more. The President can only exercise Powers on the advice of his ministers and if we here put in a provision which explicitly says so then by implication it would mean that in reference to other provisions in this Constitution the President can act on his own, merely because of the fact we have put in here a specific provision that the President should act on the advice of his ministers. Unless we do it right through, It would be wrong to put in a provision of that nature here, and the purpose that we want to be served is not going to be adequately met because there is an explicit mention in one particular place. Actually the President cannot do anything excepting by consulting the ministers; and if he does so, if he assumes to himself the dictatorial powers then the provision of article 50 and the subsequent articles could be brought into operation and the President might be impeached and thrown out of office.

The other section of this part will be discussed later on because the emergency provisions fall into two parts; one is, when a grave emergency threatens the whole country the President has to take action in order to protect the Constitution; and the second is, another part which ought to be perhaps part (b) of this particular part that relates to a contingency where a President will have to interfere in the matters confined to the limits of a State. An amendment in regard to this aspect of this matter will be moved by my honourable Friend, Dr. Ambedkar in due course and there might be an opportunity of speaking thereon, but so far

as this particular article 275 is concerned, we are not envisaging here what we would like to put in the other part, namely, in regard to the powers of the Constitution to deal with an emergency or some situation that might arise in one part of the country only covered by a State. That is a totally different matter altogether and as I said, all along even in that part the Drafting Committee has taken care to see that the powers of the Parliament are not in any manner abridged. If some people criticise here that inroads have been made into the Fundamental Rights, that the citizen's privileges are curtailed, what will the representatives of the citizen in Parliament be doing at that time? Why should my honourable Friend, Mr. Tajamul Husain take serious objection to any temporary curtailment of the free exercise of civil liberty, as it is called—God knows what it really means,—so long as there are 750 people in the Centre who have to exercise a watchful control to see that that is not unnecessarily abridged? I have no doubt that Mr. Tajamul Husain himself will agree that there must be a necessity for civil liberty to be abridged in certain contingencies. Take, for instance, rationing. It is undoubtedly a curtailment of the civil liberty. I cannot go and get a maund of rice or wheat. We tolerate that and we should probably have to do something more than that in order to help the State through an emergency and to safeguard the Constitution; and if the civil liberties of the people are unduly restricted, I say the responsibility will be that of the ultimate rulers of the people, not that of the executive and if the executive does not obey the call of the representatives of the people who are watchful, that executive will have to go provided the peoples' representatives assert themselves. Therefore, I feel that this cry that these provisions will unduly abridge the civil liberties of the people is not right so long as; we have not abridged the powers of Parliament to see that the Government of the day does allow people that amount of civil liberty consistent with the safety of the realm and safety of the Constitution. Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to rut the provision in this Constitution, but at the same time we would be failing in our duty if we do not put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people here in this House and elsewhere will understand that these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution. Sir, I support the amendment moved by the Honourable Dr. Ambedkar.

Shri H. V. Kamath : May I tell my honourable Friend, Mr. T. T. Krishnamachari that the point I made out with reference to article 48 of the Weimar Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President : Dr. Ambedkar may like to speak.

The Honourable Dr. B. R. Ambedkar: I do not know; so much time has been taken up in the debate. If the Members who have taken part in the debate desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President : I think that Mr. T. T. Krishnamachari has dealt with all points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava : We do not require any other reply.

Mr. President : I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I can not certainly prevent you from doing so. Would you take much time to reply ?

The Honourable Dr. B. R. Ambedkar : I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

Prof. Shibban Lal Saksena : Let us hear him tomorrow. In any case we want to hear him.

Mr. President : I am only thinking of the time. I do not think any reply is particularly called for. I will put the amendments to vote now.

The question is :

“That in sub-clause (a) of clause (2) of article 275, after the words ‘may be revoked’ the words ‘or varied’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 275, after the word ‘President’ the words ‘acting upon the advice of his Council of Ministers’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, the words ‘by war or by external aggression or’ be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, for the words ‘occurrence of war or of any such aggression or disturbance’ the words ‘occurrence of such disturbance’ be substituted.”

The amendment was negatived.

Mr. President: I shall put the article as moved by Dr. Ambedkar.

The question is :

“That for article 275, the following article be substituted:—

‘275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as “a Proclamation of Emergency”)—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be laid before each House of Parliament;
- (c) shall 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 has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of 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.

- (3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.”

The amendment was adopted.

Mr. President : The question is :

“That article 275, as amended, stand part of the constitution.”

The motion was adopted.

Article 275, as amended, was added to the Constitution.

The Assembly then adjourned till 9 of the Clock on Wednesday, the 3rd August 1949.
