

portance has been given only one hour. It is a Constitution amendment Bill. I think it is the first Constitution Amendment Bill that has been treated, I should say, so ungenerously. Therefore, I would submit very respectfully, Madam, that my Bill should get at least three hours.

Mr. Chairman: The hon. Member will sit down. When we came to that Bill, we will see. The question is:

"That this House agrees with the Ninety-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 24th August, 1966."

The motion was adopted.

14.34 hrs.

CONSTITUTION (AMENDMENT)
BILL*

(Insertion of new articles 125A and 221A)

Shri Hari Vishnu Kamath: I move for leave to introduce a Bill further to amend the Constitution of India.

Mr. Chairman: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

Shri Hari Vishnu Kamath: I introduce the Bill.

14.35 hrs.

CONSTITUTION (AMENDMENT)
BILL—contd.

(Amendment of article 352) by Shri Hari Vishnu Kamath

Mr. Chairman: The House will now take up further consideration of the following motion moved by Shri Hari

Vishnu Kamath on the 12th August, 1966:—

"That the Bill further to amend the Constitution of India be taken into consideration."

Out of two hours allotted, six minutes had been taken and one hour 54 minutes remain.

Shri Hari Vishnu Kamath (Hoshangabad): Madam Chairman, I had briefly moved this motion formally for consideration a fortnight ago and I would appeal to hon. friends and colleagues on both sides of the House to pay that attention to this matter, which in my humble judgment, I submit, deserves because in all conscience the matter is very vital and the issue concerns not only Parliament as such but the functioning of parliamentary democracy in letter and spirit.

Before I go to the Bill itself, I would refer to what was said about this matter in the Constituent Assembly of which you, Madam Chairman, were a distinguished Member, so was Mr. Tyagi. You remember very well how this was discussed for days on end, for more than a week I believe... (*Interruptions*). I had the misfortune of exclaiming at the end of the debate that it was a black day in the history of the country, when the emergency provisions without the amendments which I had suggested—some were accepted but the vital ones were rejected—were adopted. Tyagiji did support most of the amendments. But unfortunately that went in vain and the amendments were not accepted. Some were accepted, the others were rejected and that made me exclaim that it was a black day in the history of our country when these emergency provisions were passed in the quorum in which they were adopted. On 2nd August, 1949, Shri T. T. Krishnamachari, an eminent member of the Drafting Committee, replying to the debate on that day, a debate in which

*Published in Gazette of India dated 26th August, 1966.

[Shri Hari Vishnu Kamath]

many members had taken part, said—I would not take the time of the House by reading the names of members who had taken part in that important debate and I would not also read the whole speech but only one sentence which was significant—he said:

“These emergency provisions have got to be tolerated as a necessary evil.”

On the 4th August, the architect, the pilot of the draft constitution, Dr. Ambedkar, who was the chairman of the drafting Committee, made a very significant speech on this. He said, two days later, that is on the 4th August, very pointedly, with all the force at his command, he was a fine orator; I remember very well how he imported all his vigour into the speech he made on that day; you would also recall, Madam Chairman, if you are gifted with good memory, what he said referring to the general debate that had taken place in which it was said that these articles were likely to be abused.....

Shri S. M. Banerjee (Kanpur): They are being abused now.

Shri Hari Vishnu Kamath: I am coming to that. Dr. Ambedkar said:

“I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes.”

You too will agree, Madam Chairman; you may not, when you come down; he said ‘for political purposes’.

Mr. Chairman: The hon. Member may continue his speech without referring to me.

Shri Hari Vishnu Kamath: I cannot ignore you; how can I?

Shri Nambiar (Tiruchirapalli): It adds to the waste of the speech.

Shri Hari Vishnu Kamath: If I have offended you in any way, I am sorry. In fact, Dr. Ambedkar went on to say—he was a fairly good democrat:

“In fact I share the sentiments expressed by my hon. friend Mr. Gupte... yesterday.....”

He referred to Mr. Gupte by name; Shri Tyagi will recall our friend Mr. Gupte; he made a forceful speech the previous day. He continued:

“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.”

Pious hopes expressed but unfortunately hopes turned into ashes; so have pious sentiments expressed even by eminent men like Dr. Ambedkar, chairman of the Drafting Committee who piloted the Constitution and his colleague, Mr. T. T. Krishnamachari who had dubbed it as a necessary evil. What do we find, Madam Chairman, today? I am sure hon. colleagues on both sides will agree that this Parliament will go down in history as an Emergency Parliament.

There was what is called the Long Parliament in British history. That Long Parliament is well known; many of my colleagues have read British history and they will remember that there was a Long Parliament. And so this House will be described in history as the Emergency Parliament. Hardly had we entered this House, within six months of our taking the oath in this House, an emergency was proclaimed; not that it was proclaimed without any basis; the Chinese attack was there. The cries of Hindi-Chini-Bhai-Bhai of those days went up in smoke and we were faced with the stern reality of the President's proclamation of emergency under article 352. But since then, the emergency has been with us, with the people; the people have been suffering under the burden of the emergency, while the Government is enjoying the emergency.

The Ministers sometimes show an utter unconsciousness, non-consciousness, I would say; they are unaware of the emergency. There was a classic example, on that side, near the seat where Shri Koya is now sitting, of an ex-Minister, a fairly senior ex-Minister showing that unawareness. You will recall that he later went to Kerala State as Governor, and later took part

in a party election. It is not important and we shall not refer to that now. He stood up and asked in the House, "Where is the emergency?" We were taken aback. He did not know there was an emergency. He was one of the ex-Ministers who had held office for many, many years. He became Governor later.

Shri Yashpal Singh (Kairana): Then he was President of the Uttar Pradesh Congress.

Shri Hari Vishnu Kamath: So also many Ministers here, in answering questions and when they deal with other matters, betray a woeful lack of a sense of emergency in the sense that we are not made aware of the real purpose, and the manner in which the Government is utilising the emergency for the purpose for which it was intended. What was it intended for? It was intended to strengthen the country against external aggression, and to make our defence preparations adequate to meet an assault on the security and freedom of the country. We have been having a debate just a little while ago on that very subject.

You will be surprised to know that even after three and a half years—it is in fact three years and nine months now nearly, and another two months or so will complete four years of emergency—the emergency continues—I do not now why the emergency should continue. But that is another matter. I am not dealing with it; that has been dealt with by my hon. colleague Shri Dwivedy some days ago.

But the subject-matter of the Bill is that the executive, clothed as it is with extraordinary powers, should not be taken for granted in this dynamic and changing world. Shri Swaran Singh, the Minister of External Affairs, while answering a question on Mr. Dhamija's note the other day, said that this is a changing, dynamic world. Of course, it is a changing, dynamic world; the Government may also change in that sense. The Government should also change. Anyway, their attitude must change. (Interruption).

They took powers under the emergency in October, 1962. When President's rule is proclaimed in a State and the State is taken over by the President, that matter comes before Parliament every six months. It pertains to one State, of course. But that is important. Not that Kerala and Punjab are not very important; they are very dear to us. The point is, that matter comes to Parliament for ratification and re-approval. Why God's good earth should we not follow the same practice with regard to the emergency in its application to the whole nation and the whole country? I do not deny the conditions which certainly necessitated the continuance of the powers, but is it right, proper or desirable in a democracy, in a Parliamentary democracy, if they want to follow the true letter and spirit of Parliamentary democracy, that this power should continue unabated and indefinitely?

Parliament approved the proclamation of emergency. We did approve of it when the Chinese aggression took place. We gave the Government all the powers that they wanted; nobody batted an eye when we gave the powers. Every power asked for was granted without much ado. The historic resolution piloted by Jawaharlal Nehru still rings in my ears as it does in your ears, I am sure, and everybody else's ears. And within a few days, the Defence of India Bill was passed by Parliament. In less than a fortnight, the entire legislation was over, and on the 9th November, I think, we passed the Defence of India Bill into law. That was the situation then compared to the situation now. I do not wish to go into details as regards contrasting the two situations. We feel better prepared now. The Defence Minister of that time has passed into history; rather, he is no longer in the Cabinet. He was there when the Chinese attack took place; he is no longer there. We have another Defence Minister; we have some changes in the Government. We have unfortunately lost two Prime Ministers since then, and in that sense also this Parliament will go

[Shri Hari Vishnu Kamath]
down in history as a historic Parliament.

Shri Tyagi (Dehra Dun): This is a changing world.

Shri Hari Vishnu Kamath: Yes; we lost two Prime Ministers. We have had three Prime Ministers in these five years. So, in more than one sense this is not only a historic Parliament but an emergency Parliament also. So, if Government wants to respect the spirit and the letter of the democratic constitution, is it not obligatory to consider that the Government,—just as they come before Parliament for the continuation of President's rule in a State, Kerala or Punjab, should come before Parliament in respect of this proclamation also? In respect of Kerala, every six months, they come to us with a resolution approving President's proclamation. Last year we had it; twice we had the Kerala resolution moved by the Home Minister himself. Of course, in Parliament they have their bull-dozer majority, and yet they have got our approval. That does not matter; I have no quarrel on that score, because the bull-dozer has come into existence and we cannot quarrel on that score. The people have put that bull-dozer into operation and the bull-dozing goes on.

Shri Hem Barua (Gauhati): Bulls also.

Shri Tyagi: There are brakes; cracks.

Shri Hari Vishnu Kamath: I thought you said they operate the bullocks, and so it was a bull-dozer.

Shri Tyagi: Brakes.

Shri Hari Vishnu Kamath: Shri Tyagi is one barke. (*Interruption*). Now, I invite your attention and the attention of the House to the clauses of the Bill which have put this matter on a par with the other sister article in that chapter dealing with President's rule.....

Shri Kapur Singh (Ludhiana): Brother article.

Shri Hari Vishnu Kamath: If my hon. friend Shri Kapur Singh is more fond of brothers than sisters, I certainly yield to him. I accept the other article dealing with the President's rule in the States, and I have sought to put my amendment on a par with the other article; it is 356, I believe. The House is well aware of that article; our friends in Kerala and the whole House are aware of that article which provides that when the President takes over a State the President's proclamation taking over the State should come before the House every six months for re-approval.

What does my Bill seek to do? It says:

“A Proclamation issued under clause (1) 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 (2):”

That is only a formality; and now, the proviso is important; the proviso says:

“Provided that if and so often as a resolution—
The wording is the same absolutely,—

“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.”

Now, why should Government be afraid of coming to the House, to both the Houses, unless they have got something to hide. unless there are some skeletons in the cupboard, of which they are afraid. Otherwise, why should they hesitate to come before this House and the other place? With their bulldozer majority, they should have no hesitation in coming before Parliament. Whatever they put before

the House is passed into law, in spite of protests by a few sensible members like Mr. Sinhasan Singh, Mr. Tyagi and a few others.

Shri Hem Barua: Since when has Mr. Tyagi become sensible?

Shri Hari Vishnu Kamath: After Tashkent.

As I said, the emergency is still in operation. How does any Minister with a full sense of responsibility imagine that parties other than the fortunately ruling Congress Party can go and face elections with this sword of Democles, the Emergency, with all its concomitant evils hanging over their heads?

Shri Tyagi: How does it come in the way of free elections?

Shri Mohammed Koya (Kozhikode): Almost all the candidates of the left CPI were arrested in Kerala.

Shri Hari Vishnu Kamath: The elections are supposed to be free on paper. The senior-most Home Minister—we have the three Ministers, the junior, the senior and the senior-most—made a statement in the House last session on early this session that in most parts of India, the powers under the DIR have been more or less withdrawn, though the emergency continues. The Proclamation has not been revoked. It is an anomalous position. The Proclamation has to be revoked under the provisions of the Constitution by the President. That has not been done, but the powers have been withdrawn from the Chief Ministers in some States. But in what are called border States, the powers still continue.

The elections are coming in February.

Shri Tyagi: How are the elections affected?

Shri Hari Vishnu Kamath: I am glad he has raised this point, because he has not been a victim of the DIR—

the Act or the Rules. During the election campaign, if any one of us makes a speech strongly critical of the Government even denunciatory of the Government and its policies . . .

Shri Tyagi: Then you will not be elected.

Shri Hari Vishnu Kamath: I will be elected, in spite of it; rather because of it. Now under these powers in their armoury they can easily arrest that candidate or his workers, as they did in Kerala, and put him in jail. He or his partymen or workers can be arrested with impunity. Is this the way of conducting free and fair elections?

Shri Tyagi: How can a candidate be sent to jail?

Shri Nambiar (Tiruchirapalli): I was there in jail for 16 months. (*Interruptions*).

Shri Hari Vishnu Kamath: Candidates also are citizens of this country. If the Government takes it into its head to arrest a candidate he will be on par with any other non-candidate so far as that matter is concerned. There is no immunity for a candidate. I wish the election law, the bulky thing which was introduced the other day, which is going to be piloted by the Law Minister, contains a little provision that no candidate will be arrested from the time of nomination to the date of poll . . .

Shri Tyagi: Under the emergency provisions.

Shri Hari Vishnu Kamath: Yes. If Mr. Tyagi agrees to that, I will move that amendment and he must support me then.

The Deputy Minister in the Ministry of Home Affairs (Shri Vidya Charan Shukla): No candidate was arrested in the last four years.

Shri Mohammed Koya: What happened in Kerala?

Shri Vidya Charan Shukla: They were arrested before the elections.

Shri Hari Vishnu Kamath: So long as the law is in force; there is no guarantee that a candidate or his worker will not be arrested. You can arrest his workers and paralyse him.

Shri Tyagi: That assurance may be given.

Shri Hari Vishnu Kamath: That will not work. The courts will go by the letter of the law and not by the assurance. I know because I have fought election cases in courts where I have defeated the Congress member.

Madam Chairman, I know I will get another opportunity to reply to the debate. I know many of my colleagues are interested in participating in the debate. I would only urge the Members to bestow their careful attention upon the vital issue I have raised in the Bill and support it with all their heart mind and might. The Proclamation must come before the House every six months—I am not grudging them the powers—so that Parliament will scrutinise it. I am sure you will agree, Madam Chairman, that the supremacy of Parliament must be asserted at every step. Every six months they can come and get the approval of Parliament. What do they lose? Nothing. But Parliament gains in every way. That is what I want.

With these words, I seek the approval of the House for my motion.

Mr. Chairman: Motion moved:

“That the Bill further to amend the Constitution of India be taken into consideration.”

Shri Vishwa Nath Pandey (Salem-pur): I beg to move:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th November, 1966.”

Mr. Chairman: There are a large number of speakers. So, hon. members will be brief in their remarks.

श्री विश्वनाथ पाण्डेय : सभानेत्री महोदया, श्री कामत महोदय ने जो संशोधन विधेयक प्रस्तुत किया है और जो उस संबन्ध में तर्क प्रस्तुत किये हैं, वह मुझे बहुत असंगत मालूम होते हैं। उस का कारण यह है कि जो संविधान के निर्माता थे जिन्होंने उस समय संविधान बनाया, वह विद्वान थे, समझदार थे और सारे संसार के जो संविधान हैं उस को सामने रखते हुए जो भारत को संविधान उन्होंने प्रस्तुत किया है, वह उन्होंने बनाया। श्री कामत महोदय ने भी कहा है कि जिस वक्त संविधान का निर्माण हो रहा था वह भी उस के एक सदस्य थे और उन्होंने उस वक्त भी एक संशोधन प्रस्तुत किया था लेकिन वह संशोधन अस्वीकृत हुआ। जो यह अनुच्छेद 352 इस संविधान के अन्तर्गत है उस का मुख्य कारण और उद्देश्य यह है कि जब देश के ऊपर कोई बाहरी या भीतरी संकट हो उस समय राष्ट्रपति को यह अधिकार है कि वह अपना प्रोक्लामेशन करें, उद्घोषणा करें और इसमें इस तरीके की अपनी घोषणा दें जिससे कि यहां का कार्य चल सके और जितने उपद्रवी लोग हैं, जितने पंचमांगी लोग हैं और वह जो देश के ऊपर आक्रमणकारी हैं उन को मदद देना चाहते हैं या देश के हित में काम करने वाले जो लोग नहीं हैं उनके ऊपर यह लागू हो और देश का इन्तजाम चलता रहे। तो श्री कामत महोदय ने जो रखा है वह बिल्कुल इस के विरोध में रखा है और उन्होंने यह रखने की कोशिश की है दफा 4 जोड़ कर के कि छः महीने के बाद पुनः इस संसद् के सामने वह चीज आवे और उस पर विचार-विमर्श किया जाय। जिस समय राष्ट्रपति महोदय ने इस की उद्घोषणा की उस वक्त देश पर चाइना ने आक्रमण किया था। उस समय देश पर गम्भीर संकट था। उस संकट को देखते हुए यह आवश्यक था कि वह इस को रखें। जैसा कि उद्देश्य में बतलाया गया है कि :

"The Proclamation of Emergency issued on October 26, 1962, still continues in force."

15 hrs

मैं बहुत नम्रता से कहना चाहता हूँ कि जिस संकटकालीन परिस्थिति में राष्ट्रपति महोदय ने इस की घोषणा की, वह अभी खत्म नहीं हुई है। इस माने में खत्म नहीं हुई है कि आप ने देखा कि पाकिस्तान ने 1965 में आक्रमण किया। उस समय देश के अन्तर्गत बहुत से ऐसे तत्व थे जिन्होंने पाकिस्तान संघर्ष में पाकिस्तानियों को मदद दी लुक छिप कर। चाइना के बहुत से समर्थक थे जिस समय चाइना ने आक्रमण किया था इस देश पर। वह स्थिति ज्यों की त्यों बनी रही। जहाँ तक इस स्थिति का प्रश्न है यह जरूर है कि पाकिस्तान के संघर्ष में हिन्दुस्तान की विजय हुई थी, लेकिन अभी भी युद्ध के बादल मंडरा रहे हैं, जैसा कि चाइना के रुख से मालूम होता है, पाकिस्तान के रुख से मालूम होता है। चाइना और पाकिस्तान दोनों के गठबन्धन से साबित होता है कि अब भी हिन्दुस्तान के अन्दर आपातकालीन स्थिति है।

15.02 hrs.

[SHRI SHAM LAL SARAF in the Chair]

इस आपातकालीन स्थिति को देखते हुये श्री कामत ने जो विधेयक पेश किया है संविधान का संशोधन करने के लिए वह मुनासिब नहीं है कि हर छः महीने के बाद राष्ट्रपति महोदय की घोषणा इस संसद् के सामने लाई जाये और उस पर फिर से विचार किया जाये।

राष्ट्रपति महोदय ने उस समय इस की घोषणा की थी जब संसद् का अधिवेशन नहीं हो रहा था। चूँकि अधिवेशन नहीं हो रहा था इसलिए आवश्यक था कि वह ऐसी घोषणा करें, और जब भी ऐसी परिस्थिति आती है तब वह ऐसा करते हैं। माननीय सदस्य ने कहा कि चूँकि निर्वाचन होने जा रहा है इसलिये

इस को नहीं हटाया जा रहा है। अगर निर्वाचन में कोई भी उम्मीदवार कांग्रेस के खिलाफ, कांग्रेस की नीति के खिलाफ, कांग्रेस उम्मीदवार के खिलाफ चुनाव लड़ेगा तो भारतीय सुरक्षा के नाम पर, इमर्जेंसी के अन्तर्गत उस से निपटा जायेगा। लेकिन मैं समझता हूँ कि संविधान के अन्दर भाषा स्वातन्त्र्य दिया गया है, काम करने का पूर्ण अधिकार दिया हुआ है और इस सम्बन्ध में कई बार हमारे गृह मंत्री महोदय ने इस बात की घोषणा की है कि जहाँ तक इस सुरक्षा कानून का ताल्लुक है, इस इमर्जेंसी का ताल्लुक है, सरकार बहुत ही संयत और रेस्ट्रिक्टेड वे (Restricted way) में इस का प्रयोग करती है और कर सकती है। जहाँ तक चुनाव का सम्बन्ध है, उस में इस के उपयोग की कोई गुंजाइश नहीं है।

इसलिये मैं कहना चाहता हूँ कि जो संशोधन विधेयक प्रस्तुत किया गया है उस की कोई आवश्यकता नहीं है, बल्कि इस में बहुत सी गड़बड़ियाँ पैदा हो जायेंगी, पेचीद-गियाँ पैदा हो जायेंगी। यह बड़ा गम्भीर प्रश्न है। मैं समझता हूँ कि जिस रूप में संविधान में अंकित किया गया है उसी तरह से इस धारा को रहना चाहिये और जो संशोधन उपस्थित किया गया है उस का कोई स्थान नहीं है। लेकिन अगर माननीय सदस्य चाहते हैं कि संविधान का संशोधन अवश्य किया जाये तो इस के लिये बहुत आवश्यक है कि इस पर काफी लोगों की राय जानी जाये क्योंकि जो इस तरह के संशोधन संविधान के अन्तर्गत आते हैं उन के लिये जनमत को जानने की आवश्यकता पड़ती है। इसलिये मैंने अपना संशोधन उपस्थित किया है कि श्री कामत ने जो विधेयक प्रस्तुत किया है वह बड़ा गम्भीर विषय है और उस पर पुनर्विचार करना चाहिये, और इस संशोधन को स्वीकार करने के पहले आवश्यक है कि हिन्दुस्तान की जो बड़ी-बड़ी संस्थायें हैं, जनता में बड़े-बड़े विद्वान हैं, और इस विषय के जानकार हैं, उनके विचार हम मालूम करें उसके बाद इस संशोधन

[श्री विश्वनाथ पाण्डेय]

पर यहां विचार किया जाये। मैंने जो संशोधन जनमत संग्रह के सम्बन्ध में रखा है, उस के बारे में मैं इतना ही कहना चाहता हूँ।

Shri S. M. Banerjee: Sir, I rise to support the Bill moved by my hon. friend, Shri Kamath. I congratulate him for bringing this Bill before this House. I have a feeling that if the Home Ministry considers this Bill dispassionately and -objectively there is no reason why this Bill should not be accepted by them.

Sir, emergency today has become a mockery of democracy. I fully agree with Shri Kamath that even the hon. Members of this House are forgetting that there is emergency in the country. I remember, when my hon. friend, Shri Nath Pai—he is sick today, I wish him early recovery—mentioned article 352 and wanted to convince the hon. Speaker about the admissibility of a Calling Attention Notice, Shri A. P. Jain rose immediately on a point of order and said: "Sir, this article cannot be brought here because there is no emergency in the country". Immediately we reminded him that the emergency was there.

Let us see what the provisions are. Article 352 says:

"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."

Shri Kamath wants only that it may be referred to the House every six months. Nothing is going to be lost by that. Whenever we invite the attention of this Government to the various clauses, the various articles of the Constitution, under which they can issue necessary directions to the State Governments against external aggression or internal disturbances, we are told that the Centre shall not take recourse to anything under these articles.

You remember, Sir, when we invited their attention and we requested the Prime Minister and also the Home Minister to react sharply or to issue necessary directions to the Government of Uttar Pradesh under article 353, and also to other Governments where the law and order situation was almost finished, where nothing existed except police-raj, the Home Minister came out with the old theory that they shall not intervene in the internal matter of a State.

So, Sir, when the emergency is there, and it is going to be there, then all the articles of the Constitution should be used, whether against us or against their own party-men, who are in power in other States. It is not done.

Today where is the emergency. And what is the emergency today? We know that emergency is being used for beating the political opponents, for creating almost chaotic conditions in the country. And, whenever there is a demonstration, whenever there is an upsurge against the misdeeds of the Ruling Party, immediately all the provisions under the emergency are brought to quell people's movement. I have no hesitation in saying that this Government is existing not on the basis of their democratic tradition or past sacrifices but on the basis of AIR and DIR. That is exactly how this Government is functioning, and once the DIR is finished and AIR is not used for their own ends, once it becomes an autonomous corporation without interference by the Government, I hope this Government will come to an end. So, Sir, I am sure they do not want AIR to become a corporation and they do not want to withdraw DIR also. That is how the Government is functioning.

Without taking much time of this House, I must request the hon. Minister, who is to reply to this debate, to consult his bosses and see that this is accepted. This is the minimum thing that we can expect, that this House expects from this Government. The provisions in the Bill are very clear. It says:

"A proclamation issued under clause (1) 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 (2):"

That is to say, after the Proclamation is made, it will cease to operate after six months unless it is brought before this House and it gets the approval of the House.

Sir, this House is supreme and sovereign as far as suspension of Members is concerned. We are immediately told that this House is sovereign and supreme, we should not behave in this fashion and we better go out and remain in our constituency or house. Whenever we raise a question of sovereignty of this House, the supremacy of this august House, the independence of this House, we are told that whatever we have done is correct. That is one-way traffic, and we do not expect this to continue for long. In the larger interests of democratic traditions, if we are democrats, in the larger interests of parliamentary democracy if it is to flourish under your guidance, or the guidance of the hon. Speaker, then there are certain healthy traditions which have to be developed in this country.

Now, how is this emergency being misused? Still, those provisions of the emergency under which the State Governments could have been advised properly, they are not being used. What happened in Bombay yesterday? Is it not a fact that the entire city came to a standstill? Or was it only a political stunt? What happened in Uttar Pradesh earlier? Is it not a fact that the entire people of that vast State, which is the citadel of the Congress, moved fast against the **misdeeds of this Government** and there was a mass upsurge, and yet no instruction or direction was issued by the Central Government.

So, why keep this provision at all? What is this emergency necessary
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for? He was talking of external aggression. But if the Home Ministry behaves in this fashion, as they behaved in the latest case of leakage...

Mr. Chairman: The hon. Member should speak on the Bill proper.

Shri S. M. Banerjee: In justification of my plea, I want to place before this House....

Mr. Chairman: It is a little round about way of saying things.

Shri S. M. Banerjee: I know that this point of mine will injure the sentiments of Shri Shukla, who is a very good friend of mine. I ask, where was the emergency when a top secret news was given to *Statesman* and *Dinaman*? Who has given that? When the emergency is there, when the Official Secrets Act is there, when the Government Servants' Conduct Rules are there, this news item has appeared in *Statesman* and *Dinaman*. And today's editorial in the *Statesman* warrants the resignation of the Home Minister, the Minister of State for Home Affairs and the Deputy Home Minister.

What is this emergency? It is a mockery of democracy. It is a rape of democracy. It is meant to curb the activities of those parties and those political leaders who want this Government to change its attitude or quit. I once again congratulate my hon. friend, Shri Kamath, for bringing this Bill. I am sure the House will accept it, even if it is rejected by the Treasury Benches.

श्री राम सहाय पाण्डेय (गुना) : कामत जी के इस विषयक का जिस में संविधान की धारा 352 में संशोधन करने का राय दी गई है वैसे तो मन नहीं होता है कि विरोध किया जाए क्योंकि इस में कही हुई बात किसी हद तक उचित है। यह बात ठीक है कि यह संसद का अधिकार है और संसद के अधिकारों के परिवेश में कोई अनुचित बात न होगी यदि हम छः छः महीने में स्थिति का सिहाबलोकन करें और इस बात को देखें कि हमारे देश की आन्तरिक और बाहरी आक्रमण की क्या स्थिति है लेकिन मच बात तो यह है कि

[श्री राम सहाय पाण्डेय]

इसके पहले कि संकटकालीन स्थिति में कुछ परिवर्तन हो और इस घारा के अन्तर्गत राष्ट्रपति जी को यह सुझाव दिया जाए कि उसको हटा लें, विरोधी दल के नेताओं ने गृह मंत्री जी से बात की थी और जहां तक मुझे स्मरण है गृह मंत्री जी ने स्पष्ट शब्दों में एक उच्च भावना से अनुप्राणित हो कर आश्वासन दिया था कि हम संकटकालीन स्थिति में जो हमें अधिकार मिले हुए हैं उनका दुरुपयोग राजनीतिक स्तर पर नहीं करेंगे। आन्तरिक स्थिति को दृष्टि में रखते हुए और बाहरी आक्रमण के जो संकट आज मंडरा रहे हैं उसकी छाया में गृह मंत्री जी ने यह निवेदन किया था कि हम एमरजेंसी के अधिकारों का कोई दुरुपयोग नहीं करेंगे, उपयोग दुरुपयोग कुछ भी आप कह सकते हैं। उन्होंने कहा था कि हम इसका उपयोग नहीं करेंगे, दुरुपयोग करने का तो प्रश्न ही नहीं उठता है।

श्री कपूर सिंह : प्रश्न तो उठता है।

श्री राम सहाय पाण्डेय : यह तो दृष्टिकोण का फर्क है। इसका प्रश्न नहीं उठता है। आखिर संसदीय प्रणाली और प्रथा की मान्यता और धारणा जब तक हमारे मन में यह है कि जो देश के संचालक हैं और देश की रक्षा करना जिनका दायित्व है जब तक वे अपने इस निर्वाह में समर्थ और सफल होते हैं तब तक कोई कारण नहीं है कि इसका दुरुपयोग किया जाए। दुरुपयोग किया भी क्यों जाए? हम समझते हैं कि इसका सदुपयोग करने का एक बड़ा भारी प्रश्न है। इसलिए विरोधी दल के नेताओं से कहा गया था कि इसका उपयोग नहीं होगा।

जहां तक उत्तर पूर्वी सीमाओं का प्रश्न है आप जानते हैं कि मिजोरलैंड को पाकिस्तान से हथियार मिलते हैं और काश्मीर का झगड़ा भी है। आप यह भी देख रहे हैं कि अरमी का कंसेंट्रेशन हमारी सीमाओं पर हो रहा है पाकिस्तान की ओर से। मानलो कल कोई

संकट आ जाता है तो फिर क्या स्थिति होगी? मैं आप से निवेदन करना चाहता हूँ कि जब तक आन्तरिक और बाहरी शांति प्रस्थापित इस देश में न हो जाए तब तक इस आश्वासन के साथ कि हम इस एमरजेंसी में दिये गये अधिकारों का उपयोग नहीं करेंगे जहां तक कि आन्तरिक स्थिति का प्रश्न है, आपको संतुष्ट हो जाना चाहिये।

आप देखें कि आन्तरिक स्थिति क्या है?

श्री हरि विष्णु कामत : भ इंटरस्ट करना नहीं चाहता हूँ लेकिन मैं निवेदन करना चाहता हूँ कि मैंने यह नहीं कहा है कि एमरजेंसी को हटा लिया जाय पर छठे महीने में एप्रूवल की बात मैंने अपने इस विप्रेषक में कही है।

श्री राम सहाय पाण्डेय : मैंने कब कहा है कि आपने यह कहा है कि एमरजेंसी को हटा लिया जाए। चूँकि आपने ऐसा नहीं कहा है इसलिए तो मैंने आरम्भ में ही आपको समर्थन प्रदान किया है, आपकी जो भावना है, उसका समर्थन किया है मैं इस बात को मानता हूँ कि छः महीने के बाद इसे पर विचार हो, इस में कोई हर्ज की बात नहीं है।

मैं यह कह रहा था कि आन्तरिक स्थिति को आप देखें। आज घेरा डालने की बातें चलती हैं, बन्द चलते हैं, नारे वाजियां चलती हैं। परसों और कल बम्बई में क्या हुआ इसको भी आप जानते हैं। बम्बई बन्द बनाया गया। एक तरफ तो बाहर से खतरा है और दूसरी तरफ आन्तरिक खतरा भी है। चीन और पाकिस्तान पूरी तैयारी कर रहे हैं और हम देख भी रहे हैं कि दुश्मन तैयारी कर रहे हैं और कोई भी दिन ऐसा हो सकता है कि लड़ाई ठन जाए। आज के संदर्भ में हमारी सत्ता को, हमारी सार्वभौमिकता को जब कि खतरा उपस्थित है, देश के सामने खतरा उपस्थित है चीन और पाकिस्तान की ओर से और इस समय घेरा डालने, बन्दों का आयोजन करने आदि की स्थिति है तो मैं कामत साहब से ही एक प्रश्न पूछता हूँ और चाहता हूँ कि वह इसका उत्तर दें इस में कोई हर्ज

नहीं है कि वह अपने साम्यवादियों से, अपने संसोपा मित्रों से भी इसको पूछ कर जवाब दें। अगर ये साम्यवादी चीन में होते या रूस में होते हमारे नम्बियार साहब जैसे लोग और वहां पर इसी प्रकार का संकट उपस्थित होता और संकट न भी उपस्थित होता तो भी क्या वहां घेरा डालने, बन्दों का आयोजन करने की हरकतों को बरदाश्त किया जाता, लूटपाट को वारदातों को बरदाश्त किया जाता, उत्पादन में कमी की स्थिति में देश को डालने की क्या अनुमति मिलती . . .

एक माननीय सदस्य : गोली से उनको उड़ा दिया जाता जो ऐसा करते।

श्री राम सहाय पाण्डेय : यह तो आप यहां की संसदीय प्रणाली के गुण गाइये, प्रजातंत्र का गुणगान कीजिये, हमारे देश के गृह मंत्री जी का गुणगान कीजिये कि बड़ी सहानुभूति व सहनशीलता के साथ वह आपके साथ व्यवहार करते हैं। आज जबकि देश को खतरा है जिस को संसद मानती है, देश का हर नागरिक मानता है तब इस खतरे के रहते हुए भी सरकार की ओर से यह आश्वासन दे दिया गया है कि जो अधिकार हमें प्राप्त हैं, उनका उपयोग संकटकालीन स्थिति में नहीं किया जाएगा तो आपको संतोष हो जाना चाहिये। आखिर इसका निर्णय कौन करेगा कि संकटकालीन स्थिति है या नहीं? हमने ही तो इसका निर्णय करना है, सरकार ने ही तो इसका निर्णय करना है। कामत साहब भी इससे सहमत हैं कि संकटकालीन स्थिति है। अगर संकटकालीन स्थिति है तो यह आश्वासन भी हमारा है कि बाउंड एरियाज को छोड़ कर जहां पर विद्रोह हो रहा है या जहां पर हथियार विदेशों से लोगों को मिल रहे हैं, नागालैंड में, मिजो एरियाज में, असम ट्राइबल्स में जहां पर कि बाहर की एजेंसीज काम कर रही है, विदेशों ने अपनी एजेंसीज छोड़ रखी है जोकि हमारी शांति में खलल और दखल देने की कोशिश करती हैं, और कहीं भी इन अधिकारों का उपयोग हम नहीं करेंगे उसके लिए एमरजेंसी को बनाये रखना बहुत जरूरी है।

हमारे कामत साहब ने कहा है कि छः महीने में एक बार इस पर विचार होना चाहिये। यह छः महीने का उनका मुझाव ऐसा नहीं है कि जिस को मैं कहूँ कि संसद के अधिकारों के परिवेश में नहीं आता है। फिर छः महीने ही क्यों, हर तीन महीने के बाद इस पर विचार क्यों न हो? जैसे ही संसद बैठे एक दिन इस पर बहस हो जाए। कई बार बहस हुई भी हैं। मैं समझता हूँ कि वह दिन अच्छा दिन होगा, वह दिन स्वर्णिम दिन होगा, सुन्दर दिन होगा, स्वस्थ दिन होगा जिस दिन यह संसद राष्ट्रपति जी को यह राय देगी कि अब इस एमरजेंसी को हटा लें, अब स्थिति वैसी नहीं है जैसे पहले थी। जैसे ही संसद बैठे, जैसे ही इस पर विचार हो जाए। मैं गृह मंत्री जी से निवेदन करूंगा कि एमरजेंसी के सम्बन्ध में, बाहरी खतरे के सम्बन्ध में और जो शस्त्र क्रान्ति का आह्वान हमारे राजनीतिक दलों के लोग देते हैं उसको भी ध्यान में रखते हुए, उसको भी सामने रखते हुए, समय समय पर प्रस्ताव विचारार्थ यहाँ उपस्थित करते रहें तो अच्छी बात होगी। मैं आपसे कहता हूँ कि यह क्वेश्चन अगर बना लें कि जैसे ही मिले, जैसे ही पार्लियामेंट मिले जैसे ही देश की स्थिति क्या है, इस के बारे में विरोधी दल के नेता गृह मंत्री से मिलें, प्रधान मंत्री से मिलें और मिल कर के राय दें कि हम किस स्थिति में हैं। यह मैं ठीक समझता हूँ। लेकिन चूँकि आज भी खतरा बना हुआ है इसलिए संसदीय प्रस्ताव के माध्यम से कोई आश्वासन नहीं दे सकते हैं कि हम छः महीने में मिल कर के कोई बहस करेंगे। मैं समझता हूँ कि छः महीने क्या एक दिन भी नहीं लगना चाहिए कि यह रहे, लेकिन दुर्भाग्य से यह अधिकार सरकार ने लिया है और सरकार ने आश्वासन दिया है संकट की स्थिति में प्रयोग करने का और हम आज के निवेदन के संदर्भ में निवेदन करना चाहते हैं कि हमारे कामत साहब जैसे जो सीजन्ड पार्लिटिशियन हैं, वह अपने साथियों को राय दें कि जब बाहर का संकट पड़ा हुआ है तो यहाँ आंतरिक संकट न पैदा करें, घेरा

[श्री राम सहाय पाण्डेय]

डालो, आन्दोलन करो, मारपीट करो, यह सशस्त्र क्रांति का जो बाबेला है उस को न करें। इस प्रकार दुश्मन को यह बात न पहुँचे कि यह तो आपस में फूटे हुए हैं, यह सशस्त्र क्रांति की बात करते हैं, यह अच्छा है कि इन पर आक्रमण कर दिया जाय, यह स्थिति न हो हमारे देश में बल्कि स्थिति यह हो कि हम एक हैं, इतने सशक्त हैं कि हमको एहसास है कि बाहर से आक्रमण होगा तो हम उस का डटकर मुकाबला करेंगे। इन शब्दों के साथ मैं आप को धन्यवाद देता हूँ।

Mr. Chairman: How much time does the hon. Minister want?

Shri Vidya Charan Shukla: About 15 minutes.

Mr. Chairman: Dr. Ranen Sen.

Dr. Ranen Sen (Calcutta East): Mr. Chairman, Shri Kamath has brought forward a very timely amendment to the Constitution. During the last 15 years our Constitution has been amended seventeen times, if my memory gives me the correct picture, and most of the amendments had been directed against the people, not directed for the benefit of the people. All these amendments have been for the interest of the ruling party.

Shri Kapur Singh: Anti-people.

Dr. Ranen Sen: Anti-people. But this is an amendment which, I should say, upholds the sovereignty and independence and dignity of this Parliament. We are saying so many things about the dignity of Parliament but when it comes to the actual practice, we are shy of taking any practical action about the sovereignty of this House.

I would have gone a step further and asked for the ending of this emergency, but Shri Kamath has thought it fit to keep it limited within a very narrow orbit. How has the emergency functioned in India? For the last four years, I must say, a reign of terror was unleashed in India. I will give only a few examples to indicate that.

The workers went on a strike against the employers who were violating the laws of the land and under the emergency provisions all sorts of repressive machinery was unleashed against workers. There is a factory in Calcutta, Jay Engineering Works. The workers went on strike and nearly 400 workers, including the General Secretary of the Union and everybody, were arrested under the Defence of India Act which is a special provision under the emergency. Only the President of that Union, Shri Indrajit Gupta, was spared. In our State and in every State of India Members of Parliament have been snatched away from amongst us without showing any reason under the provisions of these emergency powers of the Government. It is not a question of misuse; it is a question of the practice of the Ministry, of the ruling party to use these powers in such a way that popular unrest created by the policies of the Government of India was suppressed.

Now, Shri Pandey was very eloquent against this *ghera dalo* and all these things. What should the people do if you cannot feed them, if you cannot give them jobs, if you cannot protect them? Do you want them to sing *Ramdhun*? This is a sort of argument which people are not going to accept. Even without the emergency what had you done earlier? You had shot down people.

Now there is no DIR in West Bengal but even then yesterday tea garden workers were shot at and one worker has been killed. This is the enormous power you have got. The executive has got enormous powers; therefore too much power has corrupted them. This is why it is necessary that every six months this should come before Parliament so that Members of Parliament are in a position to review the internal and external situation. This is all that is wanted in the amending Bill.

How has this special power corrupted the State Governments? When under the pressure of a large number of intelligentsia of our coun-

try, when all the jurists and the intelligentsia condemned these emergency powers led by Shri M. C. Setalvad, the Government of India was forced to retract a little and say that in certain border States there will be DIR and all these things, the State Chief Ministers and the State Home Ministers were opposed to it. This special power has corrupted them to such an extent that today they are not willing to rule without some special powers.

Now let us at least accept this small amendment moved by Shri Kamath. Let us, every six months when Parliament sits, discuss the situation.

Now so many things are being said here. Shri Pandey has said that every day we are seeing in the newspapers, every day the Minister came and make statements that there is danger from Pakistan, that there is danger from China, that there is danger from this quarter and that there is danger from that quarter. We want to know definitely what are those dangers. In the name of dangers on the borders of India this Government wants to continue those emergency powers. I say that if there is actual danger, as happened during those days in 1962, the Rashtrapati has got the power to immediately promulgate the emergency within a few minutes and if the Government wants to arrest people, keep people in detention, everything can be done within a few hours.

Our Government is not capable of giving food to the people. It is not capable of giving jobs to the unemployed. The Government is not capable of listening to the demands of the people. They always see the Communist danger everywhere. If this is the situation, the sooner this Government goes, the better it is for the country. This is a hopeless situation that exists today in our country. Whenever we open the newspaper we find instances of shooting and arrests everywhere, all throughout India. 4,000 people have been arrested in Bihar, where there is no DIR, under the Preventive Detention Act. It is reported that the West Bengal Government is getting prepared

to fight the leftists in West Bengal and to put them in jail, to shoot down people who are demanding or have started demanding food. This is the Government which is incapable of giving food. And they hold the people responsible. They hold the Opposition parties responsible. I do not understand how the Opposition parties are responsible.

In West Bengal armed police has been brought from Bihar, Orissa and Assam. Bihar has imported armed police from UP and then UP starts importing armed police from Madhya Pradesh and Gujarat. Thus the cycle is going on. In this situation when the members of the ruling party get up and say that this *ghera dalo* and *bandhs* and these things harm the people, I say, "Why do you not feed the people?" This is not the task of the Opposition or of the Communist Party. You are at the helm of affairs, whether in the Centre or in the States. It is for you to feed the people, to give them jobs and comforts. You are unable and incapable of doing it and then you hold the Opposition responsible.

I say that these emergency powers are misused. There is no justification for the Emergency to be continued. The least that the Government could do is to accept Mr. Kamath's amendment. This is the least, the minimum, that the Government could do and by accepting it, they can show that they are also interested in keeping the dignity, the sovereignty and the independence of this House; otherwise, all these tall talks are mere mockery of democracy; they do not mean anything to anybody.

Mr. Chairman: Before proceeding further, I would like to say that I intend calling the hon. Minister at 4 P.M. and then some time will be left for the hon. Mover to reply. If hon. members would like to speak for five minutes each, then I will be able to accommodate all the friends. The reason is that I find that the same arguments are being repeated. If you agree, I will call Mr. Shree Narayan Das to speak for five minutes.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jaganatha Rao): It is a important measure and many hon. Members want to speak. May I request you, Sir, to extend the time?

Mr. Chairman: If that is the sense of the House, we can go upto 4.45.

Some hon. Members: Yes, yes.

श्री मधु लिमये (मुंगेर) : मैं विनती करता हूँ कि कम से कम आधा या एक घंटा समय बढ़ाया जाये ।

Mr. Chairman: He can leave that to me.

Mr. Shree Narayan Das.

श्री श्री नारायण दास (दरभंगा) : सभापति महोदय, माननीय सदस्य श्री कामत ने सदन के सामने संविधान में संशोधन करने के लिये जो बिल उपस्थित किया है उस का एक सीमित क्षेत्र है । अभी विरोधीपक्ष के कई माननीय सदस्यों ने इस मौके से लाभ उठा कर देश में जो संकटकालीन स्थिति की घोषणा हो गई है उस की समालोचना की है । मैं समझता हूँ कि यह इस का समय नहीं है । इस के सम्बन्ध में इस सदन में इस से पहले भी बहस हो चुकी है कि संकटकालीन स्थिति रहनी चाहिए या नहीं । लेकिन अभी जो विधेयक हमारे सामने प्रस्तुत है उस का एक सीमित क्षेत्र है ।

श्री कामत इस बिल के द्वारा यह चाहते हैं कि संविधान की धारा 352 के अन्तर्गत राष्ट्रपति जो संकटकालीन स्थिति की घोषणा करते हैं उस के सम्बन्ध में समय समय पर संसद् के द्वारा विचार किया जाना चाहिये । यह बात कोई गैरमुनासिब नहीं मालूम होती, लेकिन मेरा ख्याल है कि आवश्यक भी नहीं है । इस देश की जो यह संसद् है वह सर्वसत्ता-पूर्ण संसद् है और देश की परिस्थिति या सरकार द्वारा किये हुए कामों की समालोचना करने

का उस को हर समय अधिकार है । जब हमारे संविधान के निर्माताओं ने संविधान के 18वें भाग में धारा 352 को रखा तब उन्होंने कहा कि यह एक ऐसी चीज है जो कि सदन के अधिकार को छीनती है, लेकिन साथ ही साथ देश में जब बाहर से खतरा हो या देश के अन्दर कोई ऐसा उपद्रव खड़ा हो जिस में देश की सुरक्षा का प्रश्न भी उठे, ऐसे समय में यह अधिकार राष्ट्रपति को दिया जाय । मैं समझता हूँ कि यह बुरी चीज है लेकिन आवश्यक चीज है । बुरी चीज इसलिये है कि यह प्रजातांत्रिक अधिकार सीमित हो जाता है, कार्यकारिणी के हाथ में तथा राष्ट्रपति के हाथ में या राष्ट्रपति के अधीन जो काम करने वाले मंत्रिगण हैं उन के हाथ में लेकिन जहाँ तक देश की सुरक्षा का सवाल है, इस मौके पर कार्यकारिणी को जो अधिकार दिया जाता है, मैं समझता हूँ कि यह संविधान की रक्षा के लिये है और देश की रक्षा के लिये है ।

प्रश्न सिर्फ यह है कि इस सदन को संविधान में संशोधन कर के क्या यह अधिकार होना चाहिये कि छः छः महीने पर राष्ट्रपति द्वारा जो संकटकालीन स्थिति की घोषणा की जाये उस पर समालोचना करने का मौका मिले और अगर यदि सदन उचित समझे तो प्रस्ताव पास कर के उसे रद्द करने के लिये भी कह सके । मैं समझता हूँ कि श्री कामत यह जानते हैं कि जो वर्तमान कार्यकारिणी है वह इस सदन के प्रति जवाबदेह है और इस सदन को अधिकार है कि वह जब चाहे तब प्रस्ताव पास कर के राष्ट्रपति से अनुरोध कर सकता है कि अब देश की जो हालत है वह ऐसी है कि उस में संकटकालीन स्थिति को रद्द करने की जरूरत है । जब इस सदन को यह अधिकार है कि समय समय पर प्रस्ताव द्वारा या खास मोशन के द्वारा कार्यकारिणी के काम की समालोचना हमेशा कर सकता है तब इस के लिए संविधान का

संशोधन करने की कोई आवश्यकता नहीं है ।

कई माननीय सदस्यों ने कहा कि आज देश के अन्दर संकटकालीन स्थिति की कोई जरूरत नहीं है क्योंकि देश को बाहर से कोई खतरा नहीं है । जब कभी जरूरत होगी, राष्ट्रपति जी इमर्जेंसी की घोषणा कर सकते हैं ।

श्री हरि विष्णु कामत : आपने 356 में यह बात क्यों रक्खी है ।

श्री श्रीनारायण दास : माननीय सदस्य 356 के बारे में ध्यान खींचते हैं । 356 धारा इसलिये है कि जब किसी प्रदेश में ऐसी स्थिति पैदा हो जाये कि संविधान के अनुसार वहाँ काम न चल रहा हो, तब राष्ट्रपति को अधिकार होता है कि वहाँ राष्ट्रपति के शासन की घोषणा कर दे । हो सकता है कि किसी प्रदेश में दो महीने, तीन महीने या चार महीने के लिये ऐसी स्थिति पैदा हो जाये, इस लिये इस में यह गुंजाइश रक्खी गई है । जब किसी समय बाहर से देश को खतरा हो या फिर किसी उपद्रव का खतरा है जिस से देश की सुरक्षा को खतरा हो तब संकटकालीन स्थिति की घोषणा करने और किसी प्रान्त में संविधान के मुताबिक शासन न चलता हो तब वहाँ पर प्रेजिडेंट्स शासन लागू करने में फर्क है । इसलिये मैं समझता हूँ कि 356 और 352 का मुकाबला नहीं हो सकता । 352 भिन्न परिस्थितियों के लिए बनाई गई है ।

मैं समझता हूँ कि माननीय सदस्य श्री कामत का जो उद्देश्य है वह बहुत ही अच्छा है, लेकिन इस के लिए संशोधन लाने की आवश्यकता नहीं है । संविधान में यह निहित है कि इस सदन को अधिकार है कि जब वह चाहे कार्यकारिणी के काम पर बहस कर सकती है और एक प्रस्ताव पास कर के

राष्ट्रपति से प्रार्थना कर सकती है जिस संकटकालीन स्थिति की घोषणा उन्होंने की है उस को वे रद्द कर दें । इसलिये यह संशोधन गैर जरूरी है । माननीय सदस्य ने अपने उद्देश्य में बतलाया है :

“The Proclamation of Emergency issued on October 26, 1962, still continues in force.”

That is a fact.

“It is necessary and desirable that Parliament should review the situation periodically when the Executive is vested with such extraordinary powers.”

जैसा माननीय सदस्य जानते हैं, एक गैर सरकारी प्रस्ताव के बारे में जो कि श्री चुरेन्द्रनाथ द्विवेदी का था और बैलट में आ गया था, इस प्रश्न पर खूब जोरदार बहस हुई, और जोरदार बहस होने के बाद सदन ने निश्चित किया कि देश में संकटकालीन स्थिति की घोषणा करना आवश्यक है । इस कारण मैं समझता हूँ कि इस संशोधन की जरूरत नहीं है । इस सदन को बराबर यह अधिकार है कि जब वह चाहे, देश में जो संकटकालीन स्थिति की घोषणा की जाये, चाहे वह छः महीने के लिये हो, चाहे दो महीने के लिये हो, चाहे तीन महीने के लिये हो, उस पर बहस कर सकता है, और अगर सदन की राय हो तो राष्ट्रपति से प्रार्थना करे कि संकटकालीन स्थिति की घोषणा को रद्द कर दिया जाये । राष्ट्रपति उस प्रस्ताव के अनुसार बंधे होंगे और उन को वैसा करना होगा ।

मैं समझता हूँ कि माननीय सदस्य जो संशोधन विधेयक लाये हैं उस की कोई आवश्यकता नहीं है और उन को उन्हें वापस ले लेना चाहिये ।

Shri Nambiar: I am very pleased to thank Mr. Kamath for having done this great service by bringing in this amendment.

The Rashtrapati declared the Emergency under the provisions of Article 352 and whenever the Rashtrapati does so, he has to cause it to be brought before the House within two months and the House has to approve it. That is the provision. Once it is approved by the House, then there is no need at all for it to be brought before the House again. That means that the emergency can go on for even a century under the constitution; it can go on for ever, till the President lives, till this Republic continues, till this Parliament is there or it is dissolved. That is the provision in the Constitution. I feel that this sort of situation should not be allowed to continue.

The hon. Member who has spoken just now has said that a motion or a resolution can be moved by even a private Member and a discussion may be raised. But I may tell him that that is not so easy. If Shri Kamath has got this Bill on the agenda today, it is because he was lucky enough to secure the ballot for his Bill out of about 100 Bills that were there, and fortunately for us and for this House we have had the opportunity to discuss it. Otherwise, how could we get the opportunity? Let my hon. friend understand that if the Leader of the House or the Congress Party does not want the subject to be raised in this House, then we the Members of the Opposition will get no opportunity whatsoever.

Shri Shree Narayan Das: Does not my hon. friend know that Shri Surendranath Dwivedy had his resolution discussed here only very recently?

Shri Hari Vishnu Kamath: That was through the ballot.

Shri Nambiar: That was through ballot. It was like a camel passing through the needle's eye. Let my hon. friend please see the list, and he will find that he secured the ballot for his bill out of 100 bills which were there.

So, a private Member's item takes so much time to come up on the Order Paper.

What we want is only this. When once this emergency is on, when the parliamentary system of democracy continues, the House must have an opportunity to say whether the emergency should continue or not. It is not a question of our doing anything against the defence of the country or creating an anarchic condition in the country; what we demand is only this namely that the House should get an opportunity once in six months to take stock of the situation and say whether the emergency should continue, weigh the balance and see the situation on both sides. For, we must understand that the emergency not only provides for certain measures here in India but makes the whole world look upon us as a country going on under an emergency eternally, in spite of the fact that there is no shooting war going on. As one hon. Member has said, when the shooting war comes, the President can declare an emergency within no time.

Those who are in power want that all sorts of powers to be kept in readiness all round them, and they seem to have an inhibition that without so much overwhelming power, they cannot even have a good sleep in the night. That is the unfortunate situation that they have reduced themselves to. They must know that wars are not fought by declaration of emergencies or Acts and legislations. Wars are fought and successfully fought by the efforts of the people and the people must have the confidence in the Government which conducts the fight. We have no reason to have that confidence in the Government.

I myself have been a victim of this emergency proclamation and the Defence of India Rules twice. In November, 1962, when I was here attending the session and discussing the Defence of India Bill which was under discussion, then suddenly I was picked up from No. 17, Windsor Place—that is

my address; at 5.30 a.m. there was a tap on the door, and I said 'Kaun hai'; that was all the Hindi that I knew. Then came a police officer and he said 'I am coming from Madras.' 'asked him' 'Have you come with a warrant?'. He said 'Yes'. Then I offered him a cup of tea; he did not take the tea, but I took the tea and with him I went to the police station in the van and I was locked up in the police station during the daytime when the House was sitting. This was the unfortunate situation that was there. Then I was packed off to a jail 1500 miles away from here and locked up in that jail for about ten months. Of course, after ten months, the deliverance came.

Again, the same thing happened in December, 1964. At that time, what additional emergency was there and what attack was there on this country? Everything was peaceful. You and I were here till the 24th December, 1964 and we had attended the session. I had returned home after the session. Then I had been to Mandapam and Rameswaram where the cyclone havoc was there and I was seeing the people who had suffered in the cyclone. On 30th December, 1964, I was picked up from Mandapam under the DIR and taken straight to the Cuddalore Central Jail where I stayed for 16 months. Then, at last, because of the benevolence of the people or because the emergency was not there or because of the efforts of the people, the door of my jail was opened and I came here and now I am here. I do not know what is going to happen to me again.

It is not my case that I am pleading for. I am only pointing out that that is the unfortunate position of a Parliament Member who was elected by ten lakhs of people of this country. If that is the fate of a person like me you can imagine what the fate of an ordinary man in the street will be. In the name of this emergency and in the name of the defence

of the country, and in the name of the Constitution, Government are establishing an autocratic and totalitarian type of Government here and they do not want anybody to criticise that; they are not even prepared to allow a discussion in the House once in six months whereby their conscience may be pricked because of the references that would be made by the Members of the Opposition and as a result they would have had to come down with a statement on the withdrawal of the emergency. They are not prepared to yield even to our request for having a discussion on it once in six months. They say that once they declare an emergency they alone can revoke it and they will do so at their sweetwill. That is what they say.

Therefore, I would submit that if at all they believe in democracy and they believe in this Constitution, let them accept this Bill and thereby show to the world that they are not autocrats. Otherwise, the world will say that they are autocrats.

Shri Bhagwat Jha Azad (Bhagalpur): What is my hon. friend?

Shri Nambiar: Therefore, I would request the Government to accept this Bill.

Shri Kapur Singh: I rise with a sense of satisfaction to support the Bill which has been moved by my hon. friend Shri Kamath. It is a Bill which may be viewed from three points of view. It may be viewed from the point of view of the theoretical principles involved then, it may be viewed from the point of view of the practical considerations of the question that we are considering and thirdly, it might also be viewed from the point of view of its actual implementation or its actual use or abuse.

Much has been said by my hon. friends who have preceded me on the point as to whether the provisions of the emergency have been properly used or not. I shall try to steer clear

[Shri Kapur Singh.]

of that point, not because I have no material to add to that which has already been produced before the House but because I consider that this argument, namely the abuse of the provisions of the emergency is an argument for the withdrawal of the emergency and not strictly an argument in support of the Bill that my hon. friend Shri Kamath has moved.

I shall, therefore, confine myself to an examination of this Bill from the other two points of view. The first of them is that of the theoretical consideration involved. What is the principle involved in this Bill? Shri Kamath, the Mover of this Bill, has made a reference to that principle and that principle is the supremacy of Parliament over the executive. That is the principle which is involved in this Bill. My hon. friend Shri S. M. Banerjee, who was here just now, made a very apt remark to the effect that supremacy or sovereignty (which I think eventually is here the same thing) of Parliament is not merely the power to suspend inconvenient Opposition Members from the House; that is not the essence of supremacy; it is not merely an exercise of power, which cannot be challenged outside this House, sometimes in a manner which might not even be acceptable to certain contemporary People's Courts or ancient Star Chambers. I am very glad that my hon. friend the Chief Whip of the Congress Party is present here. Therefore, I do not want to rub in this point, but I shall conclude this point by merely saying that the supremacy of Parliament consists in its continuous and uninterrupted and unquestioned control over the executive. This is the essence of this principle of the supremacy of Parliament. If the type of emergency powers which are now continued in this country and which are continuing without any check or control by this Parliament, is allowed to go on, that is a virtual denial of this principle of the supremacy of Parliament. Even if there were no other ground, on that ground alone, the Bill of my hon. friend

Shri Kamath ought to be accepted. Any prolonged and unchecked continuation of the exercise of such extraordinary powers by the executive is erosive of the principles of the Constitution. The second point of view from which this Bill may be considered is the practical consideration of methods of government, practical considerations of efficient ways of government, of governing the people properly and rightly. This principle requires that the emergency situation, even if it has once been determined and recognised as existing, must not only be susceptible, of control, but must also, in practice, be continuously and periodically examined and reviewed by the supreme authority in the country, which obviously and undoubtedly is this Parliament; and it should not be left to the sweetwill of those for whom the emergency powers create a kind of vested interest. On this ground also, it is obvious to me that the amendments my hon. friend, Shri Kamath, proposes are such as must be accepted. This purpose, namely, the purpose of establishing the supremacy of Parliament in the country and the purpose of putting the executive's functions under continuous check and control of Parliament as also the practical considerations which must govern ways of a government—that is, the practical consideration by which all governments must be judged—from all these points of view the purpose will be better served if the Bill of Shri Kamath is accepted than if it were rejected.

डा० राम मनोहर लोहिया : अध्यक्ष महोदय, श्री कामत की आज्ञा मैं बहुत खुले दिल से तारीफ करता हूँ। इसलिए नहीं कि वह रोग को दूर करने का कोई मसविदा रख रहे हैं बल्कि इस लिए कि उस रोग के बारे में चर्चा करने का मौका इस सदन को हर छठे महीने मिलता रहेगा, रोग तो बड़ा भयंकर है। अपना देश दुनिया का सब से भूखा देश है और उसी के साथ साथ इस समय मैं खाली आशा करता हूँ थोड़े ही अरसे के लिए यह सब से सूटा और घोबेबाज देश भी बन

चुका है और उस का एक मुख्य कारण संविधान की यह धारा 352 है। स धारा में राष्ट्रपति को अधिकार दिया गया है कि वह चार हालतों में संकट का एलान कर सकते हैं। एक युद्ध, दूसरे बाहरी हमला, तीसरे अन्दरूनी गड़बड़। अब इन तीनों के अलावा चौथी बात को मैं जोर से कहना चाहूंगा कि इन तीनों में से किसी एक का आसन्न खतरा है। इन चार चीजों पर संकट का एलान राष्ट्रपति जी यानी उनके सलाहकार कर सकते हैं और सलाहकार तो आप जानते ही हैं कि सामने लोग बैठे हुए हैं। आसन्न संकट, है क्या यह आसन्न संकट? पिछले तीन चार साल से युद्ध नहीं हो रहा है और अगर मान लो यह सलाह कार कहें कि युद्ध नहीं हो रहा है बाहरी हमला हो रहा है, तो वह भी नहीं हो रहा है। तो अन्दरूनी गड़बड़ हो रही है ? मैं भी कह सकता हूँ कि क्योंकि मैं छपाई के बहुत से काम करता हूँ और मेरे पास वक्त पर पैसा देने को नहीं रहता तो मेरे ऊपर भी संकट रहता है या समझ लो कि गनी बहुत जारों से बरस रहा है, ऐसी घटना हो चुकी है और मुझको रेलगाड़ी पकडनी है टैक्सि लिल नहीं पायी। अब भारी संकट आ गया था अध्यक्ष महोदय, मेरे ऊपर और न जाने कहां से पैसा इकट्ठा करके दूसरे दिन हवाई जहाज से जाना पड़ा। अब अगर इस तरह के संकटों को ऐसी परिभाषा में डाला जायगा तो शब्दों की घिसाई हो जायगी। कहां वह आसन्न संकट कि जिससे देश में अन्दरूनी गड़बड़ या बाहरी हमले का खतरा है ?

मैं बड़ी गम्भीरता से कहना चाहता हूँ कि यह धारा सरकार को अधिकार देती है कि संसार का सब से बड़ा धोखा इस देश के ऊपर इस्तेमाल करने का, धोखा, तरेब, जालसाजी में समझ सकता हूँ कि बहुत सी परदेश की

सरकारों ने परदेशियों को धोखा देने के लिए काम किये हों लेकिन ऐसा सारे इतिहास में मुझे कोई वर्धन नहीं मिलता कि जहां एक सरकार ने अपने देशी लोगों के ऊपर इतना बड़ा धोखा फरेब और जालसाजी का इस्तेमाल किया हो। और जब सरकार ऐसा उदाहरण जनता के सामने रख देती है तो फिर जनता वाले भी आपस में एक दूसरे से व्यवहार करते हुए छोटा मोटा धोखा और फरेब इस्तेमाल करने लग जाते हैं। यह धारा 352 सारे देश को झूठ धोखा और फरेब सिखा रही है। आसन्न संकट है क्या ? क्या करें, राष्ट्रपति जी से अगर कभी मिलता, एक जमाना था, अंग्रेजी जमाने में जब कभी मुलाकात हो जाया करती थी, तो मैं उन से पूछता था, कि राष्ट्रपति जी, क्या समुच आप अपने को संतोष दिला लेते हैं कि इस का आसन्न संकट होने वाला है ? आसन्न संकट, मतलब जो फौरन अभी होने वाला है। कभी इन् पर खुद भी आप सोचते हैं ? लेकिन शायद कहा जाय कि उन को तो सोचने की जरूरत है नहीं, वह तो सलाहकार आ कर बता देते हैं कि यह संकट होने वाला है तो मान लिया तो वह आसन्न संकट है कहां? अगर कहां जाय अन्दरूनी गड़बड़ तो अन्दरूनी गड़बड़ में आसन्न संकट के मतलब होते हैं कि जब आदमी का रोजमर्रा का जीवन असम्भव हो जाय। खाली यह नहीं होता, जैसे कि मान लीजिए दिल्ली के चांदनी चौक में कहीं कोई पटाखा फूट गय, हो सकता है है कि दम पांच इमारतें नल गईं, गिर गईं, हो सकता है कि कुछ लोग भी मर गए, लेकिन उस से पूरे दिल्ली के जीवन पर कोई असर न पड़े, लोग आते जाते रहें, अपना धन्धा चलाते रहें, दूसरे दिन भी कार्यवाही होती रह गई, तो उस को अन्दरूनी गड़बड़ नहीं कहा जायगा हर किसी घटना को अन्दरूनी गड़बड़ का नाम देना यह शब्दों की घिसाई, है, राजनीति के साथ फरेब है, अन्दरूनी गड़बड़ तभी होती है जब रोजमर्रा जीवन असम्भव हो जाया करता है, धन्धा रोजगार

[डा० राम मनोहर लोहिया]

चलना मुश्किल है, सड़क पर चलना फिरना मुश्किल है, और भी जितने कुटुम्बीय जीवन वगैरह में लोगों में आतंक है, उत्पात है, जुल्म है, इधर उधर भाग ले जाना है जीवन बिलकुल असम्भव हो जाय तब अन्दरूनी गड़बड़ हुआ करती है । मैं कहना चाहता हूँ कि पिछले चार वर्ष से जो चीजें इस धारा में कही गई हैं वह बिलकुल नहीं रही हैं । तो आप कह सकते हो, भाई, धारा में क्या गड़बड़ है, यह तो उसका इस्तेमाल खराब हुआ है । तो मैं कहना चाहूँगा कि चार वर्ष तक जिस धारा का इतना गलत इस्तेमाल हुआ हो लगातार 48 करोड़ आदमियों के ऊपर और इन सलाहकारों के साथ, तो मेरा तो यह कहना होगा कि इस धारा को खत्म किये बिना अब इस संविधान को सुन्दर बनाना असम्भव है । यह धारा पूरी की पूरी खत्म होनी चाहिए और कामत साहब को तजवीज उतनी हद तक नहीं जाती । शायद यह डर गए कि इतनी बड़ी बात इस घोषे और फरेब के जमाने में यह कह नहीं पायेंगे, इसलिए उन्होंने छोटी सी बात कही है कि हर छठे महीने कम से कम इस सदन में बहस हो जाया करे और बहस होगी तो लोगों को पता चलेगा, लोगों से मतलब...

सभापति महोदय : डर का जवाब देना होगा इनको ।

डा० राम मनोहर लोहिया : काहे का जवाब ? मैं तो उन की बात कह रहा हूँ । . .

(**व्यवधान**) अध्यक्ष महोदय, आप नाहक बोले, या इस धारा का कुछ असर आप के ऊपर भी पड़ा है ? आप हम लोगों के बीच में लड़ाई करवाना चाहते हैं . . . (**व्यवधान**)

श्री हरि विष्णु कामत : इन की बातों में न आइयेगा ।

डा० राम मनोहर लोहिया : हमारी इनकी दास्ती आज की नहीं है, बहुत पुरानी

है । बीच में थोड़ी बहुत घिस-घिस हो जाया करे तो क्या पता आगे चल कर क्या जाने कैसे दोस्ती होने वाली है ?

तो खैर, मैं यह कह रहा था, इस धारा की अब मैं मिसाल आप को एक बताऊँ । एक संविधान इस दुनिया में बड़ा महान संविधान था । आजादी के लिए वह प्रतीक और नमूना रखा जाता है था और वह था वाईमार का संविधान । पहला जो युद्ध हुआ था 1914-18 वाला, उसी के बाद यह संविधान बना था । मैं सिर्फ दो संविधानों को इज्जत करता हूँ—एक तो वह जिस में पहली दफा लिख कर आया था कि हम जनता अपने आप को यह संविधान प्रदत्त करते हैं—हम अमरीकी जनता, ये शब्द पहली दफा अमरीकी संविधान में आया, वह बहुत बढ़िया संविधान था । फिर उसके बाद यह वाईमार वाला जर्मनी का संविधान आया, यह भी बहुत अच्छा था, लेकिन इस में भी एक धारा थी, वह धारा थी 48 नम्बर की और यह जो है वह 352 नम्बर की है दोनों को देखें तो शायद एक दूसरे के नजदीक आ जायें । तो वह वाईमार का संविधान बहुत सुन्दर बना था । लेकिन उस को फिर इतना गन्दा बना दिया कि आज आपको आप खाली पुस्तकालय में जाकर पढ़ सकते हैं, जिस में जर्मनी को एक बार तहस-नहस कर डाला था ।

16 hrs.

अब मुझे खाली दो घटनायें बतानी हैं । एक तो छोटी सी चीज है लेकिन यदि उसको देखें तो कितनी जबरदस्त बात है । आज इस वक्त भी दिल्ली की जेल में एक श्री लखनपाल हैं । जब सितम्बर में भारत और पाकिस्तान की लड़ाई चल रही थी, वह बाहर थे, उन के जेल में रखने की जरूरत नहीं पड़ी । जो आदमी अपराधी हो, दोषी हो, उस से मुझे मतलब नहीं है, लेकिन उस आदमी ने तो

कोई अपराध नहीं किया, फिर उसको जेल में क्यों रखा है ? इस लिये कि पुरानी अदावत है, क्योंकि वह किसी ज़माने में काश्मीर में मत-गणना के पक्ष में था, हालांकि आज वह उस पक्ष में नहीं है, लेकिन फिर भी उस को जेल में रखा हुआ है ।

सभापति महोदय : अब खत्म कीजिये, आपका समय हो गया है ।

डा० राम मनोहर लोहिया : दूसरी घटना ऐसो-कम्पनी की है । ऐसो-कम्पनी ने सरकार के कहने पर डीजल में मिट्टी का का तेल मिलाया और उसको अपने व्यापारियों को बेचने को दिया और जब उन व्यापारियों ने बेचा तो सड़कों की तादाद में इस सरकार ने उन को गिरफ्तार किया । यह सरकार ऐसे आदमियों को गिरफ्तार करती है जो इस का खुद का काम करते हैं ।

आखिर में एक घटना साधारण जनता की आपको बताना चाहता हूँ । नज़र-बन्दी कानून के खिलाफ़ अक्सर बोला जाता है, भारत सुरक्षा कानून के खिलाफ़ अक्सर बोला जाता है, लेकिन मैं बोलना चाहता हूँ कि धारा 109 के खिलाफ़ । पिछले 125 वर्षों से भारत के नागरिकों के लिये, साधारण गरीब नागरिकों के लिये यह दफ़ा एक खतरनाक दफ़ा रही है । रात को चलते हैं, सड़क सड़क पर चलते हैं, तो कोई भी पुलिसवाला गिरफ्तार कर सकता है ।

एक अनिनीय सब्दय : पैसा देने पर नहीं करेगा ।

डा० राम मनोहर लोहिया : ठीक है, नहीं करेगा, । तो वह गिरफ्तार कर लेगा और कहेगा कि यह बहुत शक की हालत में घूम रहा था । इस का इरादा कोई बुरा काम या अपराध करने का था और इसके

पास अपनी जिन्दगी को चलाने का कोई जरिया नहीं था । इसका मतलब क्या है ? इस सरकार को तो शर्म आयेगी नहीं। वह आदमी बेकार है, उस के पास खाने को नहीं है, वह भखा है, गांव से आया है शहर में काम ढूँढने के लिए । रात के 10-11 बजे पुलिसवाला उसको गिरफ्तार कर लेगा और खाली एक मोमबत्ती, या दिया-सलाई या लोहे की एक छड़ी जाकर अदालत में पेश कर देंगे और कहेंगे कि जाइये जेल में । इतना बड़ा घोखा हो रहा है ।

मैं, सभापति महोदय, कहना चाहता हूँ कि यह देश दुनिया का सब से बड़ा भूखा देश है और दूसरी तरफ़ ज्यादा बस से ज्यादा झूठा देश है और यह सरकार उस झूठ को बोल रही है । यह धारा 351 यदि खत्म हो जाती तो बहुत अच्छा था सरकार को कामय साहब की इस बात को मान लेना चाहिये ... (व्यवधान)

श्री कपूर सिंह : हमारे देश को सब से ज्यादा झूठा देश कहना मुनासिब नहीं है ।

श्री छ० च० शर्मा : वह इनकी शान के खिलाफ़ भी है, अगर उनकी शान है तो ।

डा० राम मनोहर लोहिया : बड़ी शान, आपकी, कपूर सिंह, मालूम होती है ।

Shri N. C. Chatterjee (Burdwan): I ought to inform the House that is couple of months back there was a symposium held in Delhi under the auspices of the Bar association of India and the then chief Justice of India inaugurated that symposium and a learned judge of the Supreme court presided; every day practically one judge was presiding. I had the privilege to place my views before that symposium on the question of Emergency and fundamental rights of citi-

[Shri N. C. Chatterjee]
 mens. I ought to tell you that after having given the most anxious consideration as to the steps to be taken to meet the strong criticism levelled against the Defence of India Act and the DCI rules and the emergency regulations under which India was suffering, I had the privilege to suggest this to the symposium that there should be an amendment of the Constitution providing for a periodical review of that is happening under the Emergency. Mr. Setalvad, the President of the Bar association and the former attorney-general strongly supported it and the entire symposium was attended by the most eminent lawyers and eminent judges and also some of the distinguished professors and members of the faculty of law of the different universities as well as eminent citizens and they all supported that. That was the general view and I strongly urge the House to support the suggestion made by Mr. Kamath which is quite in conformity with the decision taken at the symposium. Consciously our Constitution made a departure from all the other constitutions in this world for we have certain basic human rights for all our citizens not merely by enacting some provisions like the American constitution but, as Justice Patanjali Sastri said, we have gone a step further. I had the privilege of arguing that case in the Supreme Court; he accepted our argument and we have made a departure from other Constitutions. According to our Constitution we have also made the remedial right a fundamental right. Any citizen of India from Cape Comorin to Kashmir; or I do not say Kashmir, any citizen from any part of India can come up to the Supreme Court and ask for a writ of mandamus or any other appropriate writ or direction or order for the vindication of his fundamental rights. What is happening today? Since the proclamation of emergency four years ago, no citizen can go to the Supreme Court. I had the privilege of arguing before guaranteed in Part III of the Constitution. They say it is *ultra vires*. You

the Allahabad High Court that the sections of the DOI rules were *ultra vires*; two learned judges held that in my favour; the Supreme Court reversed it and said under article 358 of the Constitution, immediately there is a proclamation of emergency article 19 is practically expunged from the Constitution, a total suspension of article 19. What does it mean? It means all these basic freedom conferred on the citizens—freedom of speech, of the press, of expression, of assembly, of movement, of locomotion, to form associations, practice any trade or profession—everything is completely kept in abeyance. It is practically making a parody of the guarantee of fundamental rights. A very distinguished judge of the Bombay High Court has declared that the way the emergency powers had been used or abused shows that there is not much difference between a totalitarian, police state and our State as it is functioning today. Normally left communists like Shri Gopalan and Shri Nambiar were rounded up but also other members from other parties, distinguished editors of very important papers like Mr. Atreya, a great Maharashtra editor; Mr. George, Editor of Searchlight and other editors too. Distinguished leaders of the trade union movement were also rounded up. Members of other parties were also rounded up. The Supreme Court, the other day, declared that there has been a definite abuse of power under these emergency regulations. They have given very strong judgments, and as you know, Shri Gajendragadkar had pointed out that one day we shall have to revoke this emergency and we cannot keep it for ever. That day we shall have to face any number of suits for damages, for wrongful and illegal detention and so on. These are all illegal detentions. You know the Attorney-General was asked by the Chief Justice, "please deal with the points raised by Mr. Setalvad and Mr. Chatterjee," in that DIR case. The Attorney-General had to admit and candidly confess that these Acts are against the Constitution and are *ultra vires* to the fundamental rights

cannot go to a court of law, and under article 359, the remedial rights are all suspended. You cannot go to a court of law. That is a very serious matter.

Therefore, as a man connected with law, as a man connected with the administration of justice in diverse capacities, I say this is a very serious thing. This is practically putting into jeopardy the basic human rights which we cherish, and the most important rights have been completely put into cold storage by this emergency.

What should be done? The only thing that Shri Kamath is asking is, there should be some system for review. Nobody thought when the Constitution was enacted that this kind of thing will continue for four years; although the emergency has ceased, it continues, and it will continue for years and years and because the Chinese menace will never be settled, therefore, it should continue! That will be making a complete hash of the Constitution. I may submit that because it has been abused and has been subject to judicial scrutiny and judicial scrutiny has condemned it in no uncertain terms, we should devise some method for putting it under periodical review. That is one practical method. They should put it in the proper way. We should have the power to put it under close scrutiny and see whether it is justified or whether it should be scrapped without any further delay.

You know throughout the country there is a demand that this emergency should be scrapped; it ought to have been scrapped before, and there is no justification for keeping it any longer.

Shri Shinkre (Marmagao): Sir, the purpose and the aim of my hon. friend Shri Kamath behind this Bill may be very commendable, but the main question that arises is whether it is necessary or otherwise. Unfortunately, most of the speeches from the Opposition

Benches have dealt with completely different aspects which are wholly irrelevant to this Bill, and, as my hon. friend Shri Kapur Singh pointed out very rightly, all the discussion would be relevant if we were discussing some amendment or Bill for amending the Constitution seeking to do away with the emergency provisions. But what we are seeking today to do through this amending Bill brought forward by my hon. friend Shri Kamath is only to exercise, according to him, a periodic check on the emergency provisions or emergency proclamation which, according to article 352, the President can issue.

My humble submission is that there is no such necessity under the present Constitution for introducing any amendment to article 352, because as it is, the majority party or the Government periodically bring their entire policy to the scrutiny of Parliament. By a convention, every year, at the time of the budget session, we discuss the Address of the President to both Houses of Parliament. At that time, the Parliament has every right to criticise the Government and to vote the Government down, no matter on what basis. The Members of Parliament could take the proclamation of emergency alone as the sole target of attack on the Government and vote the Government down. Besides that, although it is subject to the ballot, nothing precludes a Member of Parliament from bringing before Parliament a motion or a resolution to declare that there is no more reason for the continuance of the emergency proclaimed by the President. If we accept Mr. Kamath's amendment, the only effect will be that more and more wastage of Parliament's precious time will take place. It will just give one more chance to Government to defeat any alternative motion which the opposition might bring forward.

Shri Nambiar: That is true about all other matters also.

Shri Shinkre: Besides firing a few brickbats at the Government, you are

[Shri Shinkre]

going to achieve nothing. The parallel cited by Mr. Kamath about article 356 has no application here. Under article 356, there is no State Legislature and therefore Parliament is given an opportunity to discuss it. The respective State legislatures become defunct and so Parliament must be given some chance to have some scrutiny over what President had proclaimed in one particular State. But under article 352, Parliament continues to be in existence. Every member has a right to bring before the House any resolution or motion. So, in my opinion, there is no necessity to amend article 352 as Mr. Kamath wants. His purpose and aim may be first class. But we can exercise scrutiny over the Government's action at least once every year during the debate on the President's Address, if not more than once. Although there is the difficulty of the ballot, he may be favoured by the ballot also and he may bring any motion or resolution before the House.

Under these circumstances, it is unfortunate that most of the speeches have been irrelevant. Otherwise, we would have liked to hear some new arguments. There is no use in making political speeches that the emergency has been misused or abused. The remedy is not a half-yearly checking or scrutiny of the Proclamation. Six members from the opposition will say that the Government have misused the powers and another half a dozen members from that side will say that the Government has achieved this and that. It will only amount to wastage of the precious time of Parliament.

With these words, I oppose the Bill.

श्री यशपाल सिंह : सभापति महोदय, मेरी समझ में नहीं आता कि किस लिये इमर्जेंसी को रक्खा जा रहा है। सरकार की तरफ से तो कोई लड़ाई नहीं है। सरकार ताश्कंद को लेकर कहती है कि हम पाकिस्तान पर हमला नहीं करेंगे और पाकिस्तान हम

पर हमला नहीं करेगा। सरकार चीन के मामले में एक दिन का अल्टिमेटम भी देने के लिये तैयार नहीं है। हमारे कैलाश और मानसरोवर को शत्रु ने ले लिया, 38 हजार मुरब्बा मील छोड़ कर हम पीछे हट गये, न कोई तारीख तय की न कोई अल्टिमेटम दिया है। आखिर आज इमर्जेंसी किस लिये है। सिर्फ लूटने के लिये, टैक्स वसूल करने के लिये, चन्दा इकट्ठा करने के लिये है, मुखालिफ पार्टियों के मेम्बरों को जेल में डालने के लिये है। आज और कोई जरूरत इस इमर्जेंसी की नहीं है।

अगर हमारे देश में इमर्जेंसी होती तो कोई शराबखाना बन्द हुआ होता, कोई सिनेमाघर बन्द हुआ होता, कोई अय्याशी का अड़डा बन्द हुआ होता, कल्चरल डे बन्द होते, रंगरलियां बन्द हुई होतीं, लेकिन नहीं हुई। किसी मिनिस्टर ने भी नहीं कहा कि हिन्दुस्तान के अन्दर इमर्जेंसी है इस लिये मैं अपनी तन्खाह का 50 फी सदी या 25 फी सदी उस में देता हूँ। आखिर इमर्जेंसी है किस लिए। इमर्जेंसी सिर्फ इस लिए है कि देश को बहकाया जाय। हमारे स्वर्गीय प्रधान मंत्री पंडित जवाहर लाल नेहरू ने कहा था कि :

“Emergency may continue for ten years, for twenty years, for thirty years, for fifty years and more.”

इस का मतलब यह था कि पचास साल तक पराजय का कलंक हमारे माथे पर लगा रहेगा, पचास सालों तक हम डिफीटेड नेशन कहलायेंगे, पचास साल तक हम हिन्दुस्तान को पिटी हुई कोम कहलायेंगे। क्या यह देश के लिए शोभा की बात है? इन लोगों का इलाज करना चाहिए। श्रीमन, यह डिफीट इन की लाई हुई है। इन्होंने इस डिफीट को ला कर खड़ा किया है। अब ये कम्युनिस्टों को ब्लेम करते हैं।

किसी कम्प्युनिस्ट ने चीन को यू० एन० प्रो० में सीट दिलाने की कोशिश नहीं की है। केवल हमारी कांग्रेस पार्टी ने और कांग्रेस सरकार ने की है। यह तीस हजार मुरब्बा भूमि किसी कम्प्युनिस्ट ने चीन को नहीं दी है, कांग्रेस ने दी है, कांग्रेस की सरकार ने दी है। ये डिफीट को लाए हैं। यह एक बहुत मोटी बात है।

हमारे रघुनाथ सिंह जी इतिहास के माहिर हैं। मैं उनको याद दिलाना चाहता हूँ कि महाराज विक्रमादित्य के खून से हम लोग हैं, उनके हम लोग डिसेंट हैं। महाराज विक्रमादित्य फातह थे, विक्टोरियस थे, विजेता थे। उनके ऊपर हमला किसने किया? उनके ऊपर हमला शकों ने किया था। शकों को उसने हमेशा हमेशा के लिए डिफीट दी। जो डिफीटिड थे उसका तो संवत लिखा जाता है, उनका तो ईरा लिखा जाता है, शक संवत लिखा जाता है, रेडियो के ऊपर उनका तो डूर रोज प्रसारण होता है, सरकारी कागजात में वह तो लिखा जाता है, जो पीटे हुए थे, उनका तो संवत लिखा जाता है लेकिन जो हमारे पिता, हमारे दादा, महाराज विक्रमादित्य थे उनका संवत नहीं लिखा जाता। जिन्होंने प्राजय को लाकर खड़ा किया है, उन से जवाब तलब किया जाए। उन से पूछा जाए कि इतने बड़े देश को, इतने बड़े मुल्क को जिसने जर्मनी के नौजवानों को ला कर, उनको पकड़ कर देहरादून की जेल में बन्द किया जिनकी आवाज सुन कर बड़े बड़े राष्ट्र धरति थे, कसे एक डिफीटिड नेशन बना कर रख दिया है, उन से जवाब तलब किया जाना चाहिए। आज भी किस के साथ ये मुहब्बत का सलूक करते हैं? नागा होस्टाइज के साथ ये मुहब्बत का सलूक करते हैं, मिजो जो विद्रोही हैं उनके साथ ये मुहब्बत का सलूक करते हैं, उनके साथ बैठ कर एक थाली में, एक टेबल पर खाना खाते हैं....

1516(A1) LSD—10.

सभापति महोदय : जो बिल है उस तक ही आप अपने आपको कनफ़ाइन करें।

श्री यशपाल सिंह : यहां जब दफ़ा 109 की बात कही जाती है, तो क्या इस बात के ऊपर मैं नहीं कह सकता हूँ? जिस का ताल्लुक डिफीट के साथ है वह मैं नहीं कह सकता हूँ? क्यों नहीं कह सकता हूँ? क्या मेरे लिए कोई खास रूल है? कौन सी बात यहां नहीं कही गई है? हर एक बात कही गई है।

आज मैं फिर कहता हूँ कि चार डिफीटिस्ट मंटेलेटी के जो सिद्धान्त हैं, चार डिफीट के जो सिद्धान्त हैं उनको आप छोड़ दें। अगर आपने ऐसा किया तो आपको एमरजेंसी की कोई जरूरत नहीं है। चार चीजें आप छोड़ दें, चार चीजों को आप बालाए ताक रख दें, आपको एमरजेंसी की कोई जरूरत नहीं रह जाएगी। पहली बात तो यह है कि आप पंचशील को छोड़ दें। दूसरे ताशकंद को छोड़ दें। तीसरे नान-मेकिंग आफ न्यूक्लियर वॉपंज को आप छोड़ दें। चौथे तटस्थता की नीति को आप छोड़ दें। तटस्थता का क्या मतलब होता है? तटस्थता का मतलब यह है कि आप दरिया के किनारे पर बैठे हुए हैं। न्यूट्रल का मतलब कुछ और होता है। तटस्थता का मतलब हिन्दी में यही होता है कि किनारे पर बैठा हुआ। किनारे पर कौन बैठा है? क्या आप घर वालों से नाराज हो कर आए हैं? क्या आपको कोई काम नहीं है दुनिया का कि आप किनारे बैठे हुए हैं? क्यों वक्त आप खराब कर रहे हैं? जो किनारे पर बैठा हुआ होता है उसे जरूर कोई न कोई धक्का दे देता है और वह दरिया के अन्दर डब जाता है।

ए रहरवाने बहरे अमल मौजों से सफीने टकरा दो,

[श्री यशपाल सिंह]

साहिल पे खड़े हो कर भी कहीं,
अन्दाजए तूफां होता है ?

इन चार बातों को आप छोड़ देंगे तो एमरजेंसी की ज़रूरत आपको नहीं रहेगी। छः महीने नहीं एक मिनट के लिए भी इसकी ज़रूरत नहीं रहेगी।

अन्त में मैं कहना चाहता हूँ कि इन से ज़राब तलब किया जाए कि इन्होंने देश को क्यों पिटाया ?

श्री रघुनाथ सिंह (वाराणसी) : कामत जी की भावना का मैं आदर करता हूँ। हमारे संविधान का जो प्राक्कथन है वह प्राक्कथन भी हर एक नागरिक को अधिकार देता है

"Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship".

जो बिल हमारे सामने उपस्थित हुआ है चैप्टर 18वें के सम्बन्ध में है। फ्रेंच रेवोल्यूशन जब हुआ था तब फ्रेंच रेवोल्यूशन ने यह नारा दिया था कि जस्टिस होना चाहिए, लिबर्टी होनी चाहिए। इस में कोई दो मत नहीं हैं कि ईश्वर ने हमें स्वतंत्र बनाया है और मनुष्य ने हमें पराधीन बनाया है। लिहाजा पराधीनता के खिलाफ हमेशा संघर्ष होते रहे हैं। एमरजेंसी की आवश्यकता क्यों उत्पन्न होती है। जब देश में कोई भयावनी स्थिति उत्पन्न होती है उसी वक्त एमरजेंसी लाई जाती है। यहाँ भी एमरजेंसी तब आई थी जब यहाँ संघर्ष हमारे सामने उपस्थित हुआ था।

मैं कामत जी की भावना का आदर ज़रूर करता हूँ कि जब एमरजेंसी तीन तीन और चार चार बरस तक रह जाती है तो उस एमरजेंसी में कोई तत्व नहीं रह जाता है। कोई आकर्षण नहीं रह जाता है

और तब वह एमरजेंसी एमरजेंसी न हो कर साधारण व्यवस्था हो जाती है।

श्री त्यागी : मर जैसी जाती है।

श्री रघुनाथ सिंह : इसलिये इतने लम्बे काल की एमरजेंसी बिल्कुल अप्राप्य है।

अभी आपने देखा है कि ब्रिटेन के प्रधान मंत्री श्री विलसन साहब ने सीमेन की स्ट्राइक के समय में एमरजेंसी को अपने देश में लागू किया तो हाउस आफ कामन्स में उसकी चर्चा हुई और वहाँ पर कहा गया था कि एमरजेंसी तो हो गई लेकिन जहाज उसी तरह से चल रहे हैं, सारा कारोबार उसी तरह से चल रहा है, विलसन साहब अपने घर पर मौजूद हैं, फारेन सेक्रेटरी अपने घर पर मौजूद हैं। फिर यह एमरजेंसी कैसी ? यदि भारत में एमरजेंसी है तो मैं कहना चाहता हूँ कि एमरजेंसी का रूप तो होना चाहिए। स्त्री है तो स्त्री का रूप तो होना चाहिए, पुरुष है तो पुरुष का रूप तो होना ही चाहिए।

श्री कामत जी ने सिर्फ एक बात कही है। उन्होंने कहा है कि हर छः महीने में एक बार इसका रिव्यू किया जाए। ठीक है। सरकार को भी चाहिए कि जैसे आर्डिनेंस लागू करते हैं—और उसको पहले पहल छः महीने के लिए लागू करते हैं और उसके पश्चात फिर उसको बढ़ाते हैं या विधेयक लाते हैं उसी प्रकार कोई न कोई विधेयक एमरजेंसी के सम्बन्ध में ज़रूर लाना चाहिए और उसको पास करवाना चाहिए। यह इसलिये भी ज़रूरी है कि आर्डिनेंस का भी जो रेग्युलर कोर्स है उससे हट कर इसका आश्रय लिया है। जब एमरजेंसी होती है तो यह अधिकार हासिल होना चाहिए कि इस पर विचार करें कि एमरजेंसी की आवश्यकता इस वक्त देश में

है या नहीं है। अगर देश में एमरजेंसी का वातावरण नहीं है तो एमरजेंसी को हमें हटाना चाहिए।

श्री कामत जी ने जो विधेयक उपस्थित किया है उनका मैं इफलिये विरोध करता हूँ कि वह संविधान में संशोधन करने वाला विधेयक लाये हैं। मैं समझता हूँ कि अगर कांस्टीट्यूशन में इतनी जल्दी जल्दी संशोधन किया जायगा तो इस कांस्टीट्यूशन का कोई महत्व नहीं रह जाएगा। इस तरह से तो हमारी कांस्टीट्यूशन जो कि पवित्र, शुद्ध और हमारे लिए सर्वोपरि है उसको एक साधारण विधेयक का रूप मिल जाएगा। अतएव मैं कहना चाहता हूँ कि सरकार को स्वयं इस पर विचार करना चाहिए, सरकार को रूल बनाना चाहिए और कांस्टीट्यूशन में संशोधन करने के स्थान पर कोई ऐसी व्यवस्था करनी चाहिए ताकि हर छः महीने के बाद एमरजेंसी पर सदन में विचार हो, ताकि पता चले कि जनता की लिबर्टी को कब नहीं करना चाहते हैं। रेग्युलर कोर्स आफ जस्टिस को इन इमरजेंसी के कारणों से स्थगित नहीं रखना चाहते हैं।

मेरी प्रार्थना है कि प्राय इस विधेयक को वापिस ले लें। सरकार से मैं प्रार्थना करता हूँ कि हर छः महीने के बाद आर्डिनेन्स के मामले में सरकार जैसे सदन के सामने आती है उसी तरह से इस विषय में भी सामने आए ताकि यह सदन इसके बारे में भी निर्णय ले सके। तब यह सदन देख सकेगा कि हमने लोगों की लिबर्टी का, रेग्युलर कोर्स आफ जस्टिस का अतिक्रमण नहीं किया है वह क्या...

Shri Nambiar: Will the Government give an assurance that within the next six months the emergency will be withdrawn? Then, the Bill will be withdrawn.

श्री रघुनाथ सिंह: मुझे अफसोस है कि मैं सरकार में नहीं हूँ। आप लोग मुझे मंत्री बना देंगे तो उस दबत में इस तरह का एम्पॉरेंस दे दंगा। अभी मैं मंत्री पद पर नहीं हूँ।

इन शब्दों के साथ मैं श्री कामत जी के विधेयक की भावना का तो समर्थन करता हूँ लेकिन सरकार से प्रार्थना करता हूँ कि वह कोई ऐसा रूल कोई ऐसा रेग्युलेशन बनाये कि एमरजेंसी पीरियड में समय समय पर यह चीज सदन के विचारार्थ उपस्थित होती रहे ताकि सदन बता सके कि हम का अभी एमरजेंसी जारी रखने की आवश्यकता है या नहीं है।

Shri S. Kandappan: Mr Chairman, I welcome the useful Bill brought forward by Shri Kamath. I think the Government would do well to accept this Bill. The necessity for a review of the emergency is not in dispute. The contention is that the Government could, at any time, of their own accord, come before the House and review the whole situation. What is the difficulty if by an amendment of the Constitution it is made incumbent on the Government that it should be reviewed every six months?

It was strange that an hon. Member like Shri Shinkre was arguing on a very flimsy ground by saying that it would only be one more weapon in the hands of the Government to defeat the opposition. I was wondering whether he would perhaps carry his logic further and say that there is no need for the opposition to remain in the House. It is tantamount to that. When the opposition does not have adequate strength, every measure sponsored by it is naturally defeated. But that does not mean that we should not have a healthy convention, or a healthy provision in the Constitution itself.

[Shri S. Kandappan]

Article 352 is a very serious article and, as Shri Kamath has rightly pointed out, it was thought even by the Constitution framers as a necessary evil. Dr. Ambedkar, in his wisdom thought it would not be misused, but unfortunately this Government, in spite of the professions that they are strong adherents to and upholders of democracy, that they are all for healthy conventions of democracy, we know, in all the past 20 years has not hesitated, even for a moment, to grab whenever they got an opportunity, more and more powers in their hands. Their power mania is such and so great that the Government is not willing to relinquish even an extra-ordinary measure of this kind.

I would like to make one very important point. Apart from the necessity of this measure or otherwise, by prolonging this measure for a pretty long, unwarrantedly long, period, they have rather belittled the importance of this measure itself. As people connected with the temple know, the deity is taken in procession once in a year or twice; if it is done daily, I think, it will lose its charm.

Shri Nambiar: Nobody cares them.

Shri S. Kandappan: Even the devotees may not care for the deity. The same with this measure. This measure has been there for three or four years. As Shri Kamath pointed out, it is there for 3½ years. This Parliament can rightly be called the emergency Parliament. Unlike most Members here, unfortunately a few Members like me, who got into this Parliament through by-elections, did not have the honour of partaking in the deliberations of this House as free Members; we were all sitting in emergency sessions alone. We did not have the opportunity even for or a few months or a few days. So, the Government should ponder over these things. This is really a very serious thing. And it is a very innocuous measure.

Shri Raghunath Singh was arguing that we cannot just off-hand and often amend the Constitution. It is very strange that whenever it suits them, they can tamper with the Constitution any number of times to the detriment of healthy conventions and against the welfare of the people but when such an innocuous and harmless measure as this brought before the House, they have got the courage to say that we cannot amend the Constitution often. It is such a flimsy argument.

Shri Hari Vishnu Kamath: Audacity.

Shri S. Kandappan: Audacity, temerity or whatever you may call it. These arguments have no validity and I think the Government should come forward to accept this Bill.

Mr. Chairman: The hon. Minister.

श्री मधु लिमये : अध्यक्ष महोदय, आप पांच मिनट मुझको दे दें। मैंने पहले से नाम लिख कर दिया है।

Shri K. C. Sharma: ..(Sardhana): Just five minutes.

Mr. Chairman: There is no time left. The Bill has to be passed or whatever is to be done to it.

Shri Vidya Charan Shukla: Mr. Chairman, Shri Kamath has posed a very limited question before the House and that relates to the amendment of article 352. Most of the speeches, unfortunately, have gone beyond this point which is raised by Shri Kamath's Bill. While putting forward Government's viewpoint, therefore, I would not touch upon those matters which do not relate to this Bill which is under our consideration.

The main argument that has been raised by the hon. Member, Shri Kamath, is that while a Proclamation

under article 356 of the Constitution has to be debated before this House every six months, a Proclamation of Emergency under article 352 requires no such discussion in this House. If the hon. Members go through the Constitution and see the background of these two articles it will become apparent to them why the framers of the Constitution in their wisdom thought it fit to differentiate between these two articles.

A Proclamation under article 356 relates to matters which are of transitory nature. Whenever there is a breakdown in the law and order situation or in the constitutional machinery of a State, the Centre may take over the administration of that particular territory or State and this Parliament will take over the functions of the State Legislature. As soon as the proper time comes and the conditions are opportune, the elections could be held in that State and the powers would be given back to the representatives of Vidhan Sabha of that State and the regular democratic set-up would then begin functioning. But the Emergency or the contingency which is visualised under Article 352 is not of a transitory nature. These dangers of external aggression, war or internal rebellion are of indefinite duration; these dangers may be of indefinite duration; it all depends on things which are not necessarily under our control. What China would do in the next twenty years is not what we can determine; what Pakistan may do in the next ten years is not what we can determine; we cannot control all these things. What I am saying is that such dangers may continue or may not continue. So these are two different problems which are tackled by two different Articles under our Constitution: one is for our own internal matters which are strictly within our control, we can mend and take remedial measures and do all sorts of things, whereas the external danger, war and things like that are not in our control and within our jurisdiction. That is why the Constitution

framers deliberately put the provision of discussion every six months when proclamation under Article 356 was contemplated and they deliberately omitted it in the case of proclamation under Article 352 when we are threatened by external aggression, etc.

Mr. Kamath quoted from the proceedings of the Constituent Assembly. I would also like to quote from the same speech, but a few lines before the place from where Mr. Kamath had quoted. Mr. T. T. Krishnamachari, speaking in the Constituent Assembly, said this:

"I would ask the House to consider this Chapter as a sort of safety valve which is intended to save the Constitution. The powers of the Parliament are preserved... 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 has 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...."

Mr. Kamath had quoted from here:

"...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."

This is the main point on which, I think, Mr. Kamath has based his Bill.

Another thing that I would like to point out to this House is that the existence of Emergency is not conditioned by the fact whether the Emergency powers are misused or not by

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the Executive, but it is determined by the essential consideration of national security and it would be incorrect to limit the operation of the proclamation to any specified period or to make such operation conditional upon the manner in which the Emergency powers are exercised by the Executive for the time being in power.

This question of Emergency powers, the continuation or otherwise of the Emergency, has been brought before the Parliament more often than once in six months. Mr. Kamath wants that this may be discussed in this House once in six months.

Shri Hari Vishnu Kamath: Must be mandatory.

Shri Vidya Charan Shukla: I would say that this Government, this Parliament, has brought up this matter for discussion in a direct or indirect manner more than once in six months and if you count the number of discussions we have had during the last four years, you will see the truth of my statement.

There have been certain points which have been raised by the other members.

I would say a few words about them. The main point made by some Members was that if the House wants to discuss the emergency and the Government choose not to bring any motion, what will happen? In the case of private Members' Bills or Resolutions, sometimes they come through in the ballot, sometimes they do not. But being a very expert parliamentarian, Shri Kamath knows that is not the only way of bringing this matter before the House; there are many other procedural devices by which this matter can be brought before the House for discussion without any obstruction from the ballot. Nothing prevents this Parliament from discussing anything which is of urgent public importance.

I need not refer to a very light-hearted speech made by Shri S. M. Banerjee. The points raised by him do not, in my opinion, deserve any reply.

The question was raised whether a grave emergency exists or not. This the Members themselves can determine.

Shri Nambiar: On a point of order. I have had 10 years experience in this Parliament. I have never heard any Minister say so far that the points raised by another Member do not deserve reply. He may not reply, but to say that it does not deserve a reply is not at all proper. It is a contempt not only of the Member concerned but also of the other Members who were hearing his speech. If this point is not upheld, we can say that the Minister's reply does not deserve to be heard by us.

Mr. Chairman: Whatever an hon. Member may say, it is open to the hon. Minister to support it or oppose it or refute it. But I would certainly not agree that this expression that the points raised by a Member do not deserve a reply is proper. The hon. Minister may not agree with him, or he may say that the Member concerned is right or wrong. He can refute it that way.

Shri Kapur Singh: Perhaps what the hon. Deputy Minister intended to convey was that the hon. Member, Shri Banerjee's arguments do not call for a reply.

Shri Vidya Charan Shukla: That was why I prefaced it by saying that very light-hearted remarks do not deserve any reply. I do not know how it was wrong . . .

Shri Hari Vishnu Kamath: You may say that it does not call for a reply.

Shri Vidya Charan Shukla: Same thing.

Shri Tyagi: The remarks were not relevant and therefore he did not reply.

Shri Hari Vishnu Kamath: He can say that therefore it does not call for a reply.

Shri Vidya Charan Shukla: Some Members, particularly Shri Kamath, laboured the point: how can we go and fight general elections under these provisions of emergency? Many hon. Members of the Opposition have been returned to this House when the emergency has been existing whereas they lost the elections when there was no emergency. I will name those Members. Dr. Lohia lost the election during normal times whereas he got elected during the emergency. Same is the case with Shri Masani and several other Opposition Members; they lost the election when there was no emergency, but came in during the election after the emergency was proclaimed.

Shri Tyagi: Is that so?

Shri Hari Vishnu Kamath: Congress Members also.

Shri Umanath: Still we are opposing it.

Shri Tyagi: In that case, we shall oppose the emergency!

Shri Vidya Charan Shukla: What I am trying to say is that the Government have been very keen to see that this emergency does not interfere with the normal working of the political apparatus in this country, and no opposition political party is affected by these emergency provisions. I would say that Shri Kamath, after considering this, should withdraw this Bill.

Shri Hari Vishnu Kamath: After listening to this rather unconvincing reply by the Deputy Minister, I wish he had come better prepared, better briefed and better tutored by the senior Minister, tutored

Shri Vidya Charan Shukla: I am not tutored by anybody.

Shri Hari Vishnu Kamath: You should have come, I say.

Shri Vidya Charan Shukla: No, I should not have.

Shri Hari Vishnu Kamath: But the points that he has made, the arguments that he has advanced in reply to the various issues that were raised here, the various matters that were broached here, are so superficial, so lacking in depth that I am inclined to say that they do not call for a reply on my part, they do not deserve to be taken serious notice of. But the matter is far too grave, the issue is far too grave for me to discuss this matter in the same manner in which the Deputy Minister has done. I do not wish to stoop to the same level that he has stooped to, and I am sorry to say that he has not approached this issue with that earnestness and seriousness which it demanded.

He has adduced arguments which I will dispose of

Shri Dinan Bhattacharya: (Serampore): Ask for the presence of his senior Minister, Shri Nanda.

Shri Hari Vishnu Kamath: He is busy perhaps discussing sadachar and other matters.

I will dispose of the arguments that he has advanced in as summary a fashion as he has sought to dispose of the arguments that were adduced from this side of the House.

He was good enough to say—I could not follow the cogency of that argument—that Members of the Opposition had been elected when there was emergency, and when there was no emergency they were defeated. I think that applies with greater force to those vacant benches, the present vacant benches, except for Shri Jaganatha Rao, all the seats of Ministers are vacant on that side. Many Ministers were defeated when there was no emergency in 1962, not, of course, Keshav Devji. In other States also Ministers were defeated. In 1952 I remember Shri Morarji Desai was

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defeated in Bombay in the general election. This is no argument. I will not answer the argument with a counter-argument, that does not carry us anywhere, it is neither here nor there. By point is, a fair and free election irrespective of victory or defeat is necessary. हारजीत होती रहती है, कभी कोई हारता है, कभी कोई जीतता है।
 "सुखदुःखे समेकृत्वा लाभालाभौ जयाजयौ"

Shri Tyagi: What he meant to say was that the emergency was not made use of by the Government in the matter of elections. Is there any proof about that?

Shri Hari Vishnu Kamath: I do not want to adduce any proofs here, but is it at all possible to conduct a fair and free election when there is an emergency on? Please place your hand on your heart and say whether you can or you cannot; it may be you will not misuse, but is there any guarantee, constitutional guarantee, legal guarantee, that those powers conferred under the emergency, that have been vested in the executive under the emergency, will not be misused? Otherwise, why should Dr. Ambedkar say that which I read out in the course of my speech, that those powers might be misused, he said that, might be abused for political purposes. Dr. Ambedkar himself said that, not I, I am just quoting what he said. It is quite likely, we are facing that risk, there is no guarantee against the possibility that it may be misused for political purposes. So, the argument that the Deputy Minister has advanced has no force behind it.

The other argument that he advanced was about transitoriness, that article 356 is merely transitory and it is something different from article 352, the cat was out of the bag, a very big cat was out of the bag when the Minister admitted.....

Shri Vasudavan Nair (Ambalappuzha): Black cat.

Shri Hari Vishnu Kamath:.....in so many words that this may be

indefinite. That is the word I heard. He said "indefinite", he may consult the record if he wants, that it might continue indefinitely. I shudder to think if this continues indefinitely for 10, 20 years, as Pandit Nehru said once in this House that the conflict with China might continue for 50 years, is it the Minister's case, and therefore the Government's case, that for 50 years there need not be any official resolution by the Government before Parliament for continuing the emergency? If that is the way they are going to work democracy, I would not like to call it democracy; call it what you will but it is not democracy. I am grateful, Mr. Chairman, to all hon. Members who took part in this debate and for their valient, strong and full support of the principle as well as the provisions of my Bill. Even Congress Members of the ruling party, I believe, Shri Ram Sahay Pandey and Shri Shree Narayan Das—I would describe them as—were reluctant opponents of the Bill; they give support to the principle; even Shri Raghunath Singh extended moral support to the Bill. It was left to my hon. friend from Goa, Shri Shinkre, an advocate of Goa, to perform this; to advance a strong plea, against the Bill. It was the funniest argument I have heard; it is even funner than the Deputy Minister's argument. He said, what is the use of all this: We will be defeated again; it is wasting Parliament's time. If this is carried to its logical conclusion, if we want to save the time, energy, money and resources, the best course would be by some sort of magic—I do not know whether the Constitution allows it—or by some miraculous means to abolish Parliament..... (Interruptions).

Shri Shinkre: Since he referred to me personally, I wish to offer a clarification

Mr. Chairman: Afterwards, not now. Shri Kamath may conclude now.

Shri Hari Vishnu Kamath: If that is the way, the Treasury Benches and unfortunately some—not some, but

one—of my colleagues look at this matter—if you bring a motion it will be defeated; Shri Jaganatha Rao seems quite happy; he will defeat us once more—if that is the argument, we need not then work in this Parliament—if it be argued that whatever we may say, whatever we may bring forward will not be passed by them; they will be defeated; the bull-dozer will work.

Shri Tyagi: The Government does not intend to continue it against the wishes of Parliament.

Shri Hari Vishnu Kamath: I know, Sir, the time is up. Shri Nambiar made a proposal with regard to the withdrawal of the Bill. I can consider the matter of withdrawal only on one condition. I do not wish to take the time of the House; there is very little time; my colleague, Shri Trivedi is anxiously waiting to move his Bill. I cannot meet now the other arguments or analyse them or appreciate them, arguments advanced from both sides of the House. The proposal for withdrawal could be considered only on one condition that the senior minister, not the senior Minister, the seniormost Minister, or the Leader of the House—I am glad he has just come he is looking a bit unwell but I hope his heart and mind are quite fit.....

The Minister of Parliamentary Affairs and Communications (Shri Satya Narayan Sinha): My heart is with you.

Shri Hari Vishnu Kamath: The seniormost Minister or the Leader of the House should rise in his seat and assure the House, a solemn assurance should be given, that every six month an official resolution will be brought before the House. An official resolution should be moved in the House with regard to the emergency, in terms of the provisions of my Bill. It should be discussed by means of a resolution brought forward by the Government in this House. Then only, if that assurance is given by the

seniormost Minister or by the Leader of the House, I would consider the proposal for withdrawing the Bill; not otherwise.

With these words, I move that the Bill be taken into consideration.

Mr. Chairman: Has the Minister got anything to say?

Shri Vidya Charan Shukla: He has not asked for any assurance from me I have nothing more to say.

Shri Satya Narayan Sinha: I have not been able to follow the discussion. But one thing I can assure you.

Some Hon. Members: Louder please.

Shri Satya Narayan Sinha: I am always loud, but today, I am a little indisposed. I can tell the House and assure the Members of the Opposition that we are not going to misuse this in any way (*Interruption*) and it will not have any effect on the elections. This assurance, I can give.

Shri Hari Vishnu Kamath: That is not the assurance that we want. Every six months, you must come to the House with an official resolution for a review.

Mr. Chairman: Order, order. Does Shri Vishwa Nath Pandey want to press his amendment?

Shri Vishwa Nath Pandey: No, Sir. I would like to withdraw it.

Mr. Chairman: Has he got the leave of the House to withdraw his amendment?

Several hon. Members: Yes.

The amendment was, by leave, withdrawn.

Mr. Chairman: I shall put the question to the vote of the House. This being a Constitution (**Amendment**)

