BABURAO ALIAS P.B. SAMANT

v.

UNION OF INDIA AND ORS.

DECEMBER 17, 1987

[E.S. VENKATARAMIAH AND K.N SINGH, JJ.]

Constitution of India, 1950: Articles 83, 118, 352, 353, 364 and 366—Proclamations of Emergency dated December 3, 1971 and June 25, 1975—Whether ultra vires—Publishing of Proclamations in Official Gazette—Whether a mode of publication.

Rules of Procedure and Conduct of Business in Lok Sabha: Rules 260, 379 and 382—Non-publication of resolutions—Whether resolutions ineffective—Publication in Parliamentary Debates even after delay—Adequate publication.

House of the People (Extension of Duration) Act, 1976: Whether ultra vires.

Finance Act, 1976: Validity of.

Indian Evidence Act, 1872: S. 57—Proceedings of Parliament—Court to take judicial notice.

The petitioner, an assessee under the Income Tax Act and Wealth Tax Act during the assessment year 1976-77 and liable to pay income tax and wealth tax in accordance with the rates prescribed by the Finance Act, 1976, which was passed by the Lok Sabha during its extended period under the provisions of the House of the People (Extension of duration) Act, 1976, filed a writ petition before this Court, challenging the vires of the two Proclamations of Emergency issued by the President on 3.12.1971 and 26.6.1975 and also of the House of the People (Extension of Duration) Act, 1976 and the Finance Act, 1976 contending that the duration of the House of People would have been validly extended only when a Proclamation of Emergency was in force under the proviso to cl. (2) of Art. 83 of the Constitution and since the two Proclamations of Emergency in question were either *ultra vires* the Constitution or had ceased to be in operation by the time the House of the People (Extension of Duration) Act, 1976 was passed by Parliament, that Act had no effect and, consequently all Acts passed by the House of the People during the extended period, including the Finance Act, 1976

were *ultra vires* the Constitution, and that even though the said proclamations had been validly issued, the proclamation dated 3rd December, 1971 and 25th June, 1975 had ceased to be in operation on 3rd February, 1972 and 26th August, 1975 respectively because the Resolutions passed by the two Houses of Parliament approving the said Proclamations of Emergency as required by cl. (2) of Art. 352 of the Constitution as it stood during the relevant time had not been published in the Official Gazette of the Government of India.

The petition was opposed by the respondent-Union of India contending that the two Proclamations had been duly issued by the President and approved by the Resolutions of the two Houses of Parliament as required by law and that actually the Proclamations of 3rd December 1971 and June 25, 1975 had been revoked by the Vice-President acting as the President by the Proclamations dated 27th March, 1977 and 21st March, 1977 respectively, that in the month of February, 1976 when the House of the People (Extension of Duration) Act, 1976 was passed by Parliament both the Proclamations of emergency were in force and, therefore, Parliament was entitled to extend the period of the House of the People for a period not exceeding one year at a time, that the Finance Act, 1976 passed duly in the period so extended had been, therefore, validly passed and that publication of the Resolutions was not necessary and, in any event, since they had been published in the Lok Sabha and Rajya Sabha Debates which were published under the authority of the Speaker of the House of the People and the Chairman of the Rajya Sabha respectively, the Proclamations of Emergency remained in force until they were duly revoked.

Dismissing the writ petition,

HELD: 1. The two Proclamations of Emergency were kept in force by virtue of the resolutions passed by the Houses of Parliament until they were duly revoked by the two Proclamations which were issued by the Vice-President acting as President of India in the year 1977. Since the two Proclamations of Emergency were in force when the House of the People (Extension of Duration) Act, 1976 was passed, its validity cannot be questioned. [455D-E]

The Lok Sabha passed the Finance Act, 1976 during the extended period of its duration and, therefore, the validity of Finance Act, 1976 also cannot be questioned. [455E]

2. Article 352 of the Constitution does not prescribe that a

Proclamation of Emergency should be published in the Official Gazette. Wherever the Constitution expressly requires a certain notification to be published in the Official Gazette, it has stated that the said notification shall be published in the form of a public notification. [444H; 445C] A

A Proclamation of Emergency, being a very important event affecting public life, has also to be published in any manner known to modern world and the publication in the Official Gazette is one such mode. If the Constitution requires that a particular mode of publication is necessary then such mode must be followed, but if there is no mode of publication prescribed by the Constitution, then it must be considered that the Constitution has left the method of publication to the authority issuing the proclamation in order to make it known to the members of the public. [445G-H; 446A-B] B C

3.1 In the instant case, the Proclamations of Emergency have been published in the Official Gazette. [446B]

In the Constitution and in the Rules of Procedure of the Houses of Parliament and of the State Legislatures there are several provisions which provide for resolutions being passed by the Houses of Parliament or the Houses of State legislatures. They are not required to be published in the Official Gazette, even though in some cases they are published, say, where a certain law is adopted under Art. 252 or a member is removed on the ground of privilege etc. They would not be treated as ineffective merely because they are not published in the Official Gazette. They are all, however, published in the Reports of the Houses of Parliament and of the Houses of the State Legislature within a reasonable time. [446C; 447B-C] D E

3.2 The Lok Sabha Debates and the Rajya Sabha Debates are the journals or the reports of the two Houses of Parliament which are printed and published by them. The Court has to take judicial notice of the proceedings of both the Houses of Parliament under s. 57 of the Indian evidence Act, 1872 and it is expected to treat the proceedings of the two Houses of Parliament as proved on the production of the copies of the journals or the reports containing the proceedings of the two Houses of Parliament which are published by them. [450E-F] F G

3.3 What is essential is that the resolutions approving the Proclamation of Emergency should be passed within the period of two months. A little delay in publishing the proceedings would not affect the validity of the resolutions. [454B-C] H

3.4 The reports of the proceedings of Parliament and the State Legislatures are widely circulated. The newspapers, radio and the television are also the other modern means which give publicity to all Acts and Resolutions of Parliament and the Legislatures of the States. The publication in the Parliamentary Debates, though after some short delay is adequate publication of the resolutions of Parliament as there is no rule which requires that the resolutions should be published in the Official Gazette. Hence, mere non-publication of the resolutions approving the Proclamations of Emergency in the Official Gazette did not make them ineffective. [454G-H; 455A-B]

In the instant case, the resolutions of the Lok Sabha, and the Rajya Sabha approving the two resolutions have been duly published in the official reports of the two Houses. [455B-C]

Waman Rao & Ors. Etc. Etc. **v.** *Union of India & Ors.,* **[1981] 2 S.C.R. 1;** *Harla* **v.** *The State of Rajasthan,* **[1952] S.C.R. 110;** *State of Punjab* **v.** *Sat Pal Dang & Ors.,* **[1969] 1 S.C.R. 478 and** *Niharendu Dutt Majumdar* **v.** *The King Emperor,* **[1942] F.C.R. 38, referred to.**

ORIGINAL JURISDICTION: Writ Petition No. 63 of 1977.

(Under Article 32 of the Constitution of India).

Petitioner-in-person.

Kuldeep Singh, Additional Solicitor General, B.B. Ahuja, Ms. A. Subhashini, Ms. J. Wad and C.V. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. Shri Baburao alias P.B. Samant, the petitioner herein, who has argued this case in person with great clarity and precision has raised the following contentions in this petition.

(1) The Proclamation of Emergency issued on 3.12.1971 by the President of India was either *ultra vires* the Constitution or had ceased to be in operation on 4.2.1972.

(2) The Proclamation of Emergency dated 25.6.1975 issued by the President of India on 26.6.1975 was either *ultra vires* the Constitution or had ceased to be in operation on 26.8.1975;

(3) The House of the People (Extension of Duration) Act, 1976 (No. 30 of 1976) is *ultra vires* the Constitution; and

(4) The Finance Act, 1976 (66 of 1976) is *ultra vires* the Constitution. A

Although the petitioner had also challenged section 13 of the Constitution (42nd Amendment) Act, 1976 and clause (c) of section 3 of the Constitution (24th Amendment) Act, 1971 in the petition he did not press these two contentions at the hearing of the petition B

The petitioner was an assessee under the Income-tax Act and Wealth Tax Act during the assessment year 1976-77 and was liable to pay income-tax and Wealth tax in accordance with the rates prescribed by the Finance Act, 1976 which was passed by the Lok Sabha during its extended period which was extended under the provisions of the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976), after the expiry of five years from the date appointed for its first meeting. The contention of the petitioner is that the duration of the House of the People could have been validly extended only when a Proclamation of Emergency was in force under the proviso to clause (2) of Article 83 of the Constitution and since the two Proclamations of Emergency dated 3rd December, 1971 and 25th June, 1975 were either *ultra vires* the Constitution or had ceased to be in operation by the time the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) was passed by Parliament, the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) had no effect and consequently all Acts passed by the House of the People during the extended period including the Finance Act, 1976 were *ultra vires* the Constitution. He further submitted that even though the said Proclamations had been validly issued, the Proclamation of Emergency dated 3rd December, 1971 had ceased to be in operation on 3rd February, 1972 and the Proclamation of emergency dated 25th June, 1975 which was issued on 26th June, 1975 had ceased to be in operation by 26th August, 1975 because the resolutions passed by the two Houses of Parliament approving the said Proclamations of Emergency as required by clause (2) of Article 352 of the Constitution as it stood during the relevant time had not been published in the Official Gazette of the Government of India. C D E F G

The petition is opposed by the Union of India. The Union of India has contended that the two Proclamations of Emergency had been duly issued by the President and approved by the resolutions of two Houses of Parliament as required by law and that actually the proclamation of Emergency of 3rd December, 1971 had been revoked by the Vice-President acting as the President by the Proclamation H

A dated 27th March, 1977 and the Proclamation of Emergency dated June 25th, 1975 had been revoked by him by the Proclamation dated 21st March, 1977. In the month of February, 1976 when the House of the People (Extension of Duration)Act, 1976 (Act 30 of 1976) was passed by Parliament both the Proclamations of Emergency were in force and therefore Parliament was entitled to extend the period of the B House of the People for a period not exceeding one year at a time. The Finance Act, 1976 passed during the period so extended had been, therefore, validly passed. It was further pleaded by the Union of India that the publication of the resolutions was not necessary and that in any event since they had been published in the Lok Sabha Debates and the Rajya Sabha Debates which were published under the authority of C the Speaker of the House of the People and the Chairman of the Rajya Sabha respectively the Proclamations of Emergency remained in force until they were duly revoked.

Article 352 of the Constitution as it stood at the relevant time read as follows:

D

> "352 (1) 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.

E

> (2) A Proclamation issued under clause (1)-
>
> (a) may be revoked by a subsequent Proclamation;
>
> (b) shall be laid before each House of Parliament;

F

> (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament:
>
> Provided that if any such Proclamation is issued at a

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> time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the council of States, but no resolution with respect to such Proclamation has been passed by the House

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> of the People before the expiration of that period, the

Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

Clause (1) of Article 352 of the Constitution provided that if the President was satisfied that a grave emergency existed whereby the security of India or of any part of the territory thereof was threatened whether by war or external aggression or internal disturbance, he might by Proclamation make a declaration to that effect. The Proclamation issued under clause (1) of Article 352 of the Constitution could be revoked by a subsequent Proclamation. It was required to be laid before each House of Parliament and that the Proclamation would cease to operate at the expiration of two months unless before the expiration of that period it was approved by resolutions of both Houses of Parliament.

On December 3, 1971 when India was attacked by Pakistan the President issued a Proclamation under clause (1) of Article 352 as he was satisfied that the security of India had been threatened by external aggression. The said Proclamation was published in the Official Gazette on the same date. It reads thus:

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, 3rd December, 1971

C.S.R. 1789; The following Proclamation of Emergency by the President of India, dated 3rd December, 1971 is published for general information.

Proclamation of Emergency

A In exercise of powers conferred by clause (1) of Article 352 of the Constitution, I, V.V. Giri, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by external aggression.

B New Delhi,

3rd December, 1971

sd/-
C V.V. Giri
President

The said Proclamation was laid before both the Houses of Parliament on the 4th December, 1971. In the Lok Sabha a resolution was moved by the Prime Minister which read as follows:

D "I beg to move:

"That the House approves the Proclamation of Emergency issued under Article 352 of the Constitution by the President on the 3rd December, 1971."

E MR SPEAKER : Resolution moved:

"That the House approves the Proclamation of Emergency issued under Article 352 of the Constitution by
F the President on the 3rd December, 1971." (See Lok Sabha Debates dated December 4, 1971 Column 4).

After some discussion in the House the resolution was carri unanimously and it was adopted. (See Lok Sabha Debates dat
G December 4, 1971 column 37). Similarly a resolution was adopted the Rajya Sabha approving the said Proclamation of Emergency. (Rajya Sabha Debates dated December 4,1971 column 46). The said resolutions of the Houses of Parliament were no doubt not published in the Official Gazette. The above Proclamation of Emergency was revoked by the Vice-President acting as President on the 27th March,
H 1977 by a Proclamation which read thus:

"MINSTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 27th March, 1977

G.S.R. 132 (E)—The following Proclamation made by the Vice-President acting as President of India is published for general information:

PROCLAMATION

In exercise of the powers conferred by sub-clause (a) of clause (2) of Article 352 of the Constitution, I, Basappa Danappa Jatti, Vice-President acting as President of India, hereby revoke the Proclamation of Emergency issued under clause (1) of that article on the 3rd of December, 1971 and published with the notification of the Government of India in the Ministry of Home Affairs No. G.S.R. 1789, dated the 3rd December, 1971.

New Delhi,
the 27th March, 1977

sd/-
B.D. Jatti
Vice-President acting as President"

The above Proclamation was published in the Official Gazette Extraordinary dated the 27th March, 1977. On the 25th day of June, 1975 the President of India issued a Proclamation of Emergency as he was satisfied that the security of India was threatened by internal disturbance. That Proclamation was published under a notification dated 26th June, 1975 in the Official Gazette. It read thus:

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 26th June, 1975

G.S.R. 353 (B)

A The following Proclamation of Emergency by the President of India, dated the 25th June, 1975, is published for general information:

PROCLAMATION OF EMERGENCY

B In exercise of the powers conferred by clause (1) of Article 352 of the Constitution, I, Fakkhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance.

C New Delhi,
the 26th June, 1975 F.A. Ahmed,
President

No. 11/16013/1/75-S & P (D-11)
S.L. Khurana, Secy."

D A resolution was moved in the Lok Sabha on July 21, 1975 seeking the approval of the Lok Sabha to the Proclamation of Emergency dated the 25th June, 1975 and also the order of the President dated 29th June, 1975 made in exercise of the powers conferred by sub-clause (b) of clause (4) of Article 352 of the Constitution (as it stood E then) as applying to the State of Jammu and Kashmir. The Proclamation of Emergency was also laid on the table of the Lok Sabha. That resolution was adopted by the Lok Sabha on July 23, 1975. (See Lok Sabha Debates dated July 23, 1975, column 427). A resolution was moved seeking the approval of the said Proclamation of Emergency on 21st July, 1975 in the Rajya Sabha and it was adopted by the Rajya F Sabha on 22nd July, 1975. (See Rajya Sabha Debates dated July 22, 1975 column 124). The resolution of the Lok Sabha and the resolution of the Rajya Sabha approving the Proclamation dated 25th June, 1975 were not published in the Official Gazette. The Vice-President acting as President revoked the Proclamation of Emergency dated 25th June, 1975 by another Proclamation dated 21st March, 1977 which reads G thus:

"MINISTRY OF HOME AFFAIRS

NOTIFICATION
XXXXXXXXXX

H G.S.R. 117/E—The following Proclamation made by the

Vice-President acting as President of India is published for general information:

PROCLAMATION

In exercise of the powers conferred by sub-clause (a) of clause (2) of article 352 of the Constitution, I, Basappa Danappa Jatti, Vice-President acting as President of India, hereby revoke the Proclamation of Emergency issued under clause (1) of that article on the 25th June, 1975 and published with the notification of the Govt. of India in the Ministry of Home Affairs No. GSR 353(b) dated the 26th June, 1975.

B.D. Jatti
Vice-President acting as President

New Delhi,
the 21st March, 1977."

Article 83(2) of the Constitution during the relevant time, that is, before the 42nd Amendment Act of 1976 read as follows:

"83. (1) .....

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

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."

As the period of five years from the date appointed for its first meeting of the then existing House of the People was about to come to a close Parliament enacted the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) which received the assent of the President on the 16th February, 1976. Section 2 of that Act read thus:

A "2. Extension of duration of the present House of the People. The period of five years (being the period for which the House of the People may, under clause (2) of article 83 of the Constitution, continue from the date appointed for its first meeting) in relation to the present House of the People shall, while the Proclamation of
B Emergency issued on the 3rd day of December, 1971 and on the 25th day of June, 1975 are both in operation, be extended for a period of one year:

Provided that if both or either of the said Proclamations cease or ceases to operate before the expiration of the
C said period of one year.

The Finance Act, 1976 was passed by the Lok Sabha after its period was extended as stated above and by the Rajya Sabha in the early part of the year 1976 and it received the assent of the President on the 27th May, 1976. Aggrieved by the levy of the rates of income-
D tax and of wealth tax as provided by the Finance Act, 1976 the petitioner has filed this writ petition.

Two important questions which arise for consideration in this case are (i) whether the two Proclamations of Emergency were validly issued or not? and (ii) whether each of the said Proclamations had
E ceased to be in force at the expiration of two months from the date on which each of them was issued as the resolutions of the Houses of Parliament approving each of them had not been published in the Official Gazette. In *Waman Rao & Ors. Etc. Etc.* v. *Union of India & Ors.*, [1981] 2 S.C.R. 1 the validity of the 40th and the 42nd Constitutional Amendments had been questioned on similar grounds. This
F Court while it left open the question whether the issuance of the Proclamations of emergency raised a justiciable issue, on the basis of the material placed before it came to the conclusion that they had been duly issued. Chandrachud, CJ observed in the course of his judgment in Waman Rao's case (supra) at page 45 thus:

G "Thus, in the first place, we are not disposed to decide the question as to whether the issuance of a proclamation of emergency raises a justiciable issue. Secondly, assuming it does, it is not possible in the present state of record to answer that issue one way or the other. And, lastly, whether there was justification for continuing the
H state of emergency after the cessation of hostilities with

Pakistan is a matter on which we find ourselves ill-equipped.

Coming to the two Acts of 1976 by which the life of the Lok Sabha was extended, section 2 of the first of these Acts, 30 of 1976, which was passed on February 16, 1976, provided that the period of five years in relation to the then House of the People shall be extended for a period of one year "while the Proclamation of Emergency issued on the 3rd day of December, 1971 and on the 25th day of June, 1975, are both in operation." The second Act of Extension continues to contain the same provision. It is contended by the petitioners that the proclamation of December 3, 1971 should have been revoked long before February 16, 1976 and that the proclamation of June 25, 1975 was wholly uncalled for and was *mala fide*. Since the pre-condition on which the life of the Parliament was extended is not satisfied, the Act, it is contended, is ineffective to extend the life of the Parliament. We find it difficult to accept this contention. Both the proclamations of emergency were in fact in operation on February 16, 1976 when the first Act was passed as also on November 24, 1976 when the second Act, 109 of 1976, was passed. It is not possible for us to accept the submission of the petitioners that for the various reasons assigned by them, the first proclamation must be deemed not to be in existence and that the second proclamation must be held to have been issued *mala fide* and therefore non-est. The evidence produced before us is insufficient for recording a decision on either of these matters. It must follow that the two Acts by which the duration of the Lok Sabha was extended are valid and lawful. The 40th and the 42nd Constitutional Amendments cannot, therefore, be struck down on the ground that they were passed by a Lok Sabha which was not lawfully in existence."

The petitioner, however, contended before us that the above decision had been rendered on insufficient material and that if it was open to any person to place before this Court sufficient material the Court should reconsider the question of the validity of the Proclamations of Emergency. Assuming that it is possible for this Court to reopen the case, the petitioner has not been able to place before this Court any new material on the basis of which it is possible for us to

A conclude that the Proclamations had been issued by the President without applying his mind or *mala fide*. We are, therefore, bound by the decision of this Court in Waman Rao's case (supra) upholding the validity of the two Proclamations of Emergency. The only other question which requires to be considered is whether on account of the non-publication in the Official Gazette of the resolutions of the two B Houses of Parliament approving the two Proclamations of Emergency, the Proclamations came to an end on the expiry of the period of two months from the date of issue thereof.

The fact that the two Proclamations had been approved by the resolutions passed by both the Houses of Parliament as set out earlier C in the course of this judgment is not disputed by the petitioner. What the petitioner, however, contended before the Court was that the resolutions which were almost legislative in character and which had the effect of converting the federal State into almost an unitary State by conferring large powers on the Central Executive and Parliament as provided in Article 353 and in some other provisions of the Constitu- D tion should have been given wide publicity so that people who were affected thereby could if they did not feel satisfied about the need for continuing the state of emergency either protest or make appropriate representation. The petitioner urged that the democratic nature of the Constitution which had been highlighted in its Preamble required that wide publicity should be given to the resolutions of the two Houses of E Parliament approving any Proclamation of Emergency and that the only means available for giving such publicity was the publication of resolutions in the Official Gazette in which the Proclamations of Emergency had been published. In support of his argument the petitioner relied upon several Proclamations issued in India right from the days of Queen Victoria on many important occasions which had F been widely published in the Official Gazette and by other means. He also drew our attention to the Proclamations issued elsewhere which had been given similar publicity through the Official Gazettes of those countries. The petitioner's argument in a nut shell was that the resolutions passed by Parliament which had the effect of continuing the duration of emergency being of the same character as Proclamations G themselves, should have been published in the Official Gazette and in the absence of such publication the Proclamations of Emergency should be deemed to have become ineffective on the expiry of the period of two months from the issue thereof.

Article 352 of the Constitution does not prescribe that a Procla- H mation of Emergency should be published in the Official Gazette. The

"Proclamation of Emergency" is defined in Article 366(18) thus: A

> "366.(18) "Proclamation of emergency" means a Proclamation issued under clause (1) of Article 352."

Article 366(19) of the Constitution defines a "public notification" thus: B

> "366.(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State."

Wherever the Constitution expressly requires a certain notification should be published in the Official Gazette it has stated that the said notification shall be published in the form of a public notification. By way of an illustration, reference may be made to Article 364(1) of the Constitution which reads thus: C

> "364.(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification— D
>
> (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or E
>
> (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification ..... F
> ...."

Thus it is seen that any public notification issued under Article 364(1) of the Constitution has to be published in the Official Gazette as provided by Article 366(19) of the Constitution. A Proclamation of Emergency being a very important event affecting public life has also to be published in any manner known to the modern world and the publication in the Official Gazette is one such mode. We are of the view that if the Constitution requires that a particular mode of publica- G H

A tion is necessary then such mode must be followed but if there is no mode of publication prescribed by the Constitution then it must be considered that the Constitution has left the method of publication to the authority issuing the proclamation in order to make it known to the members of the public. In the instant case the Proclamations of Emergency have been published in the Official Gazette.

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The petitioner contended that even though it was not expressly provided that the resolutions passed by both the Houses of Parliament should be published in the Official Gazette they should have been published for the very same reason which compelled the Government to publish the Proclamations in the Official Gazette. In the Constitu-
C tion and in the Rules of Procedure of the Houses of Parliament and of the State Legislatures there are several provisions which provide for resolutions being passed by the Houses of Parliament or the Houses of State Legislatures. They are among others (i) Article 123(2)(a)—Disapproval of an ordinance; (ii) Article 169—Abolition or creation of a Legislative Council; (iii) Article 213(2)(a)—Disapproval of an ordi-
D nance; (iv) Article 249—Resolution of the Council of States empowering Parliament to legislate with respect to any matter in a State List in national interest; (v) Article 252—Resolutions of the House or Houses of State Legislatures of two or more States to enable Parliament to legislate on a State subject or adoption of a law made under Article 252 by a State Legislature which had not requested Parliament to make
E it before it was passed by the Parliament ; (vi) Article 312—Resolution passed by the Council of States creating a new All-India Service; (vii) Article 315(2)—Resolutions of House or Houses of State Legislature of two or more States to enable Parliament to provide a common Public Service Commission to such States; (viii) Article 320(5)—Amendment or repeal of Regulations made by the President or the
F Governor under the proviso to Article 320(3); (ix) original Article 352(2)(c) and the present Article 352(4)—Approval of Proclamations of Emergency by the Houses of Parliament; (x) Article 356(3)—Approval of Proclamation made under Article 356(1). (xi) Article 360(2)—Approval of the Proclamation of financial emergency by the Houses of Parliament; (xii) Proviso to Article 368—Resolutions to be
G passed by the State Legislatures approving the constitutional amendments approved by Parliament; (xiii) Article 371A(1)(a)—Power of Nagaland Legislative Assembly to adopt an Act of Parliament in respect of certain matters; (xiv) Articles 61, 67(b), 90, 94, 101(4), 124(4), 148(1), 190(4) and 217(1)(b)—relate to removal of high constitutional dignitaries from office; (xv) Article 3—State Legislature
H expressing its views on the alteration of its boundaries of the State

concerned; (xvi) Rule No. 234 to 239 of the Lok Sabha Rules of Procedure and Conduct of Business—relating to modification of subordinate Legislation and (xvii) Privilege Motions before the Houses of Parliament and the State Legislatures relating to punishment for contempt or removal from membership on account of highly unbecoming conduct of members. In all these cases any resolution passed by the concerned legislative body has far-reaching consequences. They are not required to be published on the Official Gazette, even though in some cases they are published, say, where a Central law is adopted under Article 252 or a member is removed on the ground of privilege etc.. They would not be treated as ineffective merely because they are not published in the Official Gazette. They are all however published in the Reports of the Houses of Parliament and of the Houses of the State Legislature within a reasonable time.

The petitioner relied on the decision of this Court in *Harla* v. *the State of Rajasthan,* [1952] S.C.R. 110 in support of his contention. In that case the facts were these. The Council of Ministers appointed by the Crown Representative for the government and administration of the Jaipur State passed a Resolution in 1923 purporting to enact a law called the Jaipur Opium Act, but that law was neither promulgated or published in the Gazette nor made known to the public. The Jaipur Laws Act, 1923, which was also passed by the Council and which came into force on the Ist November, 1924, provided by section 3(b) that the law to be administered by the court of the Jaipur State shall be ..... "(b)all the regulations now in force within the said territories and the enactments and regulations that may hereafter be passed from time to time by the State and published in Official Gazette." In 1938 the Jaipur Opium Act was amended by adding a clause to the effect that "it shall come into force from the Ist of September, 1924." This Court held that the mere passing of the resolution of the Council without further publication or promulgation of the law was not sufficient to make the law operative and the Jaipur Opium Act was not therefore a valid law. It further held that the said Act was not saved by section 3(b) of the Jaipur Laws Act, 1923, as it was not a valid law in force on the Ist November, 1924, and the mere addition of a clause in 1938 that it came into force from 1924 was of no use. In *State of Punjab* v. *Sat Pal Dang & Ors.*, [1969] 1 S.C.R. 478 one of the questions which arose for consideration was whether the decision of the Governor proroguing the Legislative Assembly was required to be communicated to each and every member of the Legislature before it could become effective. This Court held that Article 174(2) of the Constitution which enabled the Governor to prorogue the Legislature did not indicate the manner

in which the Governor was to make such orders known and that he could follow the well-established practice that such orders were ordinarily made known by a public notification which meant no more than that they were notified in the Official Gazette of the State. There was such a notification on the 11th March, 1968 and the prorogation must be held to have taken effect from the date of publication. It was not necessary that the order should reach each and every member individually before it could become effective. In so far as the Governor was concerned it was open to him to publish a notification issued by him under Article 174(2) of the Constitution in the Official Gazette of the State and such publication was considered to be sufficient. But the real question in this case is whether the resolutions passed by both the Houses of Parliament approving the two Proclamations of Emergency had also to be published in the Official Gazette. We shall assume that the resolutions of both the Houses of Parliament approving a Proclamation of Emergency should be given due publicity. We have already shown above that in the Lok Sabha Debates and in the Rajya Sabha Debates the proceedings relating to the resolutions in question had been published in the usual course. Rule 379 of the Rules of Procedure and Conduct of Business in Lok Sabha provides for the publication of the full report of the proceedings of the Lok Sabha. It reads thus:

> "379. The Secretary shall cause to be prepared a full report of the proceedings of the House at each of its sittings and shall, as soon as practicable, publish it in such form and manner as the Speaker may, from time to time, direct.

Rule 382(1) of the said Rules provides for the printing and publication of Parliamentary papers. It reads thus:

> "382. (1) The speaker may authorise printing, publication, distribution or sale of any paper, document or report in connection with the business of the House or any paper, document or report laid on the Table or presented to the House or a Committee thereof.
>
> (2) A paper, document or report printed, published, distributed or sold in pursuance of sub-rule (1) shall be deemed to have been printed, published, distributed or sold under the authority of the House within the meaning of clause (2) of Article 105 of the Constitution."

Similarly in the Rules of Procedure and Conduct of Business of

the Council of States (Rajya Sabha) Rule 260 provides thus: A

> "260. Preparation and publication of proceedings of Council.—The Secretary-General shall cause to be prepared a full report of the proceedings of the Council at each of its meetings and shall, as soon as practicable, publish it in such form and manner as the Chairman may, from time to time, direct." B

The Rules of Procedure of the both the Houses of Parliament are made under Article 118(1) of the Constitution which reads thus:

> "118.(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. C
>
> (2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be ....." D

E

Section 57 of the Indian Evidence Act, 1872 requires the Court to take judicial notice of the facts stated therein. Clause (4) of section 57 of the Indian Evidence Act, 1872 reads thus:

> "57. The Court shall take judicial notice of the following facts: F
>
> .....
>
> (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India of Parliament and of the Legislatures established under any laws for the time being in force in a Province or in the State."

G

Section 56 of the Indian Evidence Act, 1872 provides that:

> "56. No fact of which the court will take judicial notice need be proved."

Section 74 of the Indian Evidence Act, 1872 refers to the docu- H

ments which are considered to be public documents. Sub-clause (iii) of clause (1) of section 74 reads thus:

"74 The following documents are public documents:

(1) documents forming the acts or records of the acts-(i) ..... (ii) ..... (iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth, or of a foreign country."

Section 78 of the Indian Evidence Act, 1872 lays down the mode of proof of certain public documents. The relevant part of it reads thus:

"78. The following public documents may be proved as follows:

(1) .....

(2) The proceedings of the Legislatures,-

by the journals of these bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned."

The Lok Sabha Debates and the Rajya Sabha Debates are the journals or the reports of the two Houses of Parliament which are printed and published by them. The Court has to take judicial notice of the proceedings of both the Houses of Parliament and is expected to treat the Proceedings of the two Houses of Parliament as proved on the production of the copies of the journals or the reports containing proceedings of the two Houses of Parliament which are published by them.

In *Niharendu Dutt Majumdar* v. *The King Emperor,* [1942] F.C.R.38 the Federal Court of India was called upon to decide a question almost similar to the question which has arisen before us in this case. The facts of that case were these. Section 102 of the Government of India Act, 1935 authorised the Governor-General to issue a Proclamation of Emergency, the relevant part of which read as follows:

"102.(1) Notwithstanding anything in the preceding

sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List or to make laws, whether or not, for a Province or any part thereof, with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act.

.....

(2) .....

(3) A Proclamation of Emergency:

(a) may be revoked by a subsequent Proclamation;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament."

The Governor-General had issued a Proclamation in exercise of his powers under section 102(2) of the Government of India Act, 1935 declaring that a grave emergency existed, whereby the security of India was threatened, by war on September 3, 1939 on receipt of information from His Majesty's Government in the United Kingdom that a state of war existed between His Majesty and Germany and on September 29, 1939 the Defence of India Act 1939 was enacted. The appellant in that case was convicted by the Additional Chief Presidency Magistrate at Calcutta on the 21st July, 1941, of offences under sub-paragraphs (e) and (k) of paragraph (6) of Rule 34 of the Defence of India Rules and was sentenced to be detained till the rising of the Court and to pay a fine of Rs.500, and in default to undergo six months' rigorous imprisonment. The conviction and sentence were upheld on appeal by the High Court, and the appellant had preferred the above said appeal before the Federal Court against the judgment of the High Court of Calcutta. On appeal although the appellant was

A acquitted on the ground that the facts established in the case did not make out the offences for which he had been punished the Federal Court negatived the contention of the appellant that the Proclamation of Emergency issued under section 102 of the Government of India Act, 1935 had ceased to be in force at the expiration of six months as there was no proof of the fact that the said Proclamation of Emergency B had been approved by the resolutions of both the Houses of the British Parliament as required by clause (c) of section 102 of the Government of India Act, 1935. Before the High Court the relevant volumes of the "Parliamentary Debates" which contained the official reports of the debates in the Houses of the British Parliament had been produced and accepted by the High Court as proof that the British Parliament C had passed the necessary resolutions. But the appellant contended that that proof was not adequate and that only copies of the Official Journals of the two Houses had to be produced. The Advocate-General of Bengal contended that the court was not entitled and indeed ought to take judicial notice of the fact that the resolutions were passed and that in any event the volumes of the Parliamentary Debates were all D that was necessary in the way of legal proof. Gwyer, C.J., while rejecting the above contention of the appellant observed at pages 45-47 thus:

> "In our opinion the volumes of the official Parliamentary Debates afforded adequate legal proof of the passing of the two Resolutions by the Houses of Parliament. E Section 78 of the Indian Evidence Act sets our certain categories of public documents and the manner in which they may be proved. The first four categories (as amended by the Adaptation of Indian Laws Order, 1937) are these: "(1) Act, orders or notifications of the Central Government in any of its departments, or of any Provincial Gov- F ernment or any department of any Provincial Government"; "(2) Proceedings of the Legislatures, which may be proved 'by the journals of those bodies respectively, or by published Acts or abstracts, or by copies, purporting to be printed by orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her G Majesty's Government"; (3) Proclamations, orders or regulations issued by Her Majesty of by the Privy Council or by any department of Her Majesty's Government "(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country", which may be proved "by journals published by their authority, or commonly received in that H country as such", and in certain other ways not here mate-

rial. In our opinion the proceedings of Parliament fall under either the second or fourth of the categories set out above. It may be said that the reference in the second category to proceedings of "the Legislatures", following immediately upon the first category which is confined to acts, orders or notifications of Governments in British India, is to be taken as a reference to the Legislatures of British India only. We find it difficult however to beliece that s. 78 excludes any reference whatsoever to the proceedings of Parliament, especially when the executive acts of the Government of the United Kingdom are given a category to themselves, and we should find ourselves compelled, if we adopted that construction, to hold that proceedings in Parliament fell into the fourth category, that is to say, "the proceedings of the Legislatures of a foreign country"; but it would perhaps be even more difficult to suppose that Parliament can have been so described by the Indian Legislature in 1872. The explanation may be that "the legislatures" to which the second category refers are intended to include all the legislatures which have the power to make laws for British India or for any part thereof; but we have no doubt that the present case must fall within either the one category or the other .....-..... We have ascertained by inquiry from the Legislative Department of the Government of India that the Official Reports of the Council of State and of the Legislative Assembly which follow very closely the form and manner of presentation of the official Parliamentary Debates in England, are the only record of the proceedings of the two Houses, no other record similar to that of the Journals of the two Houses of Parliament in England being made. The proceedings of the Indian Legislature could clearly be proved by tendering in evidence copies of these Official Reports; and we can see no reason why the proccedings of Parliament cannot be proved by an exactly similar English publication, issued with a similar authority.

Having regard to the view which we take on this point, we need not consider the other contention urged by the Advocate-General of Bengal that the passing of the two Resolutions by Parliament was a matter of which the Courts were entitled to take judicial notice."

A We have quoted in extenso the relevant part of the judgment in *Niharendu Dutt Majumdar's,* case (supra) with which we respectfully agree since we are concerned in this case with a similar question.

We do not also find much substance in the submission of the petitioner that the publication in the Lok Sabha Debates and in the B Rajya Sabha Debates had been made after about two months and therefore until the resolutions were published they were ineffective. What is essential is that the resolutions approving the Proclamation of Emergency should be passed within the period of two months. A little delay in publishing the proceedings would not affect the validity of the resolutions. Let us take the case of an Act of Parliament. Under section 5 of the General Clauses Act, 1897 where any Central Act is not C expressed to come into operation on a particular day then it shall come into operation on the day on which it receives the assent of the President and unless the contrary is expressed a Central Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. Even if there is some delay in the D publication of the Central Act in the Official Gazette, its operation does not get suspended until such publication unless the contrary is expressed in the statute itself. While on the face of it, as observed, by Sir C.K. Allen in his Law and Orders (2nd Edn.) at page 132, it would seem reasonable that legislation of any kind should not be binding until it has some how been 'made known' to the public, "that is not the E rule of law and if it were, the automatic cogency of a statute which has received the royal assent would be seriously and most inconveniently impaired". The reasoning was that statutes at least received publicity of Parliamentary debate and that therefore they were, or should be 'known'. But this was not true of delegated legislation, which did not necessarily receive any publicity in Parliament or in any other way. F That is the reason for the insistence of the publication of subordinate legislation in the Official Gazette before it can be brought into force. In so far as the Acts and resolutions passed by the Houses of Parliament and the State Legislatures are concerned the very process of passing the law or the resolutions in the Houses of Parliament or the State Legislatures gives them ample publicity. The reports of the pro- G ceedings of Parliament and the State Legislatures are widely circulated. The newspapers, radio and television are also the other modern means which give publicity to all Acts and resolutions of Parliament and the Legislatures of the States. In ancient days the King's soldiers and announcers had to go round the realm to give publicity to the royal proclamations. The present day world is different from the ancient H world. The publication in the Parliamentary Debates though after

some short delay is adequate publication of the resolutions of Parliament as there is no rule which requires that the resolutions should be published in the Official Gazette. Hence mere non-publication of the resolutions approving the Proclamations of Emergency in the Official Gazette did not make them ineffective. A

We are satisfied that the resolutions of the Lok Sabha and Rajya Sabha approving the two resolutions have been duly published in the official reports of the two Houses of Parliament. This ought to meet the contention of the petitioner that any public Act or resolution which affects public life should be given due publicity. We also hold that the production of the Lok Sabha Debates and of the Rajya Sabha Debates containing the proceedings of the two Houses of Parliament relating to the period between the time when the resolutions were moved in each of the two Houses of Parliament and the time when the resolutions were duly adopted amounts to proof of the said resolutions. The Court is required to take judicial notice of the said proceedings under section 57 of the Indian Evidence Act, 1872. We are, therefore, of the view that the two Proclamations of Emergency were kept in force by virtue of the resolutions passed by the Houses of Parliament until they were duly revoked by the two Proclamations which were issued by the Vice-President acting as President of India in the year 1977. Since the two Proclamations of Emergency were in force when the House of the People (Extension of Duration) Act, 1976 (Act 30 of 1976) was passed its validity cannot be questioned. The Lok Sabha passed the Finance Act, 1976 during the extended period of its duration and therefore the validity of Finance Act, 1976 also cannot be questioned. In view of the foregoing this petition should fail and it is accordingly dismissed. There will be no order as to costs. B C D E

N.P.V. Petition dismissed. F