

HISTORICAL BACKGROUND OF ARTICLE 356 OF CONSTITUTION OF INDIA

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THE GOVERNMENT OF INDIA ACT, 1935

This Act first introduced the concept of division of powers in British India. It was an experiment where the British Government entrusted limited powers to the Provinces. But since there was very little faith lost between the British and the Indian people, the British took precautions to keep a sufficient check on the powers given to the Provinces. These precautions were manifested in the form of emergency powers under Sections 93 and 45 of The Government of India Act, where the Governor under extraordinary circumstances, exercised near absolute control over the Provinces

Drafting Committee of the Constituent Assembly

On August 29, 1947, a Drafting Committee was set up by the Constituent Assembly. Under the chairmanship of Dr. B.R. Ambedkar, it was to prepare a draft Constitution for India. In the course of about two years, the Assembly discussed 2,473 amendments out of a total of 7,635 amendments tabled.[2] When it was suggested in the Drafting Committee to confer similar powers of emergency as had been held by the Governor-General under the Government of India Act, 1935, upon the President, many members of that eminent committee vociferously opposed that idea. Dr. B.R. Ambedkar then pacified the members stating:

'In fact I share the sentiments expressed by my Hon'ble friend Mr. Gupte yesterday that 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.'

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.[3]

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 provisions of this Constitution.[4] The word 'otherwise' in Article 356(1) was not included in the original draft; it was later introduced through an amendment, despite protests from members of the original Drafting Committee, stating that it was an open invitation to abuse the Article. Dr. Ambedkar justified its introduction saying that Article 277A (now Article 355, cited above) imposed a duty upon the Center to ensure that the States are governed in accordance with constitutional provisions and that hence it would not be proper for the President to base his decision solely on the report of the Governor of the State.[5]

There are certain differences in the provision relating to the failure of the constitutional machinery under the present Constitution and the powers dealt with in Sections 45 and 93 of the Government of India Act, 1935. [6] Firstly, the 1935 Act empowered the Governor-General to deal with a failure of the constitutional machinery at the center (Section 45). It also empowered the Governor-General to deal with a similar situation in a Province (Section 93).[7] The present Constitution, however, does not intend to suspend the Constitution of a State, but empowers the President to take steps in this regard, though he shall have to act on

the report of the Governor or Ruler of the State. Secondly, under Section 93 of the 1935 Act, the executive and legislative powers of a State could be assumed by the Governor, acting at his discretion.[8] The present Constitution has separated the two powers: the President, assuming executive powers, and the Union Parliament, assuming legislative powers.

The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.[9]

FIRST DAY IN THE CONSTITUENT ASSEMBLY

The Constituent Assembly met for the first time in New Delhi on 9 December, 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House. Decorated elegantly for the occasion, the Chamber wore a new look on that day with a constellation of bright lamps hanging from the high ceilings and also from the brackets on its walls.

Overwhelmed and jubilant as they were, the hon'ble members sat in semi-circular rows facing the Presidential dias. The desks which could be warmed electrically were placed on sloping green-carpeted terraces. Those who adorned the front row were Pandit Jawaharlal Nehru, Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Acharya J.B. Kripalani, Dr. Rajendra Prasad, Smt. Sarojini Naidu, Shri Hare-Krushna Mahatab, Pandit Govind Ballabh Pant, Dr. B.R. Ambedkar, Shri Sarat Chandra Bose, Shri C. Rajagopalachari and Shri M. Asaf Ali. Two hundred and seven representatives, including nine women were present.

The inaugural session began at 11 a.m. with the introduction of Dr. Sachchidananda Sinha, the temporary Chairman of the Assembly, by Acharya Kripalani. While welcoming Dr. Sinha and others, Acharyaji said: "As we begin every work with Divine blessings, we request Dr.

Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, on your behalf, call upon Dr. Sinha to take the Chair."

Occupying the Chair amidst acclamation, Dr. Sinha read out the goodwill messages received from different countries. After the Chairman's inaugural address and the nomination of a Deputy Chairman, the members were formally requested to present their credentials. The First Day's proceedings ended after all the 207 members present submitted their credentials and signed the Register. Seated in the galleries, some thirty feet above the floor of the Chamber, the representatives of the Press and the visitors witnessed this memorable event. The All India Radio, Delhi broadcast a composite sound picture of the entire proceedings.

SOME FACTS

The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. As to its composition, members were chosen by indirect election by the members of the Provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission. The arrangement was: (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners' Provinces. The total membership of the Assembly thus was to be 389. However, as a result of the partition under the Mountbatten Plan of 3 June, 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299. On 13 December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution

1. This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereigns Republic and to draw up for future governance a Constitution
2. WHEREIN the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of all them.
3. WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom.
4. WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people.
5. WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.
6. WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.
7. WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations.
8. This ancient land attains its rightful and honoured placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India.

On 29 August, 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950. In all, 284 members actually signed the Constitution. On that day when the Constitution was being signed, it was drizzling outside and it was interpreted as a sign of a good omen.

The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952

REFERENCES:

1. National Commission to Review the Working of the Constitution, *supra* note 2 p.2
2. *First Day in the Constituent Assembly*, at <http://parliamentofindia.nic.in/debates/facts.htm>

3. National Commission to Review the Working of the Constitution, *supra* note 2
p.2
4. *India - Constitution*, at http://www.oefre.unibe.ch/law/icl/in00002_.html
5. D.D. Basu, *Commentary on the Constitution of India* (5th edn. 1990). A graphic record of this debate is also available at
<http://www.tribuneindia.com/1998/98nov08/sunday/head.htm>
6. National Commission to Review the Working of the Constitution, *supra* note 2,
p.2.2.
7. *Ibid.*
8. *Ibid*
- . 9. www.parliamentofindia.nic.in,
- 9.10. *Ibid*