

**STATEMENT OF OBJECTS AND REASONS**

Recent experience has shown that the fundamental rights, including those of life and liberty granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.

2. It is, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away fundamental rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent. of the electorate participate. Article 368 is being amended to ensure this.

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

6. A Proclamation of Emergency under article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights—including the right to life and liberty—to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

7. Further, in order to ensure that a Proclamation is issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of Emergency virtually has the effect of amending the Constitution, it is being provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months

and can be continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent. or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

8. As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it would be provided that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the fundamental right to life and liberty. The right to liberty is further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

9. A special provision is being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

10. With a view to avoiding delays, it is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136.

11. The other amendments proposed in the Bill are mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

12. The Bill seeks to achieve the above objects. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;  
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