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CONSTITUTIONAL DEBATES ON ARTICLE 356 OF INDIAN CONSTITUTION

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I. INTRODUCTION

When the Constituent Assembly discussed the need to incorporate the Article 356 in the Constitution, strong opposition to it was put forth by some members and it was argued that if power was given to the Centre to intervene, there was a possibility of, *"being abused or used for political purposes."* But it was hoped by Dr. B.R. Ambedkar that *"the occasion for invoking these powers under the relevant Article would be very rare and that they would be remain a dead letter,"*[1] but this Article has been invoked many times during the last six decades. As a result, it is now a subject of controversy and with every invocation of Article 356, the controversy scales new heights.[2]

The imposition of Article 356 of the Constitution on a state following the "failure of Constitutional machinery" is called President's Rule in India. Once the President's Rule imposed on state, the elected State Government will be temporarily dissolved, and the Governor, who is appointed by the Central Government, will replace the Chief Minister as the chief executive of the state. The state will fall under the direct control of the Union Government and the Governor will continue to be the head of the state as to represents the President of India who is the actual head of the state.

Since independence, Article 356 has become a point weapon in the hands of the Centre Government and many states Governments had become the casualty due to unethical invocations of the Article 356. Since the time of its framing Article 356 has generated serious controversy because the founding fathers apprehended that there was a possibility that this Article may "misused and abused for political purposes" or "being resorted for unnecessary or intolerant action through political prejudice". Also they apprehended that the Centre might "intervene in petty provincial matters on the slightest pretext". "On the pretext of resolving ministerial crisis", or "on the pretext of purifying or reforming maladministration obtaining in a particular state" or on the ground of "mismanagement or inefficiencies or corruption in a province" or for resolving "a mere crisis or a vote of no-confidence in the ministry by the legislature" or for ensuring "good Government thus reducing the autonomy of the state to farce."[3]

In present scenario, Article 356 has more often been used to promote the political interest of the party in power at the Centre. It has become the instrument in the hands of Central Government. In the 69 years since the Constitution adopted Article 356, has been invoked more than 125 times. On the most of the occasions there was no justification for President's Rule in the state concerned.

II. FEDERAL STRUCTURE OF INDIA

The Constitution of India provides for a structure of Government which is basically federal in nature. The Constitution makers adopted the federal system due to the large size of the country and its socio-cultural diversity. They realized that the federal system not only ensures the efficient Government of the country but also guarantees national unity with regional autonomy. However the term 'Federation' has nowhere been used in the Constitution. Article1 of the Indian Constitution state that, *"India that is Bharat, shall be a Union of States."*[4] According to B.R. Ambedkar the phrase "Union of State" indicates two things first the Indian federal system is not the result of an agreement between units like the USA federation; secondly, the units have no right to secede from the federation.[5]

The roots of Indian present day federal system are found in the Government of India Act, 1919. This Act introduced the concept of division of powers between the Centre and the Provincial legislature by separating the central provincial subject for the first time. It also introduced the system of bi-cameral legislature in India.[6]

The present Constitution is a carbon copy of the Government of India Act, 1935. This means that the larger part of the Constitution has been extracted from the Government of India Act, 1935, which also proposed to set up a federal polity in India with a central Government and the provinces deriving their jurisdiction and powers by direct devolution from the crown. The Government of India Act, 1935 was the first legal document that proposed to unite the provinces of British India and Indian State into a federation.[7] It established dual system of Government, with the Centre and the state functioning autonomously.

The distribution of powers is the core of a Federal Government. The Govt. of India Act, 1935 made a very elaborate distribution of Legislative, Administrative and Financial powers. The Act contained three list of subject - federal, provincial and concurrent. The Legislative, Administrative and Financial distribution of powers more or less corresponded to this three list of

subject.[8] This act also outlined emergency provisions stating that in the event of a breakdown of administration in any state, the Governor would take responsibilities of administration.[9] The federal legislation according to the Government of India Act, 1935, could interfere with the provincial sphere of legislation on two occasions. First, if the Governor-General declared by "Proclamation of Emergency" that a grave emergency existed where by the security of India was threatened, whether by war or internal disturbances, the federal legislature would have powers to make laws for a province with respect to any subject to provincial list. Second, a situation where in the legislatures of two or more provinces could invite the federal legislature to legislate on a particular provincial subject.[10]

The Indian federal system is based on the Canadian model. The "Canadian model" differs fundamentally from the "American model" in so far as it established a very strong Centre. It possesses all the basic features of a federal system (a written Constitution, a rigid Constitution, independent judiciary, division of powers and supremacy of the Constitution etc). Similarly the Indian Constitution also possesses several non-federal features: a strong Centre, a single Constitution, single citizenship, emergency provisions, and appointment of Governor by the President and single integrated judicial system. These features of Indian federalism shows that the Centre stands supreme. Some called India a federation with strong unitary features.[11] A well-known thinker K.C. Wheare has called it "*quasi-federal*."[12] Another thinker, Granville Austrian has rightly pointed out that the Constitution makers have adopted the model of "*co-operative federation*" for Indian polity. Co-operative federation produces a strong Centre, yet it does not necessarily result in weak provincial Governments that are largely administrative agencies for central Government. Indian federalism has demonstrated this.[13] It can be said that the Indian Government can be both federal and unitary according to the requirement of the time and circumstances. It is designed to work as Federal Government in normal circumstances, but as a Unitary Government in the time of emergency.

Since independence the main problem of Indian polity is Centre-State relationship. The basic feature of the Indian Constitution is separation of powers between the union and the states. There are various provisions in Indian Constitution which declare supremacy of centre over the state. The emergency provisions are the saga of such supremacy. The President of India has the power to impose emergency rule in any or all the states of India. These provisions enable to Central Government to need any abnormal situation effectively. The rationality behind the incorporation of these provisions in the Constitution is to sovereignty, unity and security of the country.[14]

III. CONSTITUENT ASSEMBLY DEBATES ON EMERGENCY PROVISION

Since Independence, Separation of Powers is main problem between Union and states. There are many provision of Indian Constitution, which declare supremacy of the Union over the state. The emergency provisions are the saga of such supremacy. The emergency provisions comprise part XVIII of the Constitution of India vide Art 352 to 360. It stipulates three types of emergency[15]:-

1. An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as National Emergency.
2. An emergency due to the failure of the constitutional machinery in the state (Article 356). This is popularly known as "President's Rule". It is also known by two other names: "State Emergency" or "Constitutional Emergency".
3. Financial emergency due to a threat to the financial stability or credit of India (Article 360).

No any part of the Constitution of India has been the subject of more acrimonious attack by its critics then the dealing with the emergency provision. The Constituent Assembly witnessed one of its most agitated scenes during the discussion of these provisions. Many prominent members of the Constituent Assembly opposed the inclusion of these provision in the Constitution as they thought that they were inconsistent with the democratic provision embodied elsewhere.[16] The first school of thought led by H.V. Kamath, Prof. K.T. Shah and Naziruddin Ahmed were against these provisions of emergency. H.V. Kamath declared that;

> *"I have ranked most of the Constitutions of democratic country of the world … and I find no parallel to this chapter of emergency provision in any of the other Constitution of the democratic countries of the world. The closest approximation to my mind, is reached in the Weimar Constitution of the third Reich which was destroyed by Hitler taking advantage of the very same provision contained in that Constitution …. But these emergency provision pale into insignificance when compared with the emergency provisions in this chapter of our Constitution.*[17]

H.V. Kamath worried that the framers of Constitution should learn a lesson from the Constitution of Weimer Republic which was misused by the Adolf Hitler and to destroy the Constitution and establishing dictatorship. However, the majority of the members favoured the inclusion of these provisions, although somewhat reluctantly, as a precautionary measure against possible disruptive forces destroying the newly established Union. The second school of thought which include B.R. Ambedkar, Alladi Krishnan Swami Ayyar and T.T. Krishanamachari, were of the opinion that emergency provision were necessary not only to protect the unity and integrity of the nation, but also for the individual's liberty and the Constitution itself.[18]

IV. ORIGIN OF THE ARTICLE 356

The origin of Article 356 which is emergency power of President in present Constitution can be traced from section 93 of the Government of India Act, 1935. Under this Act, there were two sections, i.e. section 93 and section 45, which dealt with the breakdown of the Constitutional machinery at the provincial and the federal level respectively. While the Government of India Act, 1935 empowered both the Governor General (at the Federal level) and the Governor (at the provincial level) to deal with the failure of the Constitutional machinery, interestingly, the present Constitution does not say anything about the failure of the Constitutional machinery at the Centre level. However, Article 356 empowers only the President of India to issue the proclamation of emergency.[19] Further, section 93 of the Government of India Act, 1935, provided power of Governor to issue Proclamations as:

"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 the act, he may, by proclamation:

a) *Declare that his functions shall, to such extent as may be specified in the proclamation be exercised by him or in his discretion;*
b) *Assume to himself all or any of the powers vested in or exercisable by any provincial body or authority and any such proclamation may contain such incidental and consequential provisions as may appear to him to be 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 provision of this act relating to any provision body authority".*[20]

The provision of section 45 and 93 of the Government of India Act, 1935 were based on two main considerations. First, in the opinion of the British Government, it was thought that the experiment of Parliamentary democracy in such diverse and complex society like India could collapse at any time. Secondly, the British Government was apprehensive of the fact that various legislatures might not cooperate in the functioning of Parliamentary Government.[21] In October, 1947, a Constitutional draft was prepared by the drafting committee. This draft was redrafted on June 26, 1946, when the provisions were put in the shape in which they were finally presented in the Constitutional draft of February 1948.[22]

However, Article 356 came into limelight in the Constituent Assembly due to Article 365, which was introduced by the Drafting Committee in the revised draft of the Constitution, just eleven days before the Assembly finally adopted it.[23] Article 365 said:-

> *Where any state has failed to comply with, or give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the state cannot on it accordance with the provisions of this Constitution.*[24]

In simple words, Article 365 meant that the states were to obey the directives of the central government in the exercise of their executive powers and in case on non-compliance, the President was lawful to hold that there was a failure of Constitutional Machinery in the state. Thus, Article 365 provided a reason for the Centre in invoking the Article 356.

V. CONSTITUENT ASSEMBLY DEBATES ON ARTICLE 356

The Constitutional draft, prepared by the drafting committee of the Constituent Assembly of India, contained Article 188 which empowered the Governor to proclaim the taking over the state Government such a proclamation was to have the maximum validity of two weeks. The Art 188 read as:

> *"If at any time the Governor of a state is satisfied that a grave emergency has arisen which threatens the peace and tranquillity 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 or 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 the Constitution relating to anybody or authority in the state."*[25]

The draft article 278, which deals with imposition of emergency in a state, brought President into the picture. The Governor was under a Constitutional obligation to transmit his proclamation to the President who, if satisfied that the Government of the state could not be run in accordance with the provision of the Constitution, could take over in his hands the functioning of the state Government and declare that *"the powers of the legislature of the state shall be exercise only by Parliament."* Such was the original

provision made in the Constitutional draft. Article 188 was completely deleted, thereby empowering the President alone to assume the functions of the state Government in the event of a breakdown of the constitutional machinery.[26]

Article 356 of the Constitution, which laid down that the President *"may assume to himself all or any of the functions of the state"* in the event of the *"constitutional failure of state machinery"*, was thoroughly debated in the Constituent Assembly. While the members of the drafting committee headed by Dr. B.R. Ambedkar strongly defended the Article for the sake of preserving national unity, H.V. Kamath, S.L. Saxena and a few others were strongly against it. Kazi Syed Karimudin, a Muslim member from the central province, was very specific in his criticism:

> *"Suppose, for example, in West Bengal the party which is in opposition to the Centre is elected, then even though the Government for West Bengal may feel that the internal disturbance in West Bengal is not sufficient for suspending the Constitution, still the will of the Centre will be imposed and the ideologies of the Centre will be imposed on the state."*[27]

Replying to the criticism, Dr. Ambedkar said,

> *"I do not altogether deny the possibility of these Articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. Proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter."*[28]

Such assurances notwithstanding, there continued to persist a good deal of confusion as to the exact meaning of the words, *"Constitutional failure of state machinery."* During the debates, H.N. Kunzru asked Dr. Ambedkar to spell out its meaning but 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."*[29]

But this does not explain anything and while speaking again on this Article, Dr. Ambedkar instead of making its meaning clear confused them further by saying:

> *"The expression "failure of the 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."*[30]

Naziruddin Ahmed, disenchanted with the vagueness of the Article, had this to say;

> *"This Article says practically nothing. It says almost everything. It enables the Centre to interfere on the slightest pretext and it may enable the centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the drafting committee for its vagueness and evasions."*[31]

It is also difficult to agree with Dr. B.R. Ambedkar that this phrase has the same meaning in the present Constitution which had in the Government of India Act, 1935, because the present Constitution is not a carbon copy of that Act. Given the fact that the country was in the grip of communal agitation and separatist movements at the time when the Constituent Assembly was debating the issue, the Article was approved in the interest of national security without, any conclusive explanation of *"constitutional failure of state machinery."*[32]

Since independence, Art 356 has become a powerful weapon in the hands of the Union Government and many State Governments has become the casualty due to unethical invocations of the Article. Precisely, as if to prove the predicaments of the Article 356, all these years of independence has caused so much harm and injury to the federal scheme, which had very carefully been built into the Constitution, that it has come out as not only the most widely debated, discussed and commented upon Article, but also the one demanded by various political parties and other agencies to be deleted from the Constitution. Time and again, this Article, mainly due to the Centre's highly dominating role sometimes results in the dismissal of state Governments on the basis of recommendations made by Governors invoking the power vested in him by under Article 356, more to satisfy the Union Government for political gains. A related aspect widely discussed but not settled for a very long time was the power of the Governor to dismiss the Chief Minister and dissolve the legislature or invite any one of his choice to form the Government.[33]

The Article 356 has been used most arbitrary by the Union Government for dismissing State Governments of the parties other than the party in power at the Centre. In Kerala after 1957 general election, Chief Minister E.M.S. Nambudripal government was toppled in July 1959, while still enjoying majority in the legislature. The Central government interference was a clear-cut case of political prejudice. Ten years later, West Bengal had a similar story to tell. First in November 1967 and then in March 1970, elected governments were dismissed. While the Janata Party government at the Centre dismissed nine Congress ruled state governments in 1978 and when Congress (I) came to power at the Centre after 1980 election, it repeated the same tone by dissolving nine non-Congress governments in 1980. In 1984, in Andhra Pradesh govt. (NTR Govt.) and in 1985, Jammu & Kashmir government (Farukh government) was dismissed on partisan grounds.[34]

In 1983, central Government appointed Sarkaria Commission which was headed by Justice R.S. Sarkaria to examine the relationship between Centre and State Government in the country and also suggest relevant changes within the framework of Constitution. This commission recommended that Article 356 can be used *"very sparingly, in extreme cases, as a measure of last resort, when all other alternatives fail to prevent or rectify a breakdown of Constitutional machinery in the state."*[35] In its final report, Sarkaria Commission explored the extensive misuse of Article 356 and made important recommendations to check its misuse. Despite this, misuse of Article 356 continued, In 1988 Nagaland and in 1989, Karnataka state governments were dismissed by the Central Government.[36]

In 1992 President's Rule was imposed in four Bharatiya Janata Party (BJP) ruled states (Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh) by the Congress party government on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organizations. In a landmark judgment in S. R. Bommai case in 1994, the Supreme Court upheld the validity of this proclamation on the ground that secularism is a "basic feature" of the Constitution. But the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991. The court also held that in no case should a state assembly be dissolved without Parliament approving the proclamation, and that test of strength could only be conducted on the floor of the house.[37]

The invocation of President's Rule to facilitate or to recover for political horse-trading continued even after the 1994s. Notable examples are - Gujarat 1996, U.P. 1996, Bihar 1999, Goa 1999, Bihar 2005, Arunachal Pradesh and Uttrakhand 2016.

In the year 2002, the National Commission to review the working of the Constitution, headed by retired Supreme Court judge, Justice Nanepalli Narayana Rao Venketachaliah submitted a Consultation paper on Union-State relations. The report criticized the Central Government for not following the concept of co-operative federalism. Finally the National Commission recommended that Article 356 should not be deleted, but it does need an Amendment.[38] However, this has not been implemented yet. Almost all the ruling parties at the Centre have been blamed of misusing the power of Article 356 for political reasons.

CONCLUSION

Finally it is concluded in the light of the above facts and events related to imposition of President's Rule that Article 356 is an important part of Indian Constitution, which gives priority to the centre on the states. It took its shape in a gradual but swift manner. There were serious objection to its incorporation but it was felt that it would be needed in grave emergency and used in the rarest of rare cases. It was designed to preserve political unity against the then threat of dysfunctional diversities.[39] In fact it was conceived as a protective shield of federalism and never to be used *'dead letter'* of the Constitution.[40] Simultaneously, this agreement is provision also hopes of ensuring governance in favour of the Indian state and better centre state relation.

Though the Constitution makers had wished that Article 356 to be invoked in genuine circumstances of Constitutional breakdown in state. Yet the provision, from the very beginning, came to be misused most patently. Imposition of President's Rule for political advantage has become habit of the Centre, irrespective of the party in power. The provision, which was intended to be a "dead letter" become a death letter for a number of state Governments. Every party plays the game at its pleasure: when in opposition, ask for the amendment or abrogation of Article 356 and when in power at the centre, misuse the power for political ends.

From time to time, the committees setup by the Central or state Governments, such as; Rajmannar committee, the Sarkaria Commission, Constitutional Review Commission etc. have recommended in favour of preserving the provision of President's Rule, but there are also many useful recommendations about preventing its misuse. Considering the various Constitutional aspects associated with the President's Rule, it becomes clear that the use of it in a meaningful and positive way is possible only, when the role of the institutions attached to it, is objective and responsive. Expecting the meaningful and practical role of the President as well as Governor should also follow the necessary guidelines in order to clearly use this Constitutional provision. It strengthen the federal system of India in actual way.

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