

Class 49—(Amendment of article 353.)

SHRI C. K. CHANDRAPPAN
(Telliicherry): I beg to move:

Page 16,—

for lines 30 to 35, substitute—

“(ii) the power of parliament to make laws under clause (b)

shall not extend to any State other than a State in which or in any part of which the proclamation of Emergency is in operation’. (578)

SHRI ANNASAHEB GOTKHINDE
(Sangli): I beg to move:

Page 16, lines 31 and 32,—

omit “or in any part of which”

SHRI C. K. CHANDRAPPAN: I would like to bring to the notice of the House some facts about these new powers which are being assumed by the Government by this amendment. According to this new provision which is being added, the Government will have the power for their proclaiming emergency in any part of the country and parliament will make laws which can be enforced even in those parts of the country which are not under the operation of Emergency. I think this is quite an undemocratic provision. Just now, while answering the discussions, the Hon. Minister had stated that if the Government finds it necessary that the emergency should be there only in one part of the territory of the country, then the Government would not like the Emergency to be declared for the whole of the country. If the position, as it is stated in the amendment is accepted, suppose there is partial Emergency declared in Nagaland, then this Parliament has the power to enact legislation in regard to that part of the country for the enforcement of Emergency. And if Government considers that, in the interest of security of the country, that legislation should be enforced in another part of the country, they can do

so. That is to say, after declaring Nagaland to be an area where Emergency is to be proclaimed, Government can enforce the legislation, which will be put into operation in that area, in West Bengal also, for example, the legislation can be put into operation in other parts of the country also. That is what we understand from this. If that happens, then what does it mean? It means, introducing the Emergency through the back-door....

MR. CHAIRMAN: You are basing the whole thing on a wrong assumption. Kindly read the clause first; it speaks of the power of Parliament to make laws; Government cannot automatically extend it....

SHRI C. K. CHANDRAPPAN: It reads:

“the power of Parliament to make laws under clause (b), shall also extend to any state other than a State in which or in any part of which the Proclamation of Emergency is in operation...’

MR. CHAIRMAN: It refers to the power to make laws. You are proceeding on the wrong assumption that this law will automatically be extended to other parts.

SHRI C. K. CHANDRAPPAN: After enacting legislation for a particular part of the country which is brought under Emergency, I understand that Government can enforce that law in other parts of the country also. That is to say, in the other parts of the country which are not under Emergency, Government will put into operation that legislation by which a part of the country has been brought under Emergency. This is how I have understood this. I may be wrong. When the Law Minister explains it, it will be clear. If that is the case, then this is very undemocratic and authoritarian because Emergency has been brought into force

only in a part of the country and if the laws which are enacted by Parliament for the enforcement of that are put into operation in other parts of the country also, then practically the whole country is under Emergency—even though only one part of the country has been declared to be under Emergency. This is the apprehension....

AN HON. MEMBER: It is not worse than the present one.

SHRI C. K. CHANDRAPAN: That is a different matter. Then, we need not have the Amendment. Since this Amendment has been brought forward and the Minister also has explained that there is a reason for declaring one part of the country to be under Emergency, I would like to point out to him that this goes against the spirit of it. That is why, we have moved an amendment to say:

"page 16, for lines 30 to 35, substitute,

"(ii) the power of Parliament to make laws under clause (b) shall not extend to any State other than a State in any part of which the proclamation of Emergency is in operation."

Our amendment seeks to clearly specify the power of Parliament to enact legislation and where it can be put into operation.

SHRI ANNASAHAB GOTKHINDE (Sangli): Mr. Chairman Sir, I would like to draw the attention of the hon. Law Minister very seriously to the point that I am making.

We have already considered clause 17 of the Bill which seeks some amendment of Article 83 of the Constitution. The proviso to clause (2) of Article 83 is not changed and it reads:

"Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by Law for a period

not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate".

That proviso remains as it is My amendment is:

"Page 16, line 31 and 32,—

omit "or in any part of which"

The Constitution is an important document; there is no doubt about it. The wordings in it should be as precise as possible and there should not be any word which is redundant. In this particular context, 'in any part of which' is very clearly redundant.

By clause 48 of this Bill, we are going to amend Article 352 of the Constitution and are adding these words:

"in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation."

The area is going to be specified in the Proclamation issued under Article 352. Therefore, I want to know from the Law Minister if the intention is to have an enabling provision to declare emergency in any part of a State or the whole State.

Secondly, my submission is that this proviso to clause (2) of Article 83 must not be made applicable while such limited or partial proclamation of emergency is in operation. This proviso enables the Parliament to extend the life of the Lok Sabha by enacting the Law, while the proclamation of emergency is in operation. But by this Article, we are going to have a limited or partial proclamation of emergency. The question is, whether after the declaration of such emergency, the Parliament will still be able to use the powers provided in proviso to clause (2) of Article 83. As I submitted, this proviso to clause (2) of Article 83, must not be made applicable while such limited or partial proclamation of emergency is in operation.