

## CONSTITUENT ASSEMBLY OF INDIA

*Thursday, the 4th August 1949*

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

DRAFT CONSTITUTION—*contd.*

**Articles 188, 277-A and 278—*contd.***

**Mr. Naziruddin Ahmad** (West Bengal: Muslim) : Mr. President. Sir. I was dealing with clause (2) of the proposed-article 278. There the wording is “Any such Proclamation may be revoked or *varied* by a subsequent Proclamation.” The words “or varied” were proposed to be inserted in a similar context by an amendment by Mr. Kamath. But that was rejected. In the new article 275, clause 2(a), the wording is : “may be revoked by a subsequent Proclamation.” Mr. Kamath by his amendment No. 111 of List No. 1 of this week, wanted to amend it by inserting the words “may be revoked *or varied* by subsequent Proclamation.” The same words have been officially accepted in the present, article namely, “may be revoked *or varied* by a subsequent Proclamation.” I think this want of uniformity is due to the haste and rapidity with which the Drafting Committee has to keep pace with varying directions.

Then coming to proposed article 278-A sub-clause (a) and (b) of clause (1) are new. Clause (a) is new and (b) is consequential. The new point which has been introduced is also revolutionary. Instead of allowing the Provincial Legislatures to have their say on the emergency legislation and thereby giving the Provincial Assemblies an opportunity to assess the guilt or innocence of the Ministers or other person or to give a verdict, the responsibility is thrown on the Parliament. That would again, as I submitted yesterday, go to make the Central Government and the Parliament unpopular in the State concerned. It may happen that Provincial Ministers and others are guilty of mismanagement and misgovernment; but if we, do not allow the Provincial Assemblies to sit in judgment over them, the result would be that guilty or innocent persons, lawbreakers and law-abiding persons, good or bad people in the State should all be combined. The result would be that those for whose misdeeds the Emergency Powers would be necessary, would be made so many heroes; they would be lionised, and the object of teaching them a lesson would be frustrated. The Centre would be unpopular on the ground that it is poking its nose unnecessarily and mischievously into their domestic affairs.

Then, Sir, in sub-clause (c) of clause (1) of this article 278-A, the President is expected to authorize and sanction the Budget as the head of the Parliament. This would be an encroachment on the domestic budget of the Provinces and the States. That would be regarded with a great deal of disfavour. It would have been better to allow the Governor or the Ruler to function and allow their own budget to be managed in their own way. Subventions may be granted but that expenditure should not be directly managed by the President.

Coming to clause (d) there is an exception in favour of Ordinances under article 102 to the effect that “the President may issue Ordinances except when the Houses of Parliament are in session”. The sub-clause is misplaced in the

[Mr. Naziruddin Ahmad]

present article. There is an appropriate place where Ordinances are dealt with. Sub-clause (d) should find a place among the group of articles dealing with Ordinances and not here. This is again the result of hasty drafting.

These are some of the difficulties that have been created. It is not here necessary to deal with them in detail. The most important consequence of this encroachment on the States sphere would be that we would be helping the communist techniques. Their technique is that by creating trouble in a Province or a State, they would partially paralyse the administration and thereby force the Emergency Powers. Then, they will try to make those drastic powers unpopular. What is more, they will make the guilty Ministers and guilty officers heroes. The legislature of the State would, as I have submitted, be deprived of the right of discussion. If the President takes upon himself the responsibility of emergency powers, then his action, I suppose, cannot be discussed in the States legislatures. The only way of ventilating Provincial and States grievances is to allow the Provinces and the States to find out the guilty persons and hold them up to ridicule and contempt and that would be entirely lost. This would have the effect of bringing all sorts of people, good and bad, law-breaking and law-abiding persons into one congregation. The Centre will be unpopular and the guilty States would be regarded as so many martyrs and the Centre would be flouted and would be forced to use more and more Emergency Powers and would be caught in a vicious circle. Then, the States will gradually get dissatisfied and they will show centrifugal tendencies and this will be reflected in the general elections to the House of the People at the Centre. The result would be that very soon these very drastic powers calculated to strengthen the hands of the Centre will be rather a source of weakness in no distant time. I have a fear which is not based without sufficient consideration and thought that we are gradually, but perhaps unconsciously, drifting towards dictatorship. It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet, it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts. The fear of the Communists is at the back of these emergency powers being centralised. This was the very reason which led Hitler to establish his dictatorship. In fact, his object was to get rid of the Communists in Germany. Having successfully suppressed the legislature and successfully suppressed expression of public opinion, Hitler produced a big fighting machine and then he felt the desire to have territorial expansion which led to the last war which led to his downfall. Mussolini also built a dictatorship by similar process, and both of them had to share the same fate. I only hope that we are not drifting towards that end. I have, however, a suspicion that the very steps which the various modern dictators have taken, perhaps unconsciously taken, with the *bona fide* belief of doing good to the country, we are unconsciously following the same road to lead to a dictatorship. There is a feeling in the House, especially among the younger sections that dictatorship of some kind is a great necessity in India. I submit that though that is a very natural feeling, dictatorships have only one end and that is failure. In fact, they get into a vicious circle; they create opposition by dictatorship; that opposition is checked by further acts of dictatorship; the opposition secretly grows and ultimately is enough to set aside the very power which created it. On the other hand, the best thing is to allow the natural democratic forces to work. As everyone knows, even here, newspapers are not free and there is a feeling amongst the newspapers that they cannot freely publish facts if they go against the Government or in any way put the Government in an unfavourable light. I think these are bad signs. This series of articles will accentuate an unhealthy opposition without any doubt. I hope that every law-

abiding, citizen, every man who has faith in the Constitution and in democratic method should rise and oppose this tendency. In fact, this is a Symptom of a deep-seated disease, namely, to acquire power and to concentrate power in the hands of the Centre. As I have submitted, this will react on the very persons who want dictatorship. The best thing is to allow free scope for public opinion. This result has unfortunately been hastened by the fact that throughout the country, in the States and in the Provinces and in the Centre, there is no regular, organised opposition. There is irregular, disorganised, unorganised. opposition in the country which in the absence of legitimate vent, expresses itself, in general dissatisfaction and law-breaking tendency on a large scale. In fact, the habitual law-breakers and honest citizens are brought together on the same platform on account of repressive measures. I hope that my warnings would prove false; nobody would be more glad than myself to find in the long run that I am wrong. But, I have a fear that we are marching towards a dictatorship and we might go the same way as the two latest dictatorships went.

**Mr. President** : Pandit Thakur Das Bhargava.

I hope Members will have an eye on the clock. We have been on this article for four hours and twenty minutes now.

**Pandit Thakur Das Bhargava** (East Punjab : General) : Sir, the provisions of the Constitution relating to emergency powers are really very important and my apology for coming before this House and taking its time is that I feel that the Drafting Committee has to be congratulated in tackling the question in a very able and a very adroit manner. Sir, it is very easy to criticise any proposal which comes from the Drafting Committee. If the Drafting Committee had kept article 188 intact, I have no doubt that the very Members who have now criticised would have come forward in no less strong language to criticise the keeping intact of 188 also. What we have to see is whether on a balance of advantages and disadvantages the present position is better or not. From this point of view my humble submission is that the retention of 188 would have been a great mistake. After all this taking away of 188 and substitution thereof by articles 278 and 277-A predicate that the Governor will have no emergency powers, and instead of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.

Secondly, I am very glad that article 277-A is being enacted. This was a great lacuna in the whole Constitution. I cannot understand how the provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing by itself. Now we have already provided fundamental rights and we have provided the Powers of the Supreme Court. We know that the army and navy are all under the Centre. How can Provincial autonomy remain totally unrelated and the State can have absolute rights ? Supposing the Constitution fails, how can a State guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a province by itself be able to meet the situation when the use of army and other forces are required by the State ? It is, therefore, but proper that in regard to provincial autonomy also we must realise that the Centre has got a duty to discharge and a very great duty to discharge. My only complaint is that when we enact 277-A we only enacted a pious wish. I wanted and I put in an amendment that to be more logical we should have also enacted a further provision that for discharge of the duties by 277-A, it was the duty of the Central Government to take such measures as they

[Pandit Thakur Das Bhargava]

require to ensure the discharge of the proper functions. In a given situation when there was no breakdown of the Constitution but there was a danger of its breaking down, even then the Centre has a duty to discharge and the Centre should have been given powers to discharge it. It is not enough to say that it is the duty of the Centre to see that the Constitution is worked. Therefore, when there is a duty for the Centre there should be means enough to see that the Centre comes forward and does its duty under a given set of circumstances. Therefore, I wanted to see that the Centre was given powers even when there was no breakdown of the Constitution.

Now I must admit that in regard to 278 and 277-A some criticism has been made. The first criticism that I wish to dispose is about the word 'otherwise'. There was a complaint to start with when the Governors' post was declared to be non-elected and he must be appointed by the Centre. Then there was a complaint that this was a retrograde measure. Now those who oppose this article say that the report of the Governor is the sole thing which ought to be considered. If the Governor is not independent and is only an agent of the Central Government, what is the use of his report. When you confess that the Governor is an individual person and he does not represent the people of the province, how can you rely on his report ? The words 'on report or otherwise' do denote a state of things in which the Governor may not be doing his duties, or may give a wrong report. Suppose there is a conflict between the Governor and the Ministers, and the Ministers and the Houses pass a resolution to the effect that the Centre should intervene, and there is conspiracy and the whole State is seething with strife and this state is not reported by the Governor, what would happen ? Under these circumstances it is fair that the words 'or otherwise' should be there. They provide for such contingencies. After all, the Centre or the President has to save the situation and see that, in case of failure of Constitution, conditions do not deteriorate into chaos. If that premise is correct, in whatever manner the President may come to know or the Centre may come to know, it is the duty of the Centre to interfere. Therefore these words 'or otherwise' do not mean, as one of my friends suggested, that report of the C.I.D. would be enough. It is a more serious thing. How could the President or the whole Cabinet act in such an irresponsible and rash manner? I understand the fear of those who think that these words now given in article 278 are too wide. They are too wide. There is no doubt that an irresponsible Cabinet or a President can certainly act rashly. Now what is the failure of machinery is the question of questions. Supposing the constitutional machinery does not work well—it works 2 per cent. well and 98 per cent. wrong or it works 98 per cent. well and 2 percent. wrong the question of questions is if there is a deadlock in a very small particular, can it be said that the Constitution is not carried on as it ought to be? But I do not think that any person will contend that on an occasion like this the Centre will take up the responsibility which is a responsibility very hard to discharge. After all, no Central Government would like that there should be conflict between the Centre and the State. Why should we assume that the Cabinet will act rashly or wrongly? I do not know of any provision in which some defect cannot be found. Only when this Constitution is not honestly worked in the right spirit, it is capable of creating mischief. Otherwise there is no provision in any constitution which cannot be abused. Why should we assume that this will be abused? After all, what is the difference? Even if action is taken by the Centre how would the Centre proceed. Does it mean that the whole thing will become topsy turvy ? It is not likely to work that way. Even if the Centre takes into its hands the administration of the province, the State provincial machinery will, not go to dogs. The Centre will not send thousands of persons to administer. the State and function differently from before. We can imagine what will take place in such a situation.

In India there are many provinces which have been working democracy for a very long time. There are many States in which these democratic institutions are being planted to day. For centuries they have been under a feudal system. Therefore, my submission is that unless you make provision like this, the Centre will not be doing its duty. It is the duty of the Centre to see that the Constitution is worked rightly and well.

I know the criticism has been expressed that articles 277-A and 278 take away the powers of the State and they will therefore reduce them to subservience. Some critics have in fact, said that provincial autonomy will be a mere farce, and that the proper action which under those circumstances ought to have been undertaken by the Provincial Governor would not be taken by the Central Government. But this is not the case. These critics seem to have failed to see that no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted. In my humble opinion as soon as such a situation arises, the first duty that the Governor will perform will be to dissolve the House. Unless and until every attempt has been made, and unless he finds that even the ordinary liberties cannot be enjoyed by the people, he will not come to the conclusion that the Constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law, to arrange in such a way that the Constitution is worked. When the entire thing has failed, then there is nothing but confusion and chaos. At that time what is the choice? Mr. Naziruddin Ahmad said that in that case, the Centre takes up the whole administration in its own hands, and so there will be confusion. But I say that it is just to avoid such confusion and chaos that the Centre takes on the administration. Are we to continue that confusion and chaos which have resulted from the failure of the constitutional machinery ? of the two, I am sure every one will admit the better thing is for the Centre to interfere and take over the administration.

**Dr. P. S. Deshmukh** (C.P. & Berar: General) : On a point of information, Sir, may I ask the honourable Member to tell us where is the provision in the sections that we have agreed to for the dissolution of the House by the Governor, in an emergency.

**Pandit Thakur Das Bhargava** : May I put a counter question to my honourable Friend and ask him where is the provision to say that the Governor shall not act, under article 153 ? I also understand that the Constitution requires that the Governor shall act in this respect, in his discretion, and so as soon as he finds that the situation is such that the dissolution of the House is necessary, then it is his duty to act in such a manner. The Central Government also will look into the matter, and will not take up the administration of the State lightly, because it is a very hard task. Why do you think that the Governor will not act? That is the question which my Friend has to answer before he puts the question to me.

Now, let us anticipate the situation. If there is failure of the constitutional machinery of the State, only for two months the Cabinet is entitled to take the entire administration in its own hands. And for those two months, how will the Centre be benefited ? Parliament will decide whether the action of the Cabinet was correct or not, and if Parliament agrees, then it means that the representatives of the particular State are there, the representatives of all the other States also are there, and if they approve of the action of the Cabinet, I do not see what possible objection can be taken. Moreover, there are all these safeguards. There is the question of two months, then there is question of the Cabinet deciding the question, and then the provision of six months period. All these are, no doubt, very good safeguards, and I do not see how the critics are justified in calling this article "dishonest, criminal" and use all the other epithets in their vocabulary. My humble submission is that, in the growing

[Pandit Thakur Das Bhargava]

conditions of India when we see so many fissiparous tendencies working in the country it was very right for the Drafting Committee to have brought forward a provision like this. It is only a cementing measure. It gives responsibility to the 'Centre to see that the provinces proceed with their administration in a business-like and constitutional manner.

It has been argued that article 275 is there and that is quite sufficient and that there is no need for enacting a measure like article 278. And it is further said that in article 278, no question of peace and tranquillity and internal commotion arises. May I point out that the situation is one in which the entire machinery has failed, and ordinary people do not enjoy the common liberties? Internal disturbance to peace and tranquillity are all covered by this. There may not be internal disturbance, but there may be imminent danger to peace: and tranquillity being broken by the people at large. In those circumstances, I do not think the State is justified in saying that there is no insurrection, and no internal disturbance. It is much better to have a preventive measure than a cure after the insurrection takes place. From all these points, I think, the enactment of article 277-A and article 278 are perfectly justified. I only wish that the logical conclusion of 277-A should have been enacted and the Centre should have been given more power to see that before the constitutional machinery fails the Centre discharges its duty in seeing that it does not fail.

**Shri Brajeshwar Prasad (Bihar : General) :** Mr. President, Sir, I rise to support the article 278 as moved by Dr. Ambedkar. But there are certain provisions in this article to which I would like to raise some objections. I am not in favour of the provision that the President can exercise legislative powers on behalf of the State only if Parliament so agrees. I am not in favour of this, because of two reasons. Firstly, it will mean delay. If the President wants a particular legislation to be passed at once, under this provision, he will be handicapped, because it will take time for the measure to go through Parliament. But time is of the very essence of the situation. In an emergency the President must be in a position to act swiftly and rapidly. If his legislative power is handicapped in this fashion then there will be difficulty. Secondly, I am opposed to this because of another reason. Suppose Parliament refuses to give its sanction. Suppose Parliament refuses to pass a law which the President considers to be necessary to meet the exigencies of the hour. In that situation, what will happen ? There will be difficulty. Therefore, I am in favour of the President having all legislative powers. If there is a grave emergency, and if the machinery of law and order has broken down in any province, then the President should be vested with all legislative powers. He has already been vested with executive powers. I see no harm, no irreparable damage will-be done, no wrong done to the people of the country or to the Constitution, if for a shod time, for a limited period, the legislative powers as well are vested in the bands of, the President.

Sir, I am opposed to another provision in this article, that the powers and functions of the High Court will not be abrogated during a period of emergency. I would like to know why. Do you distrust your President ? Do you think he will go out of his way to indulge in acts of personal tyranny in order to feed fat his grudge against some political opponents ? In a period of emergency all the energies of the President, all the attention of Government and of the Council of Ministers would be diverted towards one goal, *i.e.*, how to maintain law and order and bring about peace in an afflicted part of the country. Sir, a few months ago there was a hot debate in the house on the question as to whether the words "due process of law" should be incorporated in this constitution. We felt that if these words were there, the hands of the executive would be fettered and so we dropped those words. The danger of a grave emergency arising in this country is not merely theoretical; it is very real. And

I should like to know whether it is possible for the President to function and meet a crisis without abrogating, if he feel necessary to do so, some of the fundamental rights of the citizen. After all, it is for a temporary period for which we are asking these powers for the President; it is not a permanent provision which would remain in operation for all time. Therefore I feel that the powers of the High Court should be abrogated, if the President so thinks. I am not saying that as soon as article 278 comes into operation all powers of the High Court should be abrogated at once. I only want that if the President feels that he cannot meet the emergency without abrogating some of the fundamental rights of the citizen he must be empowered to do so. And there are reasons behind it. I feel that if there is a conflict between the security of the State and the personal liberty of the individual I will choose the former and lay stress on the security of the State. For the first time in the chequered history of India we have got an independent State of our own; are we going to barter it away in the name of some new-fangled notions which have been discredited in their own homelands ? The best thing of course is to have both security of the State and personal liberty of the individual. But the ideal thing is not always possible; and when there is a conflict between these two, my friends will have to make a choice; I would choose the security of the State.

There is an implication in article 278 which is something like saying that you must overcome evil by good and meet lawlessness with law. The President has no powers to meet undemocratic forces in the country except in a democratic manner. It is like saying that the forces of evil must be overcome by the forces of non-violence and good Practical statesmen and law-makers will not accept this proposition easily.

I am also not in favour of the provision that the period of emergency shall not last beyond a period of three years. This is like King Canute telling the tides not to touch his royal feet. How can you lay down in advance that the period of emergency shall not extend beyond three years? The forces of disorder and lawlessness, are increasing, and spreading fast in this country; and we do not want this article to be used as a cloak for other activities. I ask my honourable Friends to calmly consider the dangers and the threat to which our attention has been drawn by Mr. Kamath,—the danger of dictatorship arising in this country. I will say that the question of success of democracy in this country does not depend on the sort of Constitution that we make here; it is vitally related to our economic set-up and our social institutions. A mere democratic Constitution will not save us unless we reform our social and economic institutions.

Sir, we have been told that the Weimar Constitution came, to an end because of some provision in the constitution. I do not accept this. It is a matter of surprise that a person of the intellectual eminence of Mr. Kamath should have advanced such a shallow argument. It was not because of any article that Hitlerism came into power. It would have come in any case, whether that article was there or not. Hitlerism came because of the defeat of Germany in the first war. I am doubtful whether democracy can succeed in Germany. The Prussian traditions of war and conquest are so much imbedded in the German soil that it is not possible for a democratic constitution to succeed in Germany.

Sir, a charge has been brought against me that I lack a sense of constitutional propriety. As a humble student of political science I had the privilege of reading almost all the constitutions of the world under some of the ablest Professors of this land; but I have come to the conclusion that there are no fundamental laws in politics, no eternal truths which are applicable to all people for all time. A provision that is found suitable for Canada may be thoroughly disastrous for us because the course of evolution is not similar in any two countries. What is happening in Canada or has happened there may not

[Shri Brajeshwar Prasad]

happen in our country. Therefore I see no sense in saying that merely for the sake of constitutional propriety we must create a number of institutions, one opposed to the other.

I will say one more thing. It is not a pleasure for me to say things which do not find favour with the gods. But I have a duty to perform. I love this country and am not prepared to sacrifice its interests at the altar of any ideology. I am prepared to accept communism or socialism, or any other kind of ism, provided I am convinced that it would strengthen the foundations of our State. If I do not feel like that I will not support it merely because it is fashionable to applaud democracy. I am a democrat to the core of my being, but I feel that unrestricted and unregulated democracy at this moment will bring about disaster. I have nothing to say against any one; Members are free to express their opinions; I run a personal risk in talking in the way I have done.

**Shri Algu Rai Shastri** (United Provinces : General) : \*[Mr. President, I beg to submit that the articles under discussion at present, I mean article 188 embodied in the fourth part of the Draft Constitutions and article 275 embodied in the 11th part, should be retained as they are in the Draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration I may make mention of the difficult situation existing in Bengal and Madras today. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this article, by Proclamation, take the constitutional machinery of the province in their own hands.

Article 275 relates to the emergency power vested in the President of Indian Union. The situations in which a Governor and the President may exercise the emergency powers vested in them may be quite different. There may arise a situation like the one that arose during the last Great War when, as a result of the German invasion of Poland, the whole world was plunged into war. When the last world war broke out, the then Government of India found it necessary to proclaim an emergency. Such situation or emergency is caused by a problem that concerns the whole world. On account of such a situation the whole country may be threatened with disaster. In the circumstances the President of the Indian Union has to exercise his own discretion and declare an emergency. But the State Governors may be faced with a situation that concerns only their State; and under such circumstances, they will have to exercise their own discretion and issue a Proclamation of Emergency. We, therefore, must vest them with emergency powers. The powers that were vested in the Central Government under the provisions of Section 93 of the Government of India Act, 1935 are now being tried to be retained under different articles of the Draft Constitution. The British have, no doubt, left the country, but their mentality of distrust is still lingering here. Whatever they gave us with one hand, they tried to snatch away with the other. The British rulers used to run the Government from Delhi. Forced by the growing agitation and compelled by circumstances, they gave some power to the people with the sole object of appeasing them. Even after granting Provincial autonomy they were not sure that the provinces would cooperate with them sincerely if a situation arose which required their co-operation, and it was only out of this distrust that they wanted to make some provisions to enable them to take up the Government of the province in their own hands in times of emergency. They did not want sincerely to hand over the provincial Governments to us. In 1939 after the

---

\*[ ] Translation of Hindustani Speech.



world war broke out, we protested against the emergency powers of the Governors and the Provincial Governments passed resolutions in their Legislatures against these powers being exercised by Governors. The fact is that we were not one with the Government that was then ruling over us against our wishes. It wanted our country and our people to participate in the war but people were against this; Mahatma Gandhi also advised the nation that it was immoral on our part to participate in the war. There were two trends then working in the country. The Central Government was forcing us to join the war while the different organisations that were fighting for freedom and had the independence of the country at heart were opposed to this, and they wanted to defeat the Government on that issue. They asked the Government to state the cause that warranted their participation in the war and for this purpose a meeting of the All India Congress Committee was also held. There ensued a grave struggle on account of this and the movement of 1942 was started. All this was the result of the second great war. It is, therefore, not proper for us to follow the Government of India Act, 1935, or take it as a Bible. But we find today that it is now actually being followed, as a Bible. There is a saying in Sanskrit

श्रुत्या एक वाक्यत्वात् अनर्थक्यम् तदर्थानम्।

*“Shrutya Eka Vakyatwat Anarthakyam Ththarthanam”*

It means, what is consistent with Shruti should be taken as right. Our Drafting Committee is also practically working on this assumption that whatever is consistent with the Act of 1935 is right and thus they are going on retaining in the Draft Constitution the various provisions embodied in the Act of 1935. The alien Government that was functioning here under the Government of India Act, 1935, embodied, in the said Act Section 299 which lays down that no property shall be acquired without making due compensation for it. This provision was made only for safeguarding the English companies operating in India. They had apprehensions that in Free India they would be disposed of their properties. Today we are actually following in their footstep in providing article 24 in the Draft Constitution. Section 93 has now been put before us in this form. We are happy with article 93 as contained in the Draft Constitution. Articles 188, 275, 276 and 278 of the Draft Constitution are exactly on the lines of Section 93 of the Government of India Act 1935. They are essential and imperative. Keeping in view the fact that the Provincial Governments may have to face internal disturbances Governors of the States are vested with emergency powers under article 188 and no doubt it is a proper provision. Freedom brings in its wake various problems and difficulties which have to be faced by a nation. Anti-social elements are very active in Bengal today. They want to uproot the Government of the Province. The same thing is happening in Madras. Hyderabad too has been the scene of these activities. All these disturbances that we are witnessing today are no doubt local in character but they may create a grave situation necessitating immediate intervention. Now the question arises as to who should intervene immediately. Naturally the man on the spot must be trusted as was observed by the late Lala Lajpat Rai. Distrust begets distrust and trust begets trust. We must trust the authority on the spot. We have provided for a Governor for each province. We are going to pay him a very high salary and provide him with all material comforts; we are going to give him a supreme status in the Constitutional structure of the States, but despite all this, if we do not vest in him the emergency powers, we are in reality making him only a nominal figurehead. In that case we should not call him a Governor; rather make a little change in his designation and put it as GOBAR NAR—a dummy. Bharat had installed the wooden sandal of Ram on the throne and ruled the kingdom on behalf of the sandal. He used to offer worship to it daily but our Governors whom we are going to instal in an exalted office will not be Governors in the real sense of the term; they are going to be only show-boys. What is the sense, after all, in having a nominal figure

[Shri Algu Rai Shastri]

head ? Why then pay him such a huge salary ? Well, it would be better not to appoint them at all. It is better if the huge amount to be incurred on account of their salary and other allowances is saved and utilised for the benefit of the poor people. You are going to appoint him as Governor and ruler of a province, but you are not prepared to vest in him the power of exercising his own discretion at a time when a grave situation has arisen. Under article 188 as contained in the Draft Constitution a Governor can, if he is satisfied that grave emergency has arisen, make a declaration to that effect. When he has made such a declaration, he has, as is laid down in the article, to forthwith communicate the Proclamation to the President of the Union. Now, it is for the President to study and consider over the situation. He may consult the Parliament and revoke the Proclamation if he so deems necessary or may extend it for a further period. Article 278 empowers him to take any of these courses which he deems proper.

Dr. Ambedkar thinks that the Drafting Committee is being charged with not being firm in its ideas. We have great respect for Dr. Ambedkar. We all praise the wisdom of the Drafting Committee. These articles have been drafted by the Drafting Committee. We have had no hand in preparing these articles. We beg to request him to retain articles 188 and 275 as contained in the Draft Constitution and submit that they are complete and would amply serve the purpose. Article 277-A is intended to point out to the Union Government their responsibility in respect of maintaining the governmental machinery in the States. Their responsibility in this respect is self-evident; it is implicit. Under article 188 the Governor of a State may declare that a grave emergency has arisen. After issuing such a declaration he is bound, under the article, to communicate the declaration to the Union Government. This information is given so that the necessary action consequential to the information may be taken. Steps may be taken to maintain regional tranquillity and order. After this, the duty of the Centre regarding regional order under article 278 read with article 188 is over. Articles 277-A and 278-A are redundant, are unnecessary. I would submit that if fresh amendments received daily are tabled after considerable consideration, the amendments tabled by Shri Kamath and Prof. Shibban Lal Saksena would become unnecessary, and we can pass this Draft easily and devote ourselves to other important business.

I would also like to mention another matter. The previous British regime had issued various Ordinances after 1939. An ordinary constable was authorised to detain anybody in prison for fifteen days. Later on the period could be extended to six months. So a constable was authorised to detain for fifteen days. We are not prepared to give this right to even the Governor. In this manner the mania of centralisation, *i.e.*, the notion, that everything should be done by the Centre itself and that the regional administration should not continue to be free, is creating distrust. In this way the creation of distrust will beget more distrust and this will grow in the posterity and in the future generation. Besides this, local initiative will be suppressed. The capacity to work on one's own initiative will be destroyed.

I would congratulate Dr. Ambedkar for his imagining a contingency when the whole of the Cabinet and the Governor of our border province of East Punjab may form a clique and possibly line up with Pakistan or possibly some other country. Assam may join Burma and in this way strange things may happen. A ruler must be suspicious, for it is written that a ruler should be suspicious even of his wife and son. On the basis of that principle, this Idea of strengthening, the Centre can arise and from this point of view the new amendments being moved now may have their significance. But we should also see the other side of the case. These Governors are also the strong pillars of the Centre. It is improper to distrust them. I would therefore say that though

I have not come forward to oppose strongly these amendments, for I do not think that I am wiser than Dr. Ambedkar and the Drafting Committee, yet I would humbly submit that Dr. Ambedkar and the Drafting Committee should seriously consider whether our original Draft cannot serve the purpose, so that you may withdraw your fresh amendments and the other Members may also do likewise. With these words I make the above submission.

**Mr. President :** I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

**Several Honourable Members :** The question be put, the question be put.

**Mr. President :** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word “and” should be substituted by the word “or”. I do not think that that is necessary, because the word “and” in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, “and” or “or”, as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278, because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes these powers under sub-clause (a), that power of dissolving the legislature and holding a new election will be automatically transferred to the President which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in

[The Honourable Dr. B. R. Ambedkar]

this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary in view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in articles 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province. All that happens under article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

**Pandit Hirday Nath Kunzru** (United Provinces : General) : May I ask my honourable Friend to make one point clear? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

**The Honourable Dr. B. R. Ambedkar:** No, no. The Centre is not given that authority.

**Pandit Hirday Nath Kunzru :** Or only when there is such misgovernment in the province as to endanger the public peace ?

**The Honourable Dr. B. R. Ambedkar:** Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

**Pandit Hirday Nath Kunzru :** What is the meaning exactly of “the provisions, of the Constitution” taken as a whole? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase ‘in accordance with the provisions of the Constitution’.

**The Honorable Dr. B. R. Ambedkar :** It would take me very long now to go into a detailed examination of the whole thing and, referring to each articles say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression “failure of machinery” I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary.

**Shri H. V. Kamath** (C.P. & Berar : General) : What about the other amendments moved by Professor Saksena and myself ? Is not Dr. Ambedkar replying to them?

**The Honourable Dr. B. R. Ambedkar :** I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

**Shri H. V. Kamath:** Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

**Mr. President :** I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

**The Honourable Dr. B. R. Ambedkar :** In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening, in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

**Shri H. V. Kamath :** Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

**The Honourable Dr. B. R. Ambedkar :** I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

**Mr. President :** I will now put the amendment to vote one after another.

The question is :

“That article 188 be deleted.”

The motion was adopted.

Article 188 was deleted from the Constitution.

**Mr. President:** Then I will take up article 277-A.

The question is :

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

The amendment was negatived.

**Mr. President :** Now I will put amendment No. 221.

The question is :

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

The amendment was negatived.

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

“That in Amendment No. 121 of List I (Second Week) of Amendments to Amendments, for the words ‘internal disturbance’ the words ‘internal insurrection or chaos’ be substituted.”

The amendment was negatived.

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

“That after article 277 the following new article be inserted:—

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

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

The motion was adopted.

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

“That article 277-A stand part of the Constitution.”

The motion was adopted.

Article 277-A was added to the Constitution.

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

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

The amendment was negatived.

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

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

The amendment was negatived.

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

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

The amendment was negatived.

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

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

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

The amendment was negatived.

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

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

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

Provisions in case of failure  
of constitutional machinery  
in States.

- (a) assume to himself all or any of the functions of the Government of the State and all or any, of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

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

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

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

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

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

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

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

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

Exercise of legislative  
powers under proclamation  
issued under article 278.

- (a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;
- (b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India;
- (c) for the President to authorise when the House of the People is not in session expenditure, from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

[Mr. President]

- (d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.
- (2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

The amendment was adopted.

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

"That the proposed article 278 stand part of the Constitution."

The motion was adopted.

Article 278 was added to the Constitution.

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

"That proposed article 278-A stand part of the Constitution."

The motion was adopted.

Article 278-A was added to the Constitution.

#### Article 279

(Amendments Nos. 3026 and 3027 were not moved)

**Prof. Shibban Lal Saksena** (United Provinces: General) : Mr. President, Sir, this article takes away the Fundamental Rights contained in article 13 in an emergency. If it is the desire that these rights should be abrogated, it should be done by Parliament by law during that period and it should not be left merely to the executive authority to do so. It is quite conceivable that a war may break out and may last for a fairly long time. The last war lasted for six years and I cannot conceive that for six years the Fundamental Rights granted under article 13 should remain suspended all over the country. It is a most extraordinary state of affairs and I do not know of any Constitution in the world where the fundamental rights would remain suspended for six years. I therefore move the following amendments :—

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

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

The article will read as follows after that:—

"While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the Parliament to make any law which the Parliament would otherwise be competent to make."

My amendments come to this, that during an emergency the Parliament alone will have the power to suspend the Fundamental Rights given under article 13. Otherwise, if the rights become automatically suspended and the executive authority can do what it likes in this regard, it would be an extraordinary state of affairs. This is a matter of fundamental importance and I would like honourable Members to ponder over this question. The rights that we propose to give