Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The governments at both levels, central and local, must have complete freedom from mutual control and encroachment in the determination of their policies and functions. It is this freedom that is the essence of federalism. Under the Indian Constitution the executive power of the union


2. As provided in Art. 73(1) which reads: subject to the provision of this constitution, the executive power of the Union shall extend -
   (a) to the matters with respect to which parliament has power to make laws; and
   (b) to the exercise of such rights, authority and jurisdictions as are exercisable by the Government of India by virtue of any treaty or agreement.
and the states are coincident with the scope of their respective legislative power as provided in the Seventh Schedule of the constitution except that this general rule is to be modified when dealing with the field of concurrent legislative power in accordance with the provisions to Art. 73(1) and Art. 162 of the constitution. The principle on the basis of which the division of powers between the centre and state rests can be seen in Dr. Ambedkar's statement in the Constituent Assembly where he states -

It (the Constitution) establishes a dual polity with the union at the centre and the states as the periphery, each endowed with sovereign powers to be exercised by the Constitution both derive their respective authority from the Constitution.

3. As provided in Art. 162 which reads; subject to the provisions of this constitution, the executive power of a state shall extend to two matters with respect to which the legislature of the state has power to make laws. Provided that in any matter with respect to which the legislature of a state and parliament has power to make laws, the executive power of the state shall be subject to, and limited by, the executive power expressly conferred by this constitution or by any law made by parliament upon the Union or authorities thereof.
They are not subordinate to the other in their respective fields, the authority of one is Co-ordinate with that of the other.\(^4\)

This principle of orthodox federalism is not followed in India. In some matters states are made inferior to the centre. This inferiority is almost inherent and cannot be avoided.

It is needless to emphasise the pivotal place of the administrative system and public services in the governmental set up of a country. Notwithstanding the frequent changes that occur at the political level of the Government, stability and continuity would continue to characterise administration, the competence, qualities and calibre of which play no mean part in oiling and lubricating the ship of the state. The administrative system is actually concerned with translating in to reality the goals of the state by way of effectualising the policies and programes of the state. Constitution, among others, is the foremost factor in shaping, influencing and determining the administrative system and public service.

\(^4\) C.A.D. VII. p. 33-34.
Although, ordinarily, the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away, the executive in the realm of Government is a combination of both political executive and professionalised public services on the calibre of which would depend the effective, successful and smooth implementation of public policies and programmes.

The area of public administration coincides with that of the executive government. "Public administration is concerned with the implementation or enforcement of public policies made by the Government. The area of public administration is greatly influenced by the country's political and constitutional system."

A. TWO LEVELS OF ADMINISTRATION

The most distinctive feature of political and constitutional system of India is the establishment of parliamentary system of responsible Government at the

S. Satelved, M.C. Union and State Relations under the Indian Constitution (Tagore Law Lecturer). p. 80-81.
centre and in the states within the broad federal political framework. The existence of federal system which has necessitated the mechanisms of dual Government and the scheme of distribution of powers in seventh schedule has brought to bear great influence on the administrative system and public services. Accordingly, there exist two different levels of administration, Union and States embracing three lists vis. Union list, the State list and the concurrent list and three different kinds of public services, namely, All India services common to the union and the States, central services and state services. The institution of central services and State services are a logical corollary of the federal system. But what would seem to be unusual is the provision for All India services. This is in a sense a continuation of the British administrative legacy. The present All India services have succeeded the erstwhile I.C.S. and I.P. But these two prestigious services were looked upon by the nationalists as a sort of bear and antinationalist too. The nationalists were

opposed to these services and pledged to dispense with these services after the attainment of freedom. But political realism and vital administrative considerations proved more formidable than sentiments and political opposition. The invaluable experience gained by top national leaders who were intimately connected with the working of interim Government as also the crucial role played by I.C.S. and I.P. as the most powerful instrument in preserving the administrative unity of the country convinced the national leaders about the indispensability of continuing these services even after independence as the administrative unity and integrity became more important and urgent in free India. So they resolved to retain these services with only change of nomenclatures. Apart from these two All India services, the parliament is empowered under Article 312 to create one or more All India services. The institution of All India services and Art. 312, according to some critics, have become eyesore of India federal system mainly on the ground that the All India services have become a tool in the hand of the ruling party at the Centre that is frequently used in encroaching the rights of states.
Federal political system, whether orthodox, or otherwise, has necessitated dualism in the realm of administration. The constitution has clearly and elaborately laid down the administrative zones of the Union and the states. But this constitutional demarcation has not stopped the eruption of unitary trends and forces that pervade and powerfully influence the administrative system. Formation and implementation of development plans, party system characterised by (near) uniparty dominance, political blackmail in the name of political co-operation, bargaining and charismatic leadership too have accentuated considerably the unitary trends. This apart, historical setting, political tradition, social and economic realities and administrative exigencies have warranted and strengthened in an unprecedented manner the unitary trends which have left their indelible imprint on the country's administrative system. But it is necessary to reiterate that the unitary trends and forces are very much found in the Constitution itself. Thus it is necessary to consider the several aspects of the constitution that rigidifies unitary trends and forces in the administrative field. To know what these aspects of the constitution are and to comprehend the magnitude of the unitary trends and forces epitomised by these aspects, and their impact on the administrative system, it is necessary to consider the technique of union control over the states that can be discussed under two broad heads viz. (a) during emergency and (b) in normal time, because Indian constitution

---

loses its federal flavour that can be tested during normal
time in situation as provided in Articles 256, 257 and 365
and also in time of emergency. Therefore, it is necessary
to consider Arts. 258, Art. 258A, 307, 312, Arts. 352 to
357 and Art. 360.

At the very outset, it is necessary to stress that
these various articles not only encourage and strengthen
the unitary trends and forces, but have a vital bearing
both directly and indirectly on country's administrative
system. As such a detailed discussion of the aforesaid
provisions is a must for examining and presenting the unitary
biasness in the administrative relation between the Centre
and the States. The constitution lays down a flexible and
permissive and not a rigid scheme of allocation of
responsibilities for the administration between the Union
and the States. The scheme is such as to permit all kinds
of co-operative arrangements between the two levels of
Governments as may be thought desirable to cope with the
situation at hand. Such harmonious provisions relating to
executive powers of the Union and the States are to be
found in Arts. 258(1), 8 and 258(a). 9 Further extension

8. The Art. lays down the power of the Union to confer powers
   etc. on States in certain cases.

9. Art. 258A conversely confers power on the States to entrust
   functions to the Union.
of State executive power under Articles 282, 293(1) and 298 also warrants serious consideration while considering the clamour for more State powers. Side by side the tension areas namely -

(1) Role of Governor.

(2) Deployment of CRPF, BSF etc. by the central Government in the States.

(3) Role of mass media mainly radio and television and

(4) Languages is to be considered while examining the unitary biasness vis-a-vis non centralising tendencies.

To sum up, to examine the unitary biasness and non centralising tendency in the field of administrative relation, it is necessary to examine the following:

(1) Constitutional provisions having unitary tendencies during -

(i) normal time and

(ii) during emergency.

10. Art. 282 lays down that the Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which parliament or the Legislature of the State, as the case may be, may make laws.

11. Art. 293(1) empowers the State executive to borrow within territory of India upon the security of the consolidated fund of the State within such limit as may be fixed by law made by the State Legislature and to give guarantees.
(2) Harmonious provisions which have tendency to neutralise the unitary tendency, namely;

(a) Extension of state executive power under Articles 293(1), 282, 339(2) and 350(A).

(b) Delegation of state executive power under Article 258A.

C. UNITARY CHARACTER IN NORMAL TIMES

The centre has been given power to administer any matter falling within its exclusive legislative domain, but it is not bound to administer all these matters itself and can, if it so desire, entrust the responsibility of administering any of these matters to the states or their instrumentalities by legislation. There is no need in such delegation of executive power, as a gesture of mutual co-operation, any consultation with the States. But while the States have been empowered to administer all matters within their exclusive legislative domain, the States may leave any of their functions to the centre for administration

12. Art. 73.
13. Art. 154(b).
only by agreement with the centre. This provision i.e. Art. 250A added to the constitution by Seventh Amendment Act. 1956 is undoubtedly a harmonious provision in our federal polity. The administration of the matters in the concurrent list rests with the states in the first instance but parliament may, by passing law, enable the centre to assume responsibility for administration any of these function. In the concurrent area, therefore, there are some alternatives available to the centre. So long as parliament makes no law, the executive power rests with the state, when parliament makes a law, it may take any of the three courses in reference to the enforcement of the legislation.

- It can leave entirely to the States; or it may take over the whole of the task of giving effect to it by making an express provision in the relevant law; or it may take upon itself the enforcement of a part of the law, leaving the enforcement of the rest of it to the state.

15. Art. 250A. Reads: Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

16. Proviso to Art. 162.

17. Ibid.

18. Setalvad M.C. Union and the State Relations in the constitution (Tagore law lec.) p. 81.
A survey of the central legislation on concurrent subject will reveal all these patterns of operation. Under the Electricity (Supply) Act, 1956, enacted by the Parliament under entry 38 list III, administrative powers have been left with the States; under the Industrial Dispute Act, 1947 enacted by the Parliament under entry 22 list III, administrative powers rest both with the centre and the States; under the Essential Commodities Act, 1955, enacted by the Parliament in pursuance of entry 22 list III, the whole administrative power is vested in the centre, but provision is made in the two Acts for the centre to delegate administrative powers to the States from time to time as may be thought necessary and desirable. But the Government of India Act, 1935, vested executive power relative to concurrent subject to the provinces only. Though section 107 of the Act enabled the federal legislature to supersede provincial legislatures in the concurrent field, the corresponding executive power always remained in the provinces.

Articles 256 to 263 relating to administrative relations are intended to secure effective federal control and operation and to minimise friction between the union and the States which is very common in a dual system of Government. The framers of the constitution, therefore, decided to have detailed provisions to avoid clash between the union and the States in the administrative field. Articles 256, 257, 258 and 365 are Articles which constitute a unique feature of the Constitution of India in the sense they confer power on the union to give direction to the States in the exercise of their executive powers. The framers of the constitution considered these articles as of vital importance for the smooth day-to-day working of the Central Government. They highlight the efforts of the constitution makers to create a system of co-operation in the executive field between the union and the States. But of late they have become eye-soare of the critics in as much as the union is no body in laying hand in the State affairs. No doubt this idea of giving directions by the union to the States' executive is peculiar, if we compare it with the practice prevailing in the other countries such as

20. Rajasekhariah, Dr. A.N., Centre-State Administrative Relations. p. -1. (Paper submitted in Seminar on C-B.R., Madras Academy of Political Science, January 5-6, 1984.)
the U.S.A. and Australia although the Government of India Act., 1935 contained similar provisions. But the critics should bear in mind that no two constitutions can be alike and the constitution of a country is the first social document. Commenting on Art. 256, D.D. Basu observes. This is not justiciable, this article does not confer any legal right upon a private party to urge before a court that a state has not complied with any direction issued under this Article.

D. DIRECTIONS BY THE UNION

The constitution makers, not satisfied with this general power of direction to the States also made provisions in Art. 257 calling upon every State not to impede or prejudice the executive power of the union in the State or States. If any union agency finds it difficult to function with a State, the union executive is empowered to issue appropriate directions to the State Government to remove all obstacles. The union's power of giving directions in this regard includes certain matters such as:


22. See section 122 and 126 of the Act.

(1) The construction and maintenance of means of communication declared in the direction to be of national or military importance. This power of giving direction does not affect the power of parliament to declare highways or water ways to be national high ways or national waterways, or the power of the union to construct and maintain means of communication as part of its functions with respect to Naval Military or Airforce work.

(2) Another clause of this article similarly empowers the union to issue direction to the States for the protection of railways.

While carrying out such directions the extra expenditure incurred in discharging these functions has to be borne by the union Government. This has to be decided by an arbitrator appointed by the Chief Justice of India.

"Rajamannar Committee found fault with the constitutional provisions permitting the Central Government to give direction. They felt that these provisions impinged on the executive.


25. Cl. (3) of Art. 257.
authority of the States; and enabled the union to effectively assume to itself the executive power of the State. They observed that the provisions of Article 256 and 257 were inconsistent with the so-called accepted theory of federalism; and for that reason recommended their repeal. Alternatively, they suggested that the direction should be issued in consultation with the Inter-State Council.  

According to Art. 258, the Union can confer powers on States in certain cases -

(1) Notwithstanding anything in the constitution, the president may with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the union extends.

(2) A law made by parliament which applies in any State may, notwithstanding that it relates to matter with respect to which the legislature

of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Whereby in discharging these powers and duties conferred by the President to a State or officers or authorities, they shall be paid by the Government of India as agreed upon. If the Union Government fails to fulfil the agreement, there shall be an arbitrator appointed by the chief Justice of India, and the Government of India has to abide by the decision of the arbitrator and has to pay the sum to the State concerned. Thus, it is constitutionally obligatory on the part of the States to carry out directives issued to them in terms of Art. 258, and perform the functions entrusted to them and discharge the powers and duties conferred on them. The States are duty bound to act in terms of Art. 257–258 failing which they would be targets of disciplinary action the president could take.27 What is

27. Such power is laid down in Art. 365.
very important to reiterate is not the fear of constitutional disaster that befall the States but the pervasive effects on the administrative system likely to be generated by the constitutional obligation of the States to act in terms of Arts. 257-258.

However, Art. 258(A) reverses the position and is an offshoot of the constitution which had been inserted by the seventh amendment Act. 1956. It allows the States to entrust the union Government or to any of its officers with functions which belongs to the States. But when the States so act in pursuance to Art. 258A the Union Government or its officers will have to perform certain functions that neither to belong to the State. It is not far to seek the relevance of Art. 258A when its operation and effect are viewed in the context of the implementation of development plans since 1950; the administrative system has felt in more than one direction the impact of planning. Many changes, organisational and functional - in the administrative sphere are the outcome of this impact. There has been a great deal of co-operative federalism in the post-constitution period, a development


towards which contribution of development planning is no mean. Inter dependence of the union and the States is one of the facets of co-operative federalism. It is no exaggeration to say that whatever may be the circumstance of origin, Art. 258A emphasises the administrative interdependence of the centre and the States. It may be recalled here that in the wake of the formation of the linguistic States in November 1956 it has become utmost important to ensure and promote better and effective co-ordination and co-operation among the States, and between the States and the centre to expediate the development plans. It is in this context it would be more appropriate to analyse the relevance of Art. 258A and it effects on the administrative system.

"Few more constitutional provisions needs consideration which regulates the administrative relation between the union and the States. Any Government, whether union or State, may carry on any commercial or industrial activity, or may acquire any property and enter into contracts for the purpose, but if

an activity falls out side its legislative domain than it would be subject to the laws made by the other Government having power to do so.\textsuperscript{31} It is the only case of its kind when the central (Union) executive power may be subjected to the State Legislative power.\textsuperscript{32} Therefore, constitutional provisions namely Art. 258A and 298 are some of the articles which aimed at harmonising the relations between the Union and the States.

E. ADMINISTRATIVE RELATION DURING EMERGENCY

There is a viewpoint among the constitutional jurists that federalism and emergency provisions do not go together.\textsuperscript{33} There is force of logic in this but it cannot be accepted as truism or as unalterable truth under all circumstances or for all countries. Nothing in the draft constitution agitated more the members of the constituent assembly \textsuperscript{34} than the emergency provisions. They entailed

\textsuperscript{31} Art. 298.
\textsuperscript{32} Jain Dr. S.D., Indian Federalism : A background paper (Constitutional Development Since Independence (I.L.I.) p. 235.
\textsuperscript{33} Centre-State Fiction, Link 9(4), 14 May 1967.
\textsuperscript{34} C.A.D. VIII. p. 869-72.
a lengthy and acrimonious debate which brought to light two trends of thought: strong opposition, and approval. A small section of vocal and articulate members in the assembly very strongly denounced these provisions as undemocratic and unfederal in character. In a nutshell, their argument concentrated round; the use of emergency provisions would convert the federal into a unitary system without necessitating any constitutional amendment; they would accentuate the powers of the State executive, particularly they would be enimical to democracy; they would affect the States' autonomy politically and financially. These arguments cannot be easily refuted or demolished. But a large majority of members did not fail to note the logic and relevance of these provisions in the Indian context and endorsed the same. The emergency provisions (Arts. 352-360) in the constitution envisage three kinds of emergency: National emergency which may be necessitated by war or external aggression or armed rebellion (Art. 352); the breakdown of constitutional machinery in the States (Art. 356); and financial emergency caused by threat to financial stability and credit (Art. 360). By adopting these provisions certain safety valves or inbuilt mechanism were inserted in to the constitution to make sure the functioning and viability of the political institutions sought to be created by the constitution.
Political concepts and institutions are not the birthright or patent right of any particular people or country. Imitating them is not very difficult but to make them a successful experiment will be an uphill task. This was the dilemma facing the constitution-makers when they decided to introduce the parliamentary democracy within the federal framework. Political institutions anywhere in the world are not immune from the all-pervading influence exerted by history, society and tradition. India is no exception to this. The constitution makers knew pretty well that by introducing western political institutions and ideals, esoteric to the Indian soil, they embarked on voyaging an uncharted and turbulent ocean in the uncertain political world. India's social system, political experiments and traditions and prevailing circumstances were hardly congenial for the reception of these institutions, let alone their satisfactory functioning. It became imperative to ensure these infant institutions and their future against any kind of hazards and risks that were likely to be caused by political icebergs and gales. Hence, these emergency provisions, the ideas behind these provisions and purposes for which they would be used are no

doubt good, they need not be outrightly condemned as abominable. Some sort of judicious restraint, forebearance and foresight are preconditions while commenting on these provisions. It is also important to note that there is nothing extraordinary about these provisions. They were there in the Government of India Act, 1935 which greatly influenced and shaped the present constitution. But the possibility of subversion of these provisions by those in power cannot be ruled out.

Although it has to be conceded that there is an element of anti-thesis between federalism and emergency provisions, it is not proper or wise to condemn and castigate these provisions and recommend their revocation forthwith. It cannot be said that these provisions were included mainly with the object of the thwarting or endangering the working of federal system. These were intended to be employed as an antidote to meet the needs and requirements of emergencies and extraordinary situations and not to be employed as a power in a licentious...
permissive manner in the day-to-day political life of the country. As long as these provisions continue to be used strictly, consistently and unscrupulously for the purpose for which they were designed, they will, except few, not pose or cause any threat or challenge to federalism. But when they are maliciously employed by those in power for narrow and selfish political purposes, such an abuse or irresponsible use of these provisions will not fail to cause irreparable and unbearable harm to the co-operative relations between the union and the States.

Before examining the views of the critics on the impact of emergency provisions on union state-administrative relations it is worth while to look into the Arts. 353(A), 356(I) and 360.

One of the most important constitutional obligations of the union towards the States is to protect them against external aggression, armed rebellion and internal disturbances and to ensure that the Government of every State is carried on in accordance with the provisions of the constitution. In fact this constitutional duty of the union is writ large on the provisions of Art. 353 and Art. 356 and 357. There is vast scope for the union to invoke its constitutional authority in terms of Art. 355.
Further Art 355 has a great bearing on Art. 356 of the constitution. This article enjoins duty upon 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. Though the Art. 355 stipulates the duty of the union towards the States, it does not indicate any power and procedure to fulfill the duty. But such power and procedure have been specified in Art. 356.

Art. 353(a) of the constitution States that
"while a proclamation of emergency is in operation, the executive power of the union shall extend to the giving of directions to any State as to the manner in which the executive power of the State is to be exercised." The Rajamannar committee in its report suggested that "no direction under this article should be issued except after consulting, and with the approval of, Inter-State Council. If, however, during a period of emergency, consultation with the Inter State Council is likely to delay the issue of directions under Article 353(a) to meet any emergent

situation ...... the direction may be issued without placing the matter before the Inter-State Council, subject to the subsequent approval is obtained and further action is taken in accordance with the recommendation of the council." The reason of such suggestion by the committee is due to experience of the working of the constitution during the post constitutional period when, and even now, the emergency provisions are used by the party in power at the centre particularly with the sole political aim.

When there is a national emergency (Art. 352) caused by war, external aggression or armed rebellion, the president, if the union Government stands automatically empowered to give directives to the states as to the manner in which the latter should exercise their executive powers, and the union parliament stands empowered to make any laws with respect to any subject included in the state list. These two consequences will have definite bearings on the Union-State Relations, and it is impossible to say that State autonomy will not remain unaffected or uninfluenced. Under normal circumstances development like these would have been construed as a definite encroachment by union

37. Rajamannan Committee Report (Government of Tamil Nadu) p. 143.
on the States' sphere and State autonomy, and quite against
the rational underlying the distribution of powers. Apart
from other powers of the president during national emergency,
the president may also by order modify all or any of the
provisions of Arts. 268-279 in their application to States.
It is important to note that these provisions (i.e. Arts.
268-279) deal with the several aspects of distribution of
revenue between the union and States. Thus it can be said
that the financial relations between union and states
cannot remain free from the tenterhooks of national
emergency. The president who is to act in accordance with
the aid and advice of the union cabinet cannot exercise his
free will in implementing or otherwise of these constitutional
provisions.

The constitutional duty and obligation enshrined
by Art. 355 of the constitution can be enforced by the
procedure laid down in Art. 356, which lays down that if
the president is satisfied on a report submitted by the
Governor of a State or otherwise that the Government of
the State cannot be carried on in accordance with the
provisions of the constitution, he may by proclamation
assume to himself all or any functions of the State Government
or power vested in or exercisable by the State Governor and
declare that the powers of the State Legislature shall be
exercisable by or under the authority of parliament and
make such incidental and consequential provisions for giving effect to the objects of the proclamation. Thus when there is emergency proclaimed under Art. 356, the legislative assembly will be dissolved, the State Ministry will go out of office, the State Governor will administer the State on behalf of the president, and the union parliament will make laws for the State. The union parliament becomes competent to confer on the president the power of the State Legislature to make laws and authorise the president to delegate the law making power conferred on him or to any other authority. So a perusal of provisions of Arts. 356-357 should be sufficient to clarify the effects of emergency declared by the president under Art. 356 on the constituent States.

Failure of constitutional machinery in a State can also be declared under Art. 365 which provides if the States fails to comply with or to give effect to, any directions given in the exercise of the executive power of the union, under any provision of the constitution, the president can hold that the Government of the State cannot be carried on in accordance with the provisions of the constitution. This Article of the constitution (Art. 365)
has been taken almost verbatim from the Government of India Act. 1935. Thus the constitution of India provides for central intervention in the State, if the latter fail to perform federal obligations or maintain the democratic and republican form of the Government, or if the Government of the State is not carried on in accordance with the provisions of the constitution.

It has been endeavoured to examine the unitary biasness which affects the State autonomy created by the emergency provisions in the field of Union-State administrative relations. This has been done to evaluate the charges of the critics who have not concealed their annoyance at the impropriety of including the emergency provisions in the constitution. The charge levelled against the Art. 356 is that the expressions "failure of constitutional machinery" and "arising out of a situation in which the State Government of the State cannot be carried on in accordance with the provisions of this constitution" are quite vague and this point was raised by H.M. Kunshur and Nasiruddin Ahmed.

38. Section 33.
40. Art. 356.
42. Ibid. p. 168.
in the constituent Assembly. Nasiruddin Ahmed said "this article says practically nothing. It says almost every thing. 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 in its vagueness, so elusive in its draftmanship that we cannot but admire the drafting committee for its vagueness and evasions." But Dr. Ambedkar was in no mood to explain its meaning and he nearly said that the phrase has been used in the Government of India Act, 1935 and "everybody must be quite familiar, therefore, with its defacto and defjure meaning (and) I do not think any further explanation is necessary."43 Further the expression "Otherwise" occurring in Art. 365 is so much vague that the Art. can be twisted to suit the political aim of the ruling party of the union. Commenting on this expression H.V. Kamath said "It is a constitutional crime to empower the president to interfere not merely on the report of the Governor or ruler of a State but otherwise." 'Otherwise' is a mischievous word. It is diabolical word in this content and I pray to God this will be deleted from this article. If God does not intervene to day, I am sure at no distant date, He will intervene when things will take more serious turn and the

43. Ibid. p. 177.
eyes of every one of us will be more awake then they are to-day. But in State of Rajasthan v. Union of India, the Supreme Court of India has held that the president does not act only on the report of the Governor but in otherwise. This means the satisfaction of the president under Article 356 which is nonjusticiable can be based on material other than Governor's report. This decision of the Supreme Court does not seem to have kept in mind the basic object of Art. 356 and its use by the ruling party at the centre. Even Dr. Ambedkar did not himself ruled out in the debate of the constituent Assembly this possibility who admitted that these articles are liable to be abused. However he expected that this article would be used sparingly and the president would take proper precaution before actually suspending the administration of the State. Such was the spirit of these provisions. But unfortunately this expectation of Dr. Ambedkar was belied and its misuse started immediately after the adoption of the new constitution in 1950 which provoked Dr. Ambedkar to say: "the people have got a very

44. Ibid. p. 137.
46. Ibid.
47. Ibid. p. 177.
legitimate ground for suspicion that the Government is manipulating the article in the constitution for the purpose of maintaining their own party in office in all parts of India. This is a rape of the constitution. 48

The intention and purpose of this article is not questionable. This article sought to provide some built-in mechanism or some such mechanism to protect the fragile and tender democratic institutions at the state level from being paralysed. However, democratic a constitution may be it is sure to be distorted and endangered if the people and parties concerned lack democratic traditions and experience. 49 Hundreds of former princely States which became integral parts of free India lacked democratic traditions and background, and they were known for their autocratic, and irresponsible Government. To ensure the proper functioning of democratic institutions in such areas was no easy task. To prevent the breakdown of the constitutional Government in such areas which were so far strangers to democratic experiment and constitutionalism


the constitution makers thought earnestly in terms of some constitutional device. This led to the adoption of Art. 356. This was intended to provide for central intervention in case of a constitutional machinery of Government could not function according to constitution in any State and provide antidote to democratic institutions against any kind of paralytic stroke.

How much the theoretical spirit of this article is distorted in practice can be seen from the fact that till November 1883, President's Rule has been imposed Seventy times\(^50\) and this provision, in fact, has been thoroughly misused by

(a) dismissing the State Governments having majority in the assembly;
(b) suspending and dissolving the Assemblies on partisan consideration;
(c) not giving chance to the opposition (i.e. party not in power in the centre) to form Government when electoral verdict was indecisive;

\(^{50}\) It was imposed Seven times during Nehru's time, twice during Lal Bahadur Shastris' regime, thirty nine times when Mrs. Gandhi was the Prime Minister between 1966-77, Nine times during Morarji Desai's regime, five times during Charan Singhs' regime and eight times between February 1980, November 1983 during the regime of Mrs. Indira Gandhi. Quoted from Basu, D.D. - Introduction to the Constitution of India (9th Edn.). p.308-311.
(d) denying the opportunity to the opposition to form Government when Ministry resigned in anticipation of its defeat in the floor of the house.

(e) not allowing the opposition to form Government even after the defeat of the Ministry on the floor of the house.

There is a saying in Assamese that "who so ever goes to Lanka becomes a Ravana" which is almost true about Indian politics because both the Congress and Janata Governments at the centre dismissed the State Governments, keeping in view the party interests. In all 27 States Governments have been dismissed so far under this Article when they not only had majority but were also prepared to prove that majority on the floor of the house. Some of these were (1) Gian Singh Rarewala's Ministry in Pepsuwas dismissed in 1953 on flimsy ground such as cultivators did not pay rent, hands of a boy were chopped off, dacoities were committed in daylight, house was adjourned by the Speaker on the request of the C.M., some members crossed floor, election petitions against 15-20 persons were pending in the court; the C.M. had been unseated in the election petition 51 (Mrs. Indira Gandhi too was unseated in the

51. K.M. Katju, parliamentary Debates Vell. II para 2, 1853, ColEs. 1893-94.
election petition but she did not resign). There was slander majority of united front in the Assembly (26 out of 46),\textsuperscript{52}

Nambudiripad's Ministry in Kerala was dismissed in 1959 on grounds, among others, that his Government remitted sentences of certain criminals, interfered in the course of administration in general and particular with the course of judicial administration, transferred some officers and suspended a few other, denied money to some of the co-operative societies simply because they did not apply in time, arrested agitators belonging to the congress and other non CPI parties, collected Rs. 25 lakhs for party fund;\textsuperscript{53} Rao Birendra Sing in Haryana was dismissed in 1969 on ground that thirty members had defected one way or the other and some of them had defected more than once, the size of the ministry too large (only 22), MLAs' interference in administration, and political instability. But surprisingly a year later in the same State Haryana with the same Governor in office (B.N. Chakravarty) as many as 31 M.L.A's defected and some

\textsuperscript{52} J.R. Siwach, the Indian Presidency, Haryana Prakashan, Delhi 1971.

of them more than once in a single day but this time the
governor kept quiet because they were in favour of the congress
(i.e. ruling party at the centre).

Again on the same day
(November 21, 1967) a ministry of P.C. Ghosh was installed
in West Bengal which included all the defectors and non
else. It is difficult to justify the activities of the
Governor which indicate that in the opinion of the
Governor the defections in Haryana were bad but the
defections in West Bengal were good. There cannot be a
bigger mockery of democracy than this. Again Charan Singh's
Ministry in U.P. was dismissed in 1970 because he refused
to resign when asked to do so after withdrawal of support
by the Congress (R), Karunanidhis' Ministry in Tamil Nadu
was dismissed in 1976 because there were allegations of
corruption against the Ministry although Ministries of
Bansi Lal in Haryana, Devraj Urs in Karnataka and Vengal
Rao in Andhra Pradesh were not dismissed though there were
similar corruption charges levelled against these Ministries perhaps simply because they belonged to the party
in power at the centre.

54. Bivach, J.R.- State autonomy and the President’s Rule
(Seminar at C.S.R. 5-8, January 1984,
Madras. p. 13.)
Nine State Governments\textsuperscript{55} were dismissed in 1977 by the Janata Government in Centre on the ground that they had ceased to represent the people - a conclusion drawn on the basis of parliamentary election held in that year and the Supreme Court of India in Union of India Vs state of Rajasthan\textsuperscript{56} upheld the dissolution in its unanimous decision. Following 'the tit for tat' policy the Congress Government at the Centre, under the leadership of Smt. Indira Gandhi who came to power after the General election in 1979, dissolved nine State Assemblies\textsuperscript{57} and President's Rule was imposed on the ground that they no longer represent wishes and aspiration of the electorates, and that these Assemblies adopted delaying tactics towards the constitution 45th Amendment Bill seeking to extend the reservation of seats for scheduled castes and scheduled tribes in Lok Sabha and Legislative Assemblies.\textsuperscript{58}

\textsuperscript{55} They were Rajasthan, U.P., M.P., Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal, and Haryana.

\textsuperscript{56} Ante.

\textsuperscript{57} They were U.P., Bihar, Rajasthan, M.P., Panjab, Orissa, Gujrat, Maharashtra and Tamil Nadu.

\textsuperscript{58} Indian Express, February 19, 1980.
The grounds mentioned above clearly prove that the party in power at the centre has dismissed State Governments in an arbitrary manner.

The power of declaring failure of constitutional machinery has also been misused by suspending or dissolving the Assemblies keeping in view the interests of the ruling party in the centre. Whenever there is a chance of forming alternative ministry by manoeuvering defection or otherwise, the Assemblies were suspended, otherwise they were dissolved.

For example, the Assemblies were suspended in Rajasthan in 1967, in U.P. in 1970, in Orissa in 1971, in Assam in 1979. But on the other hand Assemblies were dissolved in Andhra in 1954, in Kerala in 1965.

59. Siwach, J.R. President's Ruler in India, of cit. p.300.
60. Ibid. p. 367.
61. Ibid. p. 240.
63. Siwach, J.R. - Politics of President's Rule in India, p. 1107.
64. Ibid. p. 175.
In 1970, and again in 1982, in Manipur in 1969, Tripura, and West Bengal in 1971, in Orissa in 1973, in Assam in 1982 in order to prevent the opposition from forming the Government when the Congress Ministries or the Ministries supported by it went out of office.

Similarly the suspension of State Assemblies in Panjab in 1961, 1966, 1971 and again in 1983, in Andhra in 1973, in U.P., and Orissa, in 1975 provided examples for resolving Intra party conflict. Such examples can be added to show that the opposition is not given a chance to form the Government immediately after election, opposition is not allowed to form Government after the defeat of the Ministry on the floor of the House.

65. Ibid. p. 175.
66. Ibid. p. 207.
67. Ibid. p. 320.
68. Ibid. p. 410.
69. Ibid. p. 246.
70. Ibid. p. 278.
71. Ibid. p. 282.
72. The Tribune, 7 November 1983.
73. Ibid. p. 109.
74. Ibid.
75. Ibid. p. 369.
76. This happened in Kerala in 1965 and in Rajasthan in 1967.
77. For example, such situation arose in Andhra in 1954, in Manipur in 1969 and in Assam in 1981.
The foregoing discussion is sufficient to indicate the manner in which this constitutional device has come to be employed and it leads to certain irrefutable conclusions:

(i) Irresponsible, indisciplined and unprincipled manner in which political parties and groups in various States have come to conduct themselves in power politics and politics of defection has lead to the creation of unstable and precarious situations which eventually obliged the State Governors and Centre to play their respective roles in bringing the sordid drama to its logical end by invoking action under Art. 354, the political parties lacks federal political culture;

(ii) Lack of will and grit to resist the play for safe tendency and political ineptitude and maladroitness end inadequate of little foresight displayed by Governors in assessing, analysing and reporting to the centre the highly fluctuating situation prevailing in the States;

(iii) Inconsistent, dubious, questionable and conflicting stands adopted by the centre in different situations to invoke the sanction of Art. 356.
(iv) Legal infirmities inherent in the very provisions of Art. 356 under which even if there is no report from the Governor about the break down of the constitutional machinery of Government of a state, the centre can as well act by resorting to Art 356 and whatever centre does is placed beyond judicial review.  

(v) Political factors and forces and subjective considerations have been of considerable influence in the action taken by centre under Article 356;  

(vi) Constitutional aspects and legal sincerities have been overshadowed or obscured by political calculations;  

(vii) Constitutionalism, statementship, healthy democratic practice and federal spirit have been at times pushed to the back seat by Lackadaisical manner in which action has been taken by the centre under Article 356.  

(viii) Tradition of central intervention as happened under the British authorities, scant regard for democratic practices and norms, absence of well organised, disciplined and viable opposition and highly centralised political system;  

Governors have been at times used as whippining boys to send reports favouring and forcing central action;

Neither the conduct and behaviour of political parties are praiseworthy nor the action of Governors are devoid of suspicions nor the centre is above reproach in creating a situation forcing president's rule under Article 356.

The theoretical provisions relating to administrative relations during emergency sounds wise, except the inclusion of term 'Otherwise' in Art. 356; but the practical experience particularly in promulgation of president's rule in States indicate a sordid picture. Apart from removal of the term 'otherwise' from Art. 356, unless the national interest is made superior to political interest of the ruling party i.e. create the atmosphere of federal political culture, suggestion like:

(i) the entire material on the basis of which proclamation is issued be made public;

(ii) inclusion of another article empowering the Governor to submit report under Article 356 in his sole discretion and judgment

meaningless. No doubt the practical constitution vitally differs from the theoretical provisions of the constitution, but if such practical working creates tensions between the Union and States, instead of creating a harmonious situation and leads the nation in the path of progress and prosperity, it is really serious matter. To ensure smooth and proper working of administrative machinery, co-operation and good will are the two essential prerequisites between the centre and States (.........). For this purpose there should be a scheme (such as Inter State Council under Article 263) to bring about a proper co-ordination and adjustment.  