

STATEMENT OF OBJECTS AND REASONS

The Constitution (Thirty-ninth Amendment) Bill, 1975 seeks to amend articles 123, 213, 239B, 352, 356, 359 and 360 of the Constitution.

2. Article 123 empowers the President to promulgate Ordinances when both the Houses of Parliament are not in session if he is satisfied that circumstances exist rendering it necessary to take immediate action. Corresponding powers have been conferred by the Constitution on the Governor under article 213. Similar powers have been conferred on the Administrator under article 239B when the Legislature of a Union territory is not in session. On the plain language of articles 123, 213 and 239B there is no doubt that the satisfaction mentioned in those articles is subjective satisfaction and that it is not justiciable. There is no doubt that this was also the intention of the makers of the Constitution. However, litigation is pending involving the justiciability of this issue and contentions are being raised that the issue is subject to judicial scrutiny. To place the matter beyond doubt, it is proposed to provide in the Constitution that the satisfaction of the President, Governor or Administrator shall be final and conclusive and shall not be questioned in any court on any ground.

3. Article 352 empowers the President to declare Emergency if he is satisfied that the security of India or any part of it is threatened by war, external aggression or internal disturbance. Article 356 empowers the President to assume to himself the functions of the Government of a State if the constitutional machinery in any State fails and the Government in the State cannot be carried on. Likewise article 360 empowers the President to declare Financial Emergency if he is satisfied that the financial stability of India is threatened. Here again, the issue regarding satisfaction is, on the face of the article clearly not justiciable. However, as the validity of the Proclamation issued under article 352 has been challenged in several proceedings and as litigation of this nature involves waste of public time and money, it is proposed to amend these three articles so as to make the satisfaction of the President final and conclusive and not justiciable on any ground.

4. In relation to article 352, contentions have been raised in certain writ petitions that while the original Proclamation of Emergency is in operation no further Proclamation of Emergency could be made thereunder. In order to place the matter beyond doubt it is proposed to make it clear in article 352 that the President may issue different Proclamations on different grounds whether or not there is a Proclamation already in existence and in operation.

5. When a Proclamation of Emergency is in operation, the President is empowered under article 359 of the Constitution to make an order suspending the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in that order. It

was intended that the powers conferred by this article should be exercised during an emergency according to needs of the situation. On the other hand, article 358 renders the provisions of article 19 automatically inoperative while the Proclamation of Emergency is in operation, and the power to make any law or to take any executive action is not restricted by the provisions of that article. The intention underlying article 359 appears to be that when an order is made under clause (1) of that article in relation to any of the rights conferred by Part III and mentioned in the order, the order so made would have for all practical purposes the same effect in relation to those rights as article 358 has in relation to article 19. It is, therefore, proposed not to have any differences in language between article 358 and the language in respect of those rights only which may be mentioned in the Presidential Order under clause (1) of article 359.

6. The Bill seeks to achieve the aforesaid objects.

NEW DELHI,
The 20th July, 1975.

H. R. GOKHALE.