

Historical Background of Article 356 of Indian Constitution

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Abstract – The power of the President to impose President's Rule in States is a legacy of the British Colonial rule in India. The British Government introduced this rule so that they might fulfill their imperial interests. The founding fathers of the Constitution of India were also alive to the fact that several regions of the country did not have deep-rooted conventions of parliamentary form of government and as a result failure of constitutional machinery in such a State could not be ruled out as a possibility. In a way, this was a reflection of the times. The nation at this time was passing through a critical period in its history in the wake of partition, communal riots and the disintegration of the country. The strength of the Union was perceived as the need of the hour and this power was provided to the President, who is directed by the Union Council of Ministers.

The process of centralisation of power with the Centre is a legacy of British colonial rule in India. The British East India Company centralised the powers with the Centre to control its Indian regions. The Regulating Act, 1773, started the Centralisation of administration in India, and the Charter Act of 1883 strengthened the centralisation of power. From the earliest 1773 phase until independence, India was governed as a unitary and not as a federal state. In attempt to satisfy the demands of princely states and the Muslim demands for greater autonomy, the British introduced a set of political reforms in 1935.[1]

Historically, the proximate origin of the President's Rule is traced back to the Government of India Act, 1935. This Act, for the first time, specifically empowered the Governors under Section 93 with emergency powers which they could use for taking over the provincial administration. Article 356 has its ancestry in Section 93 of the Government of India Act, 1935

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1. SECTION 93 OF THE GOVERNMENT OF INDIA ACT, 1935

The Governor is empowered to impose the Governor's Rule, when satisfied that the Government of the province cannot be run in accordance with the provisions of the Government of India Act, 1935.

Section 93 of the Government of India Act, 1935 provided:

- (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation :
 - (a) declare that his functions shall, to such an extent as may be specified in the Proclamation, be exercised by him in his discretion;

- (b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) A Proclamation under this section
 - (a) shall be communicated forthwith to the secretary of state and shall be laid by him before each House of Parliament;
 - (b) unless it is a Proclamation revoking a previous Proclamation,

shall cease to operate and the expiration of six months:

Provided that, if and so often as a resolution 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 twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

- (4) If the Governor, by a Proclamation under this section, assume to himself any power of Provincial legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature and any reference in this Act to Provincial Acts, Provincial Laws, or Acts or Laws of a provincial legislature shall be construed as including a reference to such a Law.
- (5) The function of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.[2]

The Indian intellectuals and the leaders of major political parties- the Indian National Congress and the Muslim League - criticised the Government of India Act, 1935 that this Act was imposed by the British Parliament on the Indian people. It provided the arbitrary powers to the Governor-General and the State Governors, which was against the democratic norms. By a comprehensive resolution adopted at its 491 session held at Lucknow on April 12-14, 1936, the Indian National Congress totally rejected the new Constitution, firmly declared that no Constitution imposed by an outside authority could be accepted and stressed the demand for a Constituent Assembly. It observed, Whereas the Government of India Act, 1935, which is based on the White Paper and Joint Parliamentary Committee Report and which is in many respects even worse than the proposals contained in them, in no way represents the will of the nation, is designed to facilitate and perpetuate the domination and exploitation of the people of India and is imposed on the country to the accompaniment of widespread repression and the suppression of civil liberties, the Congress reiterates its rejection of the new constitution in its entirety ... In the opinion of the Congress such a constitution must be based on the independence of India as a nation, and it can only be framed by a Constituent Assembly elected on adult franchise or a franchise which approximates to it as nearly as possible.[3]

The Indian Independence Act, 1947, virtually ended the British Rule in India and set up India as a new Independent Dominion. The provision seeking dismissal of a State Government by the Centre gained acceptance in the Constituent Assembly with surprising ease. In a way, this was a reflection of the times. The nation was at this time passing through a critical period in his history in the wake of partition, communal riots, the India-Pakistan war, and the problem of integrating the princely states into the Indian Union, etc. The Constituent Assembly itself, which Section 93, *Government of India Act, 1935*, cited in Sunil Destha (1993), *President's Rule in the States: Constitutional Provisions & Practices, Congress Resolution on the Government of India Act, 1935 (April, 1936)* originally contemplated a rather weak federal government, ultimately became the champion of a powerful Centre.

The framers of the Constitution wanted to provide some machinery to cope with the unforeseen breakdown of the Constitution in the States. It was proposed that if the Governor of the province felt that the machinery setup by this Constitution for administration of the affairs of the Province broke down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery had failed, that he had issued a Proclamation and taken over the administration to himself, and on this report made by the Governor under the original Article 188 the President could act under Article 278, (which later became Article 356). Thus, the framers of the Constitution recognised that the provisions of Articles 355 and 356 were necessary to meet an exceptional situation where breakdown of the constitutional machinery occurred in a State. At the same time, they hoped for the growth of healthy conventions which would help ensure that these extraordinary powers were used in the extreme cases for the legitimate purposes.[4]

2. ARTICLE 188 OF THE DRAFT CONSTITUTION

The Governor of a State is empowered to impose the Governor's Rule under Article 188 of the draft Constitution of India when there emerges a threat to peace and tranquillity of the State and the Government of the State is unable to be run in accordance with the provisions of this Constitution. The proclamation shall be forthwith communicated by the governor to the President of India, who take the appropriate action.

3. ARTICLE 188 OF THE DRAFT CONSTITUTION PROVIDED:

- (I) If at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and

tranquility of the State, and that it is not possible to carry on the Government of the State in accordance with the provisions of this Constitution he may by Proclamation, declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State. Provided that nothing in this clause shall authorise the Governor to suspend, either in whole or in part, the operation of any provision of this Constitution relating to the High Courts.

- (2) The Proclamation shall be forthwith communicated by the Governor to the President, who may, thereupon, either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers vested in him under Article 278 of this Constitution.
- (3) A Proclamaition under this Article shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by public notification.
- (4) The function of the Governor under this article shall be exercised by him in his discretion.[5]

This was the original scheme. But Article 188 was deleted and substituted by Article 278.

4. ARTICLE 278 OF THE DRAFT CONSTITUTION

The President of India is empowered to impose the President's Rule under Article 278 of the Draft Constitution, when satisfied that the government of a State is unable to be run in accordance with the provisions of the Constitution, doing so either on the report of the Governor of a State or otherwise.

Article 278 of the Draft Constitution provided:

- (l) If the President, on receipt of a report from the Governor or ruler of a State or otherwise, is satisfied that the Government cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation -
 - (a) assume to himself all or any of the functions of the Government of the

State and all or any of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or anybody or authority in the State other than the legislature of the State;

- (b) declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending whole or in part, the operation of any provision of this Constitution relating to anybody or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.[6]

In Article 278 (now Article 356) of the Draft Constitution a few important changes were made. First, now the President could act not only on the report of the Governor but also 'otherwise.' It was, however, thought proper that as Article 277-A (now Article 355) imposed a duty and an obligation upon the Union Government to see that the administration of the State was carried on in accordance with the provisions of the Constitution, it would be proper to restrict the action of the President to the report made by the Governor of the province. If the Governor had no inclination to make a report but the facts were such that the intervention of the President was necessary and imminent, the President could act on his own without the report of the Governor. Second, the authority and powers of the legislature were now exercisable only by the Parliament. Third, now the proclamation was to cease in operation at the expiration of two months unless before the expiration of that period, Parliament by resolution approved its further continuance. Fourth, if the Parliament had once approved the proclamation, that proclamation could run automatically without further ratification for twelve months.

It, therefore, follows that the President was empowered to act not only when he got a report from the Governor of a State but also otherwise. In this regard, the Constituent Assembly members had two schools of thought.

5. THE FIRST SCHOOL OF THOUGHT

The first school of thought favoured the incorporation of the word "Otherwise" in the provision of President's Rule. The first school of thought included B.H. Zaidi, Raj Bahadur, B.M. Gupte and K. Santhanam. These members made their observations as follows.

B.H. Zaidi (Rampur-Banarès States) said, "The provision is sound, healthy and necessary in the light of our historic past and in the light of the tendencies that are staring us in the face and fears expressed this morning are unwarranted and unjustified." Raj Bahadur (United State of Matsya) was also in favour of granting liberty to the President to interfere in the affairs of the State without a report from the Governor, if there was a breakdown of constitutional machinery in the State. He was of the view that "The President should be empowered to act under article 278 in those cases also where he receives information from other sources. Surely he must be allowed to act on the advice of his Cabinet or Government. I do not think that by seeking to eliminate the words 'or otherwise' he would be making an apt amendment in this provision." [7] B.M. Gupte (Bombay: General) too, also gave his support to Article 278. He said, "I have given support to article 278, only hope that it may remain a dead-letter and no occasions will arise for the exercise of these extraordinary powers. [8] K. Santhanam (Madras: General) held the power conferred on the President under Article 278 to be fully justified saying that "The President cannot act under this article at his discretion. He has to be guided by the Central Cabinet. .. When the State Constitution breaks down these powers and the functions of the State come back to the Central Executive and Central Legislature, which are as popular and as democratic as the State Governments and legislatures. It must also not be forgotten that in the Central Parliament the representatives of the State, whose government is to be superseded, will be there."

6. THE SECOND SCHOOL OF THOUGHT

The second school of thought raised objection to the consideration of the 'otherwise situations' in the provision of President's Rule. The second school of thought included H.V. Kamath, S.L. Saxena, P.S. Oeshmukh and H.N. Kunzru. These members made observations as follows.

H.V. Kamath (C.P. & Berar: General) protested against the provision empowering the Union Government to intervene 'otherwise than' on the report of a Governor. He said, "Proclamation under Article 278 is issued only on rare occasions, i.e., when the President is satisfied on receipt of a report from the Governor or Ruler of a State. 'Or otherwise' should go. Otherwise the Ruler or Governor will be a mere sham and a mockery." [9] Shibban Lal Saxena (United Provinces: General) also supported this

opinion. He appealed to the Drafting Committee that "The word 'otherwise' should be removed. The President should proceed on the report of the Governor who is his own nominee." P.S. Deshmukh (C.P. & Berar: General) suggested that "It is far better that we retain the powers of the Governor and give him such powers as we consider necessary and as were given by section 93 of Government of India Act, 1935 ... I think that it is absolutely essential that we should not impose this burden on the President and the Parliament and make it difficult for them to manage the affairs."

Hirdaya Nath Kunzru (United Provinces: General) said, "If there is mismanagement or inefficiency or corruption in a province, I take it that under articles 277, 278 and 278-A taken together the Central Government will have the power-! do not use the word 'President' because he will be guided by the advice of his Ministers- to take the government of that province into its own hands." [10]

At the end of the two days' debate there was a great apprehension among the members about the misuse or abuse of this power by the President. B.R. Ambedkar, Chairman of Drafting Committee of the Constitution, tried to assuage the feelings of those who criticised these articles by saying that these articles would never be used. He observed, "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. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the Provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think that we could then say that these articles were imported in vain or that the President had acted wantonly." [11]

This speech does throw some light on the nature of the power conferred by Article 356 on the President, which will be considered more fully later. First, the Article was meant to be the last resort. Second, the President would issue a warning is important, because such a warning serves a number of purposes. It would compel the Union to specify with some particularity in what respects the Government of State was not being carried on according to the provisions of the Constitution. The need for giving a warning meant that the power was not arbitrary. Third, the necessity of holding the elections before acting under Article 356 emphasizes the fact that the President's Rule is at the root of parliamentary government to which our

country is fortunately committed. Fourth, that 'parliamentary government' is part of a federal Constitution, in which the States have their own rights, which, at need, can be enforced against the Union.

B.R. Ambedkar's assurance notwithstanding there continued to persist a great number of confusions as to the exact meaning of the words, "constitutional failure" (of the State machinery). During the debates; H.N. Kunzru pointedly asked B.R. Ambedkar to spell out clearly the meaning of the phrase "failure of constitutional machinery" but B.R. Ambedkar gave a somewhat evasive reply : "when we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely, that the form of the Constitution must be maintained." [12]

However, at a later date, during the debates, B.R. Ambedkar evaded the issue when he said, "The expression 'failure of the constitutional machinery' I find, has been used in the Government of India Act, 1935. Everybody must be quite familiar, therefore, with its de-facto and de-jure meaning. I do not think any further explanation is necessary." [13]

It is clear that this expression is vague and ambiguous, because B.R. Ambedkar did not give the exact meaning of the phrase "failure of constitutional machinery of the State," nor could he describe the circumstances where it can be recognised that the situations have arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. At the revision stage the drafting committee introduced a new Article 365 as follows:

Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of the Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

It is clear regarding Article 365 that where a State fails to comply with Union directions under Articles 256 and 257, it shall be lawful for the President to hold that "a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution." It means that President can also impose the President's Rule in the States where they fail to comply with the Union's directions under Articles 256 and 257 of the Constitution.

It may be concluded that the framers of the Constitution conceived these provisions as more than a mere grant of over-riding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of

maintaining or restoring representative government in the States responsible to the people. Ultimately, the framers of the Constitution considered that the provisions of Articles 355, 356 and 365 were necessary to meet an exceptional situation where breakdown of the constitutional machinery occurred in a State. It was considered that the Union Government be accountable for all its actions to Parliament. Thus, they also hoped that these extraordinary powers would be used in the extreme cases for legitimate purpose. Alladi Krishnaswami Ayyar observed, "This provision 19 Rao, B. Shiva (1968), (President's Rule) is a bulwark in favour of provincial or State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained." [14]

The thought which was emergent in the Constituent Assembly Debates was such that such emergency provisions are necessary for the protection of states when they are unable to maintain their constitutional machinery and will be used in the rarest of rare circumstances and in this manner we have made an attempt to trace its origin along with present provisions.

7. GOVERNMENT OF INDIA ACT, 1935

The concept was introduced by the name of 'Division of Powers' at the British India time. It was performed as an experiment in which the British government entrusted the provinces with limited powers over their provinces, but at that point of time the people of India were having a faded faith over the British man therefore the British took care and precaution to keep sufficient check on the powers given to the provinces. These powers were manifested under Section 45 and 93 of the Government of India act, where the Governor General and the Governor under certain circumstances can exercise nearly absolute power and control over the provinces.

8. DRAFTING COMMITTEE OF CONSTITUENT ASSEMBLY

A drafting committee was set up by the constituent assembly on August 29, 1947 under the chairmanship of Dr. B. R. Ambedkar, it was to prepare Constitution of India. when it was suggested that the similar power to be confer of emergency as held by the Governor General on Government of India Act, 1935, upon the president, there was an oppose to the idea then Dr. Ambedkar pacified them by Stating :

'In fact I share the sentiment expressed by my Hon'ble friend Mr. Gupta yesterday that the proper thing we ought to expect is that such articles will never be called into operation and they would remain a dead letter. If at all they are brought into operation, I hope the president who is endowed

with those powers, will take proper precautions before actually suspending the administration of the provinces.

He added : ‘ I hope the first thing he will do would be to issue a clear warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the constitution.’

As it was clearly stated by Dr. Ambedkar that the application of the article was the last resort to be applied and used in rarest of the rare events, as a good constitution is one which would provide solution to all possible exigencies. Therefore this article is a valve in case of disruption of political machinery in the state.

Article 355 states: ‘It shall be the duty of the union to protect every State against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provision of this constitution.’ The word ‘otherwise’ in Article 356(1) was not included while drafting, but has been incorporated through an amendment despite a vast protest of the original Drafting committee, stating it to be open invitation for the abuse the Article. This was justified by Dr, Ambedkar stating that Article 355 imposes a duty upon the Centre to ensure that the states are governed in accordance with the constitutional provisions and therefore it would not be good for the president to base his decision solely on the reports of Governor of the concerned state.

9. ARTICLE 356 OF CONSTITUTION OF INDIA AND SECTION 45 AND 93 OF GOVERNMENT OF INDIA ACT, 1935

There are certain distinction in the provision of the failure of constitutional machinery under the current Constitution and powers dealt under Section 45 and 93 of Government of India Act, 1935. The Act empowered the Governor-General to deal with failure of the constitutional machinery at the centre (Section 45). It also empowered the Governor General to deal in with the similar situation in a province. The current Constitution does not intend to suspend the Constitution of the concerned state, in spite has empowered the President to take measures in the regard, although he have to act on the report provided by the Governor of the concerned state. Secondly, under Section 93 of Government of India Act, 1935, the powers of Executive and Legislative could be assumed by the Governor whereas in current Constitutional Provision it has been separated that is the President assuming the Executive powers and the Union Parliament assuming Legislative powers.

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