CHAPTER - V

CONSTITUTION FRAMING REGARDING THE INSTITUTION OF GOVERNOR AND PRESIDENT'S RULE IN STATES

There is nothing wrong to say that any one exercising authority under the Constitution must learn that the people as a whole are the political sovereign. And the Constitution derives its strength from the people's faith in it. Therefore no functionary holding office or exercising State power can defy or deny the Constitution, because the Constitution is above every one. However it is a matter of deep regret that this true fact has become a casualty in these days at the hands of persons holding high offices.

A Constitution is not an omnipotence in the sky or omnipresence among the stars but a politico-legal instrument functionally fundamental, directionally value-loaded and, in practical terms, a regulatory interface between the people and the power process. But any Constitution, which is irresponsive to new challenges and old evils and permits itself to be subverted, will prove a tragicomedy and must suffer eclipse unless periodic mutations up-date it.

Debates in the Constituent Assembly are one of the valuable aids and guides in arriving at the wisdom and clan of the living

1. Iyer V.R. Krishna, The Indian Presidency; Nascent Challenges and Novel Responses, PP-48-49.
words of the Paramount Parchment. The Founding Fathers who wrote our Constitution were not sages and seers and bequeathed us a document, prolix and complex, wrapped in phraseology which makes meaning only enphemistically. The office of Governor, given by the Framers of Constitution, is a British Indian transplant with a federalistic flavour.

The Founding Fathers of the Indian Constitution were fully aware of the need for preserving the hard won freedom of the country, and, therefore, they took adequate pains in preparing a Constitution which was not only to fulfil the urges and aspirations of the Indian people, but also to establish a strong national Government which could effectively meet all challenges to her freedom and territorial integrity.

The impact of partition of India has its own repurcussion on the minds of the makers of the Constitution. It was thought desirable that the Central Government should have effective power to deal with any demand of secession on the part of any community for further division of the country on the basis of religion, language, caste etc. as that would have balkanize the country into smaller Units.² It was, therefore, perhaps thought desirable to create a strong National Government.

Apart from it, the makers of the Constitution of India were

fully alive to the need of having a strong and united India so that it could start its journey towards progress and prosperity of the exploited people. About 650 Princely States were integrated with the Indian Union by the efforts of Sardar Ballabh Bhai Patel (the deputy Prime Minister and Home Minister of India) who successfully completed negotiation with the Princes of the native States and thus brought into being a new India. Although these States were merged in the Indian Union yet it was apprehended that any native Prince may revive his demand for the independence of his State. It was, therefore, thought desirable that Central Government should have sufficient power to deal with such eventualities which may throw the very unity and integrity of India in jeopardy.

OBJECTIVE RESOLUTION

The Constituent Assembly was first convened on 9th Dec. 1946. On 13th December 1946 Jawaharlal Nehru moved an objective resolution which, after discussion, was adopted by the Assembly on 22nd Jan. 1947, and became the Preamble of the Constitution. The Resolution spoke of the maintenance of the integrity and sovereign rights of the country along with people's liberty and autonomy of the Units. So, the maintenance of national integrity and protection of sovereign rights were considered as important.

3. Ibid.
as the freedom of the people and autonomy of the Units.⁴

FIRST DRAFT CONSTITUION (OCTOBER, 1947)

For preparing the preliminary draft of the Constitution, the constituent Assembly appointed a number of Committees⁵ to consider and report on various important matters for which provisions had to be made in the Constitution. Rau, a member of Constituent Assembly was entrusted with the task of preparing a draft of the Constitution. He prepared a Draft Constitution embodying reports of various Committees. Rau's draft was placed before the Drafting Committee for scrutiny on 27th Oct. 1947.⁶

When the Constituent Assembly first started discussing matters concerning the Governor, the idea in the minds of makers of the Constitution was that we should accept the American precedent. There the Governor is elected, and he enjoys many executive powers. In the American system the Head of the State is granted and exercises real powers. He may have advisors but they are responsible and subordinate to him.⁷ However the idea

5. C.A.D. Vol. IV, PP. 948-49, 951-952. The Committees so appointed were the Advisory Committee on Fundamental Rights, Minorities', Union Powers Committee, and the Union and Provincial Constitution Committees.
was dropped, because we have adopted the principle underlying the British Constitution. There the Head of the State - the King or the Queen - while enjoying the highest social position and receiving the highest honours, has no power in matters of Administration. Hence it was thought by our Constituent Assembly that it would be worse than useless making the Governor's office an elective one.

(A) VIEWS OF CONSTITUTION MAKERS REGARDING THE INSTITUTION OF GOVERNOR

(a) PROVINCIAL CONSTITUTION COMMITTEE

The Provincial Constitution Committee was appointed in pursuance of the Resolution of the Constituent Assembly on 30th April, 1947 to prepare the Draft of model Provincial Constitution for the Provinces. Committee members were of the different views about the institution of Governor of a Province.

Speaking about the institution of Governor in the report Pandit Jawahar Lal Nehru said, "in the present report the term 'Governor' occurs. This has completely upset the Maulana. I admit that the term 'Governor' has come down to us from the previous regime and that our associations with it are not very happy. But

8. There were twenty one members in the committee with Sardar Vallabhbhai Patel as its Chairman.

9. Previous regime must be understood as British regime.
at present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view."  

Maulana Hasrat Mohani said, "That in clause I, for the words 'a Governor' the words 'a President' shall be substituted." He said, "we want only a republic in the Centre. We will not allow any of these Provinces to become a Republic," and as I said, this is a trick when you say that in each Province there shall be a Governor." I say that it must be a President, then it means that you agree to make every Province a Republic. If you refuse to accept the word 'President', then it means that you are determined to retain those Provinces as mere autonomous Provinces. You grant only Provincial autonomy and nothing else."  

H.V.Kamath opposed the amendment on the ground that "nothing would be gained by the substitution of the word 'President' for 'Governor'. After all we have reserved that term for the Head of the Indian Union. There must be some way of

11. Ibid. P. 592.
discriminatory between the Head of the Indian Union and that of a Province."

On the issue whether the Provincial Constitution should be of Unitary or Federal nature, the Committee thought it convenient to have a joint sitting of the Provincial Constitution Committee and Union Constitution Committee. The joint session of both the Committees was held on June 7, 1947 which decided that our Constitution should be modelled on the British pattern—a Parliamentary system of Constitution. Dr. K.M. Munshi while participating in the debate of the Constituent Assembly, explained how the decision regarding the adoption of Parliamentary system of Government both at the Union level and Provincial level was settled:

"In 1947 when this question was discussed at joint sitting of Union Constitution Committee and the Provincial Constitution Committee there were two diametrically opposed views that was in the beginning of the career of the Constituent Assembly. One view was that India as a whole should adopt the American model and the other that it should adopt the British model. At one time the general opinion fluctuated from one to the other. Ultimately, however so far as the general opinion was concerned it veered round in

12. Ibid P. 591.
favour of the British model both in the Centre and in the
Provinces. 13

(b) RECOMMENDATIONS OF THE JOINT SITTING OF THE
PROVINCIAL CONSTITUTION COMMITTEE AND UNION
CONSTITUTION COMMITTEE

The joint sitting of the Committees made the following
recommendations regarding the appointment and functions of the
Governors of the Provinces:-

(1) There should be a Governor at the head of every
Province;
(2) The Governor should be appointed by the Province, and
not by the Central Government;
(3) The Provincial executive should be appointed of the
Parliamentary Cabinet type;
(4) The Governor should be appointed by indirect election
on the basis of adult franchise through a special
electoral college. 14

However, the Provincial Constitution Committee at its
meeting held on June 11, 1947 took the following decision in
regard to Governor:-

(1) That there should be direct election on the basis of
adult sufferage;

(2) That the duration of office of the Governor should be co-terminous with the life of the legislature, and
(3) That there should be simultaneous election with the election of the members of the lower House.¹⁵

Speaking on clause 1 of report on the principles of a model Provincial Constitution, Sardar Vallabhbhi Patel said, "For each Province there shall be a Governor to be elected directly by the people on the basis of adult sufferage." He said," here two important points are involved. The first thing is that for each Province there shall be a Governor. That principle is an important one. The other important principle is that he shall be elected by adult franchise. Now in the Provincial Constitution you may have seen that very limited powers are given to the Governor and yet he has to be elected by a process which is very cumbersome and therefore the question may naturally arise that if the Governor has got limited powers, why do we go through the process of election which involves so much difficulty because an election in a Province by the process of adult franchise is a very difficult job.? Yet it is considered necessary because of the dignity of the office which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole Province will exert considerable influence on the

¹⁵. Ibid.

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popular Ministry as will as on the Province as a whole. His dignity and status also demands that he should have the unanimous and general support of all the sections of the people in the country.\textsuperscript{16}

Sardar Vallabhbhai Patel was in favour of the institution of Governor as well as the Institution of Deputy Governor.\textsuperscript{17} He suggested that for clause 3 the following be substituted:-

"There shall be a Deputy Governor for every Province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence".\textsuperscript{18}

The Memorandum on the principles of a Provincial Constitution prepared and circulated by the Constitutional Adviser, B.N.Rau, provided that the Governor would be elected by the Provincial Legislature by secret ballot according to the system of proportional representation by means of a single transferable vote.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{16} C.A.D. Vol. IV. P. 584.
\item \textsuperscript{17} C.A.D. Vol. VI. P.618.
\item \textsuperscript{18} Ibid.
\item \textsuperscript{19} Rau, B.N., "India's Constitution in the Making", P. 167.
\end{itemize}
While making this suggestion, the Constitutional Adviser stated in a note that in a "Unitary" Constitution and even in a Federal Constitution approximating to the "Unitary" type like that of Canada, Provincial Governors might be appointed by the Central Government. Under the Cabinet Mission's plan of May 16, 1946, the Union Government would not have that power and some other method of selecting Governors had to be adopted.

The Provincial Constitution Committee in its meeting on June 6, 1947, considered and discussed the system adopted in the U.S.A., appointment through indirect election and the nomination by the Central Government. The joint meeting of the Provincial Constitution Committee decided on June 7, 1947, that the Governor should not be appointed by the Central Government but chosen by the respective Provinces. Therefore, the Provincial Constitution Committee stated in its Memorandum: "For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage." The Committee was of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This might be difficult to provide by

21. Minutes, Select Documents 11, 19, PP 608-09, cited in Ibid.
statute, because the Assembly might be dissolved in the middle of its term. 22

While pleading in favour of the provision for election of the Governor, Sardar Patel, the Chairman of the Provincial Constitution Committee, Stated:-

"It is considered necessary because of the dignity of the office, which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole Province will exert considerable influence on the Popular Ministry as well as on the Province as a whole. His dignity and status also demand that he should have the unanimous and general support of all the sections of the people in the country. 23

Jawaharlal Nehru, while criticising the election system, Stated:-

"Nearly two years have passed, two years which have made an enormous difference to the Indian scene. And if we seek to reconsider something that we have passed two years ago, before the 15th of August 1947, it should not appear to be a strange thing to do, for we have had been aiming at a great deal of experience, bitter experience during this

22. Vide clause I of the memorandum of the principles of model Provincial Constitution.

Now one of the things that we have been aiming at great deal has been to avoid any separatist tendencies, the creation of groups, etc. ....... Apart from the tremendous burden of the elections for the Provincial and Central Legislatures, to add another election on this major scale would mean not only spending a tremendous deal of energy and time of the nation but also the money of nation and divert it from far more worthwhile projects."24

Dr. Ambedkar also criticised election system and Stated that "It was felt whether it was desirable to impose upon the electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well."25

K.M. Munshi Stated: "After we have adopted the British model, the election of the Governor by adult franchise in Province remained an anomaly, a completely out of date and absurd thing."26

H.V. Kamath also expressed the view that if the object was to have a Parliamentary democracy in every State, "then it is patent, it is obvious that the method of choice by election is absolutely inappropriate and unacceptable."27

25. Ibid. P. 467.
26. Ibid P. 462.
27. Ibid P. 428.
During the discussion in the committee the proposal of an elected Governor was widely criticised on the ground that the presence of two persons in the Government, namely, the Governor and the Chief Minister each deriving his mandate from the people, might lead to friction. H.V. Kamath said, "If the Governor were to be elected by the direct vote of all voters in a Province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole Province he will think that he is a far superior man and a far more powerful man than the Chief Minister or the Premier of the State who will be returned from one constituency only. There will be two conflicting authorities within the State. One is the Premier whom, under this Constitution, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate himself, because he will say that I have been elected by the people of the whole of the Province and as such I am persona gratia with the people and not the chief Minister." 

Alladi Krishnaswami Ayyar emphasized that under modern conditions elections would have to be fought out on a party ticket and during elections the party would have to rally round a

leader who would be the presumptive Premier of the State. If the Governor was also to be elected, the question would arise as to whether the party would rally round the Premier or the Governor. The whole basis of the Constitutional structure was harmony between the legislature and the executive. If the choice of the Governor was left to the President and his Cabinet, they might choose a person of undoubted ability and position in public life who at the same time had not been mixed up in Provincial party struggles or factions; a person who was likely to act as "a friend and a mediator" of the Cabinet and help in the smooth working of the Cabinet Government. Alladi Krishnaswami Ayyar stressed the position of the Governor as a Constitutional Head, a sagacious counsellor and adviser to the Ministry; and he hoped that the convention would develop where by the Government of India would consult the State Government in the selection of the Governor. 29

Supporting the arguments of Alladi Krishnaswami Ayyar, Pandit Jawaharlal Nehru expressed the fear that, apart from the expenditure of time and money involved in an election, the election of Governors would encourage a "narrow, Provincial way of thinking and functioning in each State." Democracy should of course be based on the electoral process; but this had been done

29. Ibid P.431.
and in his opinion it was unnecessary to "duplicate it again and again." It would be infinitely better if a Governor was not intimately connected with the local politics and factions in a State, but was a more detached figure, acceptable to the State, no doubt, but not known to be a part of its party machine.  

Another factor that led the Framers to drop the election system were the powers of the Governor. They did not intend to give any substantial power to him, in view of the system of Parliamentary form of Government. As such they did not think desirable to have an elected Governor. On behalf of the drafting committee, Ambedkar made the position clear and stated: "We feel that the powers of the Governor were so limited, so nominal, his position so ornamental that probably very few would come forward to stand for election."  

The panel system for the appointment of Governor was also rejected due to certain reasons. Speaking against the panel system, Brajeshwar Prasad said that the nomination by the President from a panel of names in reality meant restricting the choice of the President. "It gives power to the hands of the legislature. It is necessary that the President should be free from the influence of the legislature."  

30. Ibid. PP. 454-56.  
31. Ibid P. 468.  
32. Ibid. P.426.
Opposing the panel system H. V. Kamath said that if the President somehow did not choose the very first nominee and choose the third or fourth, the legislature of the State would certainly have grouse against the man chosen by the President because he had been chosen in preference to the first man.\(^{33}\)

There was proposal for the method of election by the legislature in accordance with the system of proportional representation by means of single transferable vote. However, this proposal was not discussed in detail. While criticising this system, Shrimati G. Durga Rai maintained that "The system of proportional representation would not improve matters in any way. That would only produce the effect that it would divide the whole House into warring groups and it will also produce all the disadvantages and defects of the French System." \(^{34}\)

The main purpose of the framers in accepting the method of appointment was that the Governor would be a harmonious link between the Centre and the Provinces, and that he would be above party politics. While opposing the method of appointment, Rohini Kumar Chaudhery had stated that "the Governor who is selected by the congress party cannot set in harmony with the Provincial Cabinet if it is of another party." \(^{35}\) Bishwa Nath Dass called this

\(^{33}\) Ibid P. 429.

\(^{34}\) Ibid, p.450

\(^{35}\) Ibid. P. 437.

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system of appointment as "democracy from toe to neck and autocracy at the head." 36

Advocating the need for an appointed Governor, K.M. Munshi Stated that an elected Governor could not keep away from party politics. Thus, when there is rivalry for Premiershipt, "a person who is completely detached from party politics of the Province would be much better than a person who is wedded to the party." 37

Dr. Ambedkar, while supporting the proposal of an appointed Governor, maintained:-

"The Governor had no functions which he is required to exercise in his discretion or individual judgement. According to the principles of the Constitution, he is required to follow the advice of Ministry in all matters. If the Governor had no power of interference in the internal administration of a Ministry which had a majority then it seemed to me that the question whether he was nominated or elected was a wholly immaterial one." 38

Pandit Jawahar Lal Nehru clearly Stated:

"minority groups will have better chance in the process of nomination than in election." 39 He further observed that, "nomination is really a more democratic procedure than the

36. Ibid P. 447.
37. Ibid P. 434.
38. Id. P. 467-69.
39. Id. P. 456.
other procedure (i.e. election) in the sense that the better would not make the democratic machine work smoothly."\(^{40}\)

According to T.T. Krishnamachari that an elected Governor was inconsistent to Parliamentary system. "The position is" he observed:-

"either you make the legislature supreme or you make the Governor supreme. If you adopt the Presidential system the Governor is supreme, under the Parliamentary system the legislature and the leader of the majority party in legislature will be supreme. The choice is obvious and that choice is logical. This is why we have come to this choice of a nominated Governor."\(^{41}\)

Raghava Chariar was of the View:-

"In the Governments of such a vast country as India it is but proper that the Head of each State should be nominee of the Central Executive, so that the main lines of policy which the Centre may conceive as conducive to the coherence and solidarity of the country as a whole may be better instilled into the Government of each Province through the Centre's representative."\(^{42}\)

\(^{40}\) Id.
\(^{41}\) Ibid. P. 461-62.
But eventually the idea of appointment of the Governor by the President found favour with the Founding Fathers, because, they intended to have a united and strong India free from "a narrow Provincial way of thinking and functioning in each State. An elected Governor would to some extent encourage the separatist Provincial tendency more than otherwise. They will be for fewer common links with the Centre."⁴³

On an analysis of views of Framers of Constitution and discussions in the Constituent Assembly, it is clear that the majority opinion, rather the consensus was in favour of vesting in the President the power to appoint the Governor. It would be interesting to note here that the drafting committee for the Constitution of India did not make categorical suggestions in respect of the Governor as it made two alternative suggestions, one by election and the other by appointment. Brajeshwar Prasad, a member from Bihar, was the first to move that 'the Governor of a State shall be appointed by the President by warrant under his hand and seal. He observed that in the interest of All India Unity it was necessary that the authority of the Government of India should be maintained intact over the Provinces."⁴⁴

After discussing various proposals, the Framers of Constitution accepted Brajeshwar Prasad's amendment for the

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⁴⁴. Ibid p.426

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appointment of the Governor by the President" by warrant under his hand and seal.\(^45\)

(c) LEGISLATIVE POWERS OF THE GOVERNOR

A major question which engaged the attention of the Constituent Assembly was whether the Governors in the States should have the authority to promulgate ordinances when the legislatures were not in session. If they were to wield such authority, what should be the procedure: could they exercise their powers acting on their special responsibilities without prior consultation with their respective Ministries?

Under the present Constitution, so far as Governors are concerned, a similar power to that of President of India, to promulgate ordinances has been conferred on them by article 213 of the Constitution. As first framed in the memorandum of May 30, 1947,\(^46\) it was worded in the same manner as the clause conferring ordinance - making powers on the President. But certain features of the Governor's power came under discussion at meetings of the Provincial Constitution Committee. The Memorandum also contained a separate provision that a Governor would have certain special responsibilities, one of which was the prevention of a grave

45. Id. p.431.
menace to the peace and tranquillity of the Province or of any part - a special responsibility which gave him power to overrule his Ministers and even act independently of them "in his discretion." The implication of this power in relation to the making of ordinances was explained by the constitutional Adviser at a meeting of the committee on June 9, 1947; although the power as proposed in the memorandum authorized the Governor to issue ordinances on the advice of his Ministers, the Governor had the authority, by virtue of his special responsibility, to issue ordinances in his discretion in the exercise of that special responsibility. The committee apparently considered that these special personal powers of the Governor should be expressly safeguarded: for it decided that this point should be made clear in the draft. A suggestion was also made that the Governor should not make an ordinance by virtue of his personal power except in consultation with the President.

Accordingly, the provision included in the Report of the Provincial Constitution Committee regarding the promulgation of ordinances was the same as that contained in the Constitutional Adviser's Memorandum. It was adopted without any discussion by the Assembly on July 21, 1947. When the Drafting Committee

47. Select Documents II, 22. P. 650.
48. Ibid.
undertook the formulation of suitable provisions in the Draft Constitution, two matters had to be provided for, which were peculiar to the powers of the Governor. In regard to certain categories of Bills passed by the State Legislature the Draft Constitution required that they should be reserved for the consideration of the President and would not have any validity without his assent. In order to provide for ordinances which fell in this category, a proviso was added requiring the Governor to obtain the instructions of the President before promulgating an ordinance if an Act containing the same provisions would have been required to be reserved for the consideration of the President.

This proviso was discussed by the Assembly on June 14, 1949. Hariday Nath Kunzru again moved an amendment providing that a Governor's ordinance should not remain in operation for a period longer than two weeks. He argued that in a State where members of the legislature lived in a compact area, it would be much easier for them to meet for an urgent session. Shibban Lal Saxena wanted that the sole authority to make ordinances in India should be vested in the President. These amendments were, however, negatived by the Assembly and the Article as moved by the Drafting Committee was adopted.


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GOVERNOR AND THE ADVICE OF THE COUNCIL OF MINISTERS

The Memorandum on the principles of a Provincial Constitution prepared and circulated by the Constitutional Adviser on May 30, 1947, contemplated a Council of Ministers to "aid and advise" the Governor, in so far as functions were not assigned to him in his discretion; and the relations between the Governor and his Ministers were to be, as nearly as possible, the same as those between the King and his Ministers in the United Kingdom.

Dr Ambedkar said that according to the principles governing the Provincial Constitution, the Governor was required to follow the advice of his Ministry in all matters and was not to have any functions in which he was required to act in his discretion or exercise his individual judgement.

Articles 143 and 144 of the Draft Constitution contained provisions about the Council of Ministers in a State. Article 143 had three clauses. The first clause declared that there would be a Council of Ministers with the Chief Ministers at the head to aid and advise the Governor in the exercise of his functions except in so far as he was by or under the Constitution required to exercise any of them in his discretion. The other clauses laid down the following similar provisions in the Act of 1935, that:

53. Select Documents II, 21 (ii), PP. 632-41.
55. Select Documents III, 6, P. 569.
(a) if any question arose whether any matter was or was not one as respects which the Governor was required to act in his discretion, the decision of the Governor in his discretion would be final;

(b) the validity of anything done by the Governor would not be called in question on the ground that he ought or ought not to have acted in his discretion;

(c) the question whether any, and if so, what advice was tendered by the Ministers would not be inquired into in any court.56

Dr. Ambadkar said that "the Governor had to act on the advice of his Ministers with respect to any particular executive or legislative action that he took". He further pointed out that in the past the Viceroy or the Governor to whom these instructions were given was subject to the authority of the Secretary of State and could be removed for persistent refusal to carry out the instrument of instructions issued to him: but under

56. Under the Government of India Act of 1935, from which these provisions were borrowed, the Governor acted in subordination to the Governor-General in the exercise of his discretionary powers; and the Governor-General himself functioned in subordination to the Secretary of State for India. Thus the ultimate responsibility for these matters rested in the British Parliament. But in the scheme as contemplated (at the time) in the new Constitution, there was no proposal to make the Governor responsible to any one for the exercise of his discretionary powers.
the Constitution of India there was no functionary who could ensure this happening.\(^57\)

Mr. Brajeshwar Prasad said that "the Governor is not bound to act according to the advice tendered to him by his Council of Ministers. It only means that the Ministers have the right to tender advice to Governor. The Governor is quite free to accept or reject the advice so tendered. In another sphere of administration the Governor can act in the exercise of his functions in his discretion. In this sphere the Ministry has not got the power to tender any advice. Of course it is left open to the Governor to seek the advice of the Ministers even in this sphere."\(^58\)

Article 143, with the amendments approved by the Assembly, now figure as Article 163.

(e) DISCRETIONARY POWERS OF THE GOVERNOR

Criticising the discretionary powers of the Governor, Rohani Kumar Chaudhury said that "if the Governor is given the power to act in his discretion, there is no power on earth to prevent him from doing so. He can be a varitable king stork. Further-more as the article says, whenever the Governor thinks that he is


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acting in his discretion, nowhere can he be questioned."  

Speaking in favour of the retention of discretion Mahavir Tyagi said that, "Governors are not to be there for nothing. After all we have to see that the policy of the Centre is carried out. We have to keep the States linked together and the Governor is the agent or rather he is the agency which will pross for and guard the Central policy. In fact our previous conception has now been changed altogether. The whole body politic of a country is affected and influenced by the policy of the Centre".  

He further said that, "the Governor's discretionary powers should not be interfered with. Democratic trends are like a wild beast. Say what you will, democracy goes by the whims and fancies of parties and the masses. There must be some such machinery which will keep this wild beast under control. I do not deprecate democracy. Democracy must have its way. But do not let it degenerate into chaos. Moreover, the State Governments may not be quite consistent in their own policies. The Governors may change too but the policy and instructions given by the Centre to the Governors will remain practically unchange. The more the powers given to the Governors the more vigilant must be the control. The Governor must remain as the guardian of the Central policy on the one side and the

59. Ibid. PP. 498-99.
60. Ibid P. 494.
guardian of the Central policy on the one side and the Constitution on the other. His powers therefore, should not be interfered with".61

Dr. B.R. Ambedkar said that, "vesting the Governor with discretionary powers was in no way contrary to or in no sense a negation of responsible Government."62

Finally, it was decided that we should have Governors in our constituent States; but they must be selected or nominated by the Centre. It was also felt that there should be convention that Governors should not belong to the States to which they were accredited. Their position and prestige should be maintained as a whole, but they would have no power. They would be completely Constitutional Governors. They would act in accordance with the advice given to them by the Ministry, really the Chief Minister.63

(B) PRESIDENT'S RULE IN STATES

(I) VIEWS OF CONSTITUTION MAKERS OPPOSING PRESIDENT'S RULE IN STATES

Rau's draft Constitution contained provision relating to Fundamental Rights, Centre Province relations, grave emergencies

61. Ibid P. 495.
62. Id. P.501.
63. Id. P. 503.
to issue a proclamation for assumption of functions of the Provincial Government, etc, if the Governor was satisfied that a grave emergency arose threatening the peace and tranquillity of the Province and that it was not possible to carry on the Government with the Ministerial advice in accordance with the provisions of the Constitution. The proclamation had to be communicated to the President who could either revoke it or take appropriate action in exercise of his emergency powers vested in him under clause 182. The proclamation had to last for two weeks unless revoked earlier. 64

Just after the Constitution came into force, Governor's power, of reporting, to the President, a failure of the Constitutional machinery in a particular State, became a controversial matter, contrary to the expectations of the Framers of the Constitution. Article 356 of the present Constitution envisages the condition and procedure for the imposition of President's Rule over the States, where the Government can not be carried on according to the provisions of the Constitution. Governor has to make a report to the President about the failure of the Constitutional machinery. But this report is not a condition precedent for the use of Article 356 in all the cases. President can also act upon his own information.

64. Supra note 7, pp. 65-66.
Dr. Ambedkar, the Chairman of the Drafting Committee, said in the Constituent Assembly that, "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 prescribed in this Constitution must be maintained."65

The provisions relating to a situation in a State where there was a breakdown of the Constitutional provisions, and particularly those on the respective roles of the Governor and of the Union Government and the functions and powers to be exercised by them evoked considerable discussion in the Drafting Committee. The special Committee at its meeting held on April 11, 1948, decided that consequent on the decision reached that the Governors were not to be elected but would be appointed by the President, all references to the functions to be exercised by them in their discretion should be omitted from the Constitution.66 This meant that it would no longer be possible for the Governor, when a breakdown of the Constitution was threatened, to take over any functions in his discretion. Drawing attention to this aspect, the Constitutional adviser pointed out that it would necessitate the deletion of Article 188

65. C.A.D. Vol. IX, PP. 175-76.
66. Ibid. Vol VIII. P. 411.
of the Draft Constitution which empowered the Governor to assume functions to be exercised in his discretion in a situation where he felt that the Government could not be carried on in accordance with the provisions of the Constitution.67

After deep discussions, the Drafting Committee decided to amend the emergency provisions in two important respects. First, a new article would place on the Union the duty of protecting every State; Second the responsibility of intervention in the administration of a State, when it was faced with the threat of a breakdown of the Constitutional arrangements, would be exclusively that of the Union Government and the Governor would not have any powers of his own to intervene in such a situation even for a short period. Accordingly, on August 3, 1949, Ambedkar introduced the necessary amendments in the Assembly68. Firstly, proposal was made for the deletion of draft article 188 empowering the Governor in an emergency to take over the administration of the State for a period of two weeks and prescribing that his functions would be exercised in his discretion. Second proposal was for the adoption of a new article i.e. 277-A to provide:

"It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to

67. Ibid P. 365.

ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."

The third amendment entirely recast article 278. According to the revised article the President could intervene in the affairs of a State if, either on the basis of a report of the Governor or otherwise, he was satisfied that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution. On being so satisfied the President could by proclamation assume to himself all the functions of the State Government or any State authority. He could declare that the powers of the State Legislature would be exercised by or under the authority of Parliament and make such incidental or consequential provisions as might be necessary, including provisions for suspending the operation of any provision of the Constitution relating to any body or authority. Such a proclamation would remain in operation for two months unless Parliament approved it by an affirmative resolution of both houses in which case it would remain in force for six months at a time, for a total period not exceeding three years.

The fourth amendment which Dr. Ambedkar proposed was the insertion of a new article 278-A which empowered Parliament to delegate its law-making power to the President or to any other authority specified by him in that behalf; laid down that it
would be legal for Parliament or the President or other authority to whom the law-making power was delegated to confer functions and impose duties on the Union Government or officers and authority of that Government; empowered the President to authorise expenditure from the consolidated fund of the State when the House of the people was not in session, pending the sanction of Parliament, and gave power to the President to promulgate ordinances when the two Houses of Parliament were not in session. 69.

In a long and lively discussion on these articles, anxiety was voiced by some members lest in the name of an emergency, there should be inroads into the autonomy of the Units. 70.

Following are members who opposed the articles:

1. H.V. Kamath
2. Shibban Lal Sexena
3. P.S. Deshmukh
4. Hriday Nath Kunzru
5. B.M. Gupte
6. Naziruddin Ahmed

1. H.V. Kamath

He was critical of the position likely to be created by

69. Ibid. P. 132.
70. Cited in Rao B. Shiva, "The Framing of India's Constitution", P. 813.
these amendments, since the President could thereby intervene in a State even without a threat to peace and order, on the ground that the Government of the State could not be carried on in accordance with the provisions of the Constitution. The President's intervention should not be invoked, Kamath argued, on the pretext of resolving a ministerial crisis or of reforming maladministration in a State. For such a purpose the remedy would lie in the dissolution of the legislature and a fresh reference to the electorate. He criticised the provision empowering the Union Government to intervene "otherwise than" on the report of a Governor. He said, "the 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 .......... the report must satisfy the President not merely that the Government of the State cannot be carried on in accordance with the provisions of this Constitution but also it should satisfy him that there is grave danger to the peace and tranquillity of the State".71

The crucial point to his mind in this connection was what is internal disturbance and what is not. Will any petty riot or a general melee or imbroglio in any State necessitate the President's or the Union Government's intervention in the internal affairs of that State? If honourable members turn to

list II of the seventh schedule, they will find that item I lays the responsibility for public order (but not including the use of naval, military or air forces in aid of the civil power) squarely on the shoulders of the State. That will be within the jurisdiction of the State. It is not in the concurrent list either. Public order has been made expressly a responsibility of the State Government. Now, the crux of the matter is this: you say that the State must maintain public order. But through a new Article 277-A you say that the Union Government shall protect every State against internal disturbance. Let us be honest about what we are going to do. It is no use having mental reservations on this important point. If we are going to whittle down Provincial autonomy, let us say so in the Constitution. Let us make no bones about it. It is dishonest on our part to say in one article that public order shall be the responsibility of the State and then in another article to confer powers upon the Union Government to intervene in the internal affairs of the State on the slightest pretext of any internal disturbance. If this Article 277-A is adopted without much consideration by this House, I foresee the destruction of Provincial autonomy, the subversion of Provincial autonomy by the Union Government, on the pretext of averting or quelling internal disturbance. If that is our objective, let us say so, and then let us pass this article. If we are not going to do it, if it is our aim to promote
Provincial autonomy - no doubt the inevitability of gradualness comes in here - let us be straight about it and let us provide as an interim measure, as a provision during the interregnum, during the transition we are passing through, during the dangerous and critical times that we are living in, let us amend this article by saying that only in the event of an insurrection or chaos shall the Union Government be empowered to intervene in the internal affairs of the State, and not for any disturbance that might arise in the State. For that the State has ample powers at its disposal, the police force, the Raksha Dal and all sorts of other subsidiary forces. Can we not trust the State Government to look after its own public peace and order, to maintain tranquillity within the borders of its own domains? Certainly I think that is the spirit of the Constitution which we are considering in the House and with that spirit in mind, let us not confer more powers upon the President and the Union Government than are warranted by the facts or the contingencies or the possibilities of any situation that might arise in future.

H.V. Kamath commented that we here, representatives of a democracy, just liberated from foreign slavery, sitting in solemnity and dignity to frame the Constitution of our motherland, we are adopting subterfuges to nullify and set at naught, certain articles of certain provisions which we have already adopted......"
H.V. Kamath further observed that 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 a diabolical word in this context and I pray to God that 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 a more serious turn and the eyes of every one of us will be more awake than they are to-day.  

2. SHIBBAN LAL SAXENA

He was also critical of the new Article 278. According to him Article 278 would reduce Provincial autonomy to a farce. He further stated "articles relating to President's Rule in a State will reduce the State Governments to great subservience to the Central Government. They cannot have any independence whatsoever. He did not want the State to pull in one direction and the Centre in another. There must be some autonomy for the States and according to him Articles 277-A and 278 take away this autonomy".  

72. Ibid. P. 141.  
73. Ibid P. 143.  
74. Ibid.
3. P.S. DESHMUKH

He was of the view that the vesting of the powers in the Union to intervene in the affairs of a State was neither in conformity with a federation, nor would it be administratively beneficial or practicable. It would be far better to retain the powers of the Governor "and give him such powers as we consider necessary and as were given by Section 93 of the Government of India Act, 1935". P.S. Deshmukh observed that we have concentrated all emergency powers in the hands of the President and Parliament of India and have made the Governor merely a reporting authority so far as emergency and its proclamation are concerned. There are at least two arguments which have been suggested by the Honourable Dr. Ambedkar himself in his speech which support my contention. The one is that the spirit of this change is against the idea of federation, and secondly we would be over-burdened in the Parliament with responsibilities which naturally should be delegated to another authority. Some of my friends will probably say that when I am in favour of a Unitary Government, why do I not like the President or the Parliament having larger and larger powers. My answer to that is that this is neither fish nor fowl; it is neither a Unitary Government nor a Federal Government. If you wish to retain the least possible

75. Ibid P. 147.
vestige of a federation, you must not deprive the Head of the Unit or the State of all authority in such matters".  

4. HRIDEY NATH KUNZRU

He maintained that the instability resulting from a large number of political groups in a State legislature would not justify Central intervention. If powers were given to the Centre to intervene, there was a serious danger that whenever there was dissatisfaction in a State, appeals would be made to the Central Government to come to its rescue and the Provincial electorate would be able to transfer its responsibility to the Central Government. Kunzru added: If responsible Government is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance with their best interests....... responsible Government....... requires patience and it requires the courage to take risks. If we have neither the patience nor the courage that is needed our Constitution will virtually be still-born.

Kunzru was of the opinion that the Centre should intervene in a State only to protect it from external aggression and

76. Ibid P. 146.
77. Ibid. P. 156.
internal commotion; and that for this purpose the articles enabling the President to issue a proclamation of emergency were sufficient. He said, that "the articles that we are discussing are not needed. Articles 275 and 276 give the Central Executive and Parliament all the power that can reasonably be conferred on them in order to enable them to see that law and order do not break down in the country, or that mis-Government in any part of India is not carried to such lengths as to jeopardise the maintenance of law and order. It is not necessary to go any further. The excessive caution that the Framers of the Constitution seem to be desirous of exercising will, in my opinion, be inconsistent with the spirit of the Constitution, and be detrimental, gravely detrimental, to the growth of a sense of responsibility among the Provincial electors."  

(5) B.M. GUPTE

He observed "Though I support the deletion of article 188, I am not very happy about the new article 278. I am not happy because the scope of the new article is far wider. Article 188 came into operation only when the peace and tranquillity of the State was threatened, while this article 278 comes into operation even though there is no law and order emergency but there is mere

78. Ibid.
79. Ibid. P.156.
failure of the Constitutional machinery. I can understand drastic power being given when the very existence of the State is threatened. But I do not like extraordinary power being given for a mere Constitutional failure or a Constitutional evil. This is a very much less serious and non-urgent matter and in such matters I do not like that extraordinary power should be given.........Article 278 comes closer to old section 93, even though there is still great difference. The obvious difference is that in the place of the irresponsible Governor and the Governor-General the elected responsible Government is substituted. But in my opinion, the more important point is that the sovereign popular legislature will be in effective control of the situation. Parliament must be consulted in two months and thereafter it will be the Parliament that will govern the situation. This is the great difference between section 93 and the present article 278. But in spite of this defence, I can not help observe that if it were possible, we should disfigure our Constitution with such a provision. That was our desire, but we can not have it our own way. Unfortunately the circumstances in the country are such, we are living in times which may perhaps prove critical to our infant democracy. In France sometimes three Governments fall in two days; in a mature and old democracy they can go in for that luxury, but ours is an infant democracy; and though we do not like it, we shall have to tolerate things,
which in normal times we may have rejected. Though, of course I have given support to this article, I only hope that it may remain a dead-letter and no occasions will arise for the exercise of these extraordinary powers.\textsuperscript{80}

\textit{(6) NAZIRUDDIN AHMED}

He observed that the deletion of article 188 is a very important and serious departure from principles which the House solemnly accepted before. Some honourable members who usually take the business of the House seriously have attempted to support these changes on the ground that some emergency powers are highly necessary. I agree with them that emergency powers are necessary and I also agree that serious forces of disorder are working in a systematic manner in the country and drastic powers are necessary. But what I fail to appreciate is the attempt to take away the normal power of the Governor or the Ruler of a State to intervene and pass emergency orders. It is that which is the most serious change. We are now going to take away the right of the Ministers of a State and the members of the legislatures and especially the people at large from solving their own problems. As soon as we deprive the Governor or a Ruler of his right to interfere in grave emergencies, at once we deprive the elected representatives and the Ministers from having any say in

\textsuperscript{80} Ibid P. 152.
the matter. As soon as the right to initiate emergency measures is vested exclusively in the President from that moment you absolve the Ministers and members of the local legislatures entirely from any responsibility. The effect of this would be that their moral strength and moral responsibility will be seriously undermined. It is this aspect of the problem to which I wish to draw the attention of the House. If there is trouble in a State, the initial responsibility for quelling it must rest with the Ministers. If you do not allow this, the result would be that the local legislature and the Ministers would have responsibility of maintaining law and order without any powers. That would easily and inevitably develop a kind of irresponsibility. Any outside interference with the rights of a State to give and ensure their own good Government will not only receive no sympathy from the Ministers and the members, but the action of the President will be jeered at, tabooed and boycotted by the people of the State, the members of the legislature and the Ministers themselves.... The conferment of full responsibility for law and order without giving full powers to the States will work havoc and will create considerable amount of dissatisfaction in the States and I submit this House will play into the hands of the communists and other law-breakers if they adopt this course. I do not deny that the President should have overriding powers, but he should not have the exclusive power to initiate
and incur much unnecessary unpopularity and blame in the process. While the Centre should necessarily have the power to intervene in times of emergency, it should not take the initiative in the matter. The Governor acting in consultation with the Ministers will be in a better position to make the declaration. This declaration may be ratified or changed in any way the President thinks fit. It does not derogate from the overriding power of the President. On the other hand, by placing the responsibility on the local administration, the matter will be brought to a Head. The evil will produce its own remedy. If they fail to discharge their functions properly it will be a good reason for dissolving the Assembly and ordering fresh elections. 81

Naziruddin Ahmed pleaded that the power of the Governor to initiate any emergency measures should remain and that will make the Ministers and the legislature responsible and at the same time the responsibility being there will produce its own remedy. If we interfere with the ultimate right of States to deal with emergencies it will reduce Provincial Autonomy to a farce. I think there has been enough encroachment on Provincial rights. In fact in the Provincial list a great deal of encroachment has already been made. I think we are drifting, perhaps unconsciously towards a dictatorship. Democracy will flourish only in a democratic atmosphere and under democratic conditions. Let people

81. Ibid. P. 159-160.

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commit mistakes and learn by experience. Experience is a great tutor. The arguments to the contrary which we have heard today were the old discarded arguments of the British bureaucracy. The British said that they only knew how to manage our affairs. They said also that if we mismanaged things they will supersede the Constitution and do what they thought fit. What has been our reply to this? It was that "Unless you make us responsible for our acts, we can never learn the business of Government. If we mismanage the great Constitutional machinery, we must be made responsible for our acts. We must be given the opportunity to remedy the defects." This argument of ours is being forgotten. The old British argument that they must intervene in petty Provincial matters is again being revived and adopted by the very opponents of that argument. In fact very respected members of this House are adopting almost unconsciously the old argument of the British Government. I submit that even the hated British did not go so far as we do. I submit, our reply to that will be the same as our respected leaders gave to the British Government. I submit, therefore, that too much interference by the Centre will create unpleasant reactions in the States. If you abolish Provincial autonomy altogether that would be logical. But to make them responsible while making them powerless would be not a proper thing to do."^{82}

82. Ibid P. 161-62.
There were some members of the Constituent Assembly who were in favour of President's Rule in States. These members were:

1. COL. B.H. Zaidi
2. Sh. Raj Bahadur
3. Sh. Alladi Krishnaswami Ayyer
4. Sh. K. Santhnam
5. Pandit Thakur Das Bhargava
7. Dr. B.R. Ambedkar.
8. Sh. L.Krishnaswami Bharati.

1. COLONEL B.H. ZAIDI

He said "I feel that it may be a very dangerous thing for our country to be too democratic. Let us have a little realism about our discussions and about our Constitution-making. We go on dissecting, analysing things purely from the point of view of a lawyer or an advocate. There is much too much of this hair-splitting, as it is in our temperament, but this hair-splitting and this tendency to be too legalistic may be divorced from the realities of administration and the handling of political crisis. What has been the trouble in our country in the past?"
Have we or have we not suffered from fissiparous tendencies?

Have the various Units not tried to break away from the Centre again and again? The greatest danger, as I dimly look into the future, may be, not that the Centre will interfere too much, but that the Units may resent the guidance of the Centre. Of the two things, I do not believe that the President will be inclined to depose Governors, but that Provinces may have mal-administration over a long period and may come to grief over it unchecked by the Centre. The last speaker said "suppose the President, on the basis of a report he receives from the C.I.D., decides that law and order has broken down and there is a grave emergency in a certain Province, he can then proceed to take the Government of the Province into his own hands and be the absolute Ruler of that Province" Well, Sir, if that can happen in my country, then we are not fit for democracy. Let there be a perfect human body with all the limbs intact, with everything looking perfectly all right, but if the spirit has departed, that body is no good, the hands cannot work, the feet cannot walk, the tongue cannot speak because the spirit has departed. If we have the finest Constitution in the world but if the democratic spirit is not in the country, then that Constitution is bound to break down. What do we mean by saying that the President may take the powers into his own hands and may become an absolute dictator? And will the thirty-two crores of Indians sit quietly and knuckle under? If
they would, then they would do that anyhow, no matter what Constitution you frame. We seem to think that our political salvation lies purely in laws, not in a public opinion, which is wide awake, well-informed and vigilant. I feel that if we are going to pin our faith only on the written Constitution without bringing about the education of our new masters - the masses and the people of India - then we are going the wrong way about it. No Constitution which exists only on paper can mean the salvation of a country. What we must work for is the proper democratic spirit, the realization that every one of us is responsible to see that the country is governed properly along enlightened, progressive, democratic lines. If that spirit and that vigilant watching of the Government of our country is not there, then no Constitution on God's earth, even if framed by Archangel Gabriel, is going to succeed. So I feel that instead of being too critical and putting the most unwarranted suspicious at the door of our would be President's of the future, we should take the historical tendencies of our country into consideration and see what is likely to happen in the future and then in a realistic way, in a way which means political sagacity and wisdom and balance, we should proceed to the task of framing the Constitution. Take England, Sir. Does England put its trust wholly and solely in the written Constitution? Much more than the written Constitution, they make use of conventions. But we seem to forget that there is
anything like conventions or public opinion and we go the 
legalistic extreme of conjuring up most weird and fantastic 
visions of the future and trying to provide for everything that 
we can possibly think of. I think, Sir, that 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 the fears expressed this morning are unwarranted and 
unjustified. 83

2. RAJ BAHADUR

He said that we can easily contemplate the possibility of a 
brake-down not only on account of a disturbance or chaos, by also 
on account of other reasons. Consider for a moment the State of 
affairs obtaining in France, where there is a change of Government almost every other day. In such situations it will 
be profitable to ask the President to come in and take powers in 
his hands until the elections are held. Similarly we can also 
contemplate the possibility of a financial brake-down in a 
Province or State. The example of the then dominion of New 
Foundland is before us. New Foundland found it difficult to carry 
on on account of a financial brake-down with the result that she 
had to petition to the British Parliament to come to her aid and 
enable her to stand on her feet. The Parliament intervened and

83. Ibid. P.145-146.
the ultimate result has been that on her own choice New Foundland has now become a Province of Canada. Such contingencies may arise in our country as well. Again I see no reason why we should distrust our President who has not yet even come into being. After all who shall be the President. The President shall be our own countryman. He shall be the guardian angel of our liberty and freedom. He shall be the first citizen of the country. I fail to understand why Mr. Kamath should be so much suspicious about him. The time has come when we should break through the cyst of our suspicious and superstitions. Obviously enough we are not living in the pre-1947 era. We talk of revolutionary spirit and revolutionary ideas. But it appears that we have not yet reconciled ourselves to the change that has taken place in the country. Why should we forget that we are the masters of our own house now? The President is to be elected by us and we should not distrust him. Cannot we put our trust in him for a brief two months in the case of an emergency? Without giving any reasons for the view held by him, my friend went on saying that this article is merely a 'subterfuge to nullify the democratic freedom.' I say it is just the opposite and the antithesis of what he has said. It is to protect and safeguard democracy and freedom that such a provision has been made to meet certain emergencies.  

84 Ibid. P. 149.
3. ALLADI KRISHNASWAMI AYYAR

Alladi Krishnaswami Ayyar said that the primary thing concerning the Nation and the Union Government is 'to maintain the Constitution'. If the import of that expression is fully realised, it will be noticed that there cannot be any intention to interfere with the Provincial Constitution, because the Provincial Constitution is a part of the Constitution of the Union. Therefore, it is the duty of the Union Government to protect against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper manner both in the States and in the Union. If the Constitution is worked in a proper manner in the Provinces or in the States, that is, if responsible Government as contemplated by the Constitution functions properly, the Union will not and cannot interfere. The protagonists of Provincial or State autonomy will realise that, apart from being an impediment to the growth of healthy Provincial or State autonomy, this provision is a bullock in favour of Provincial or State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained. Such a provision is by no means a novel provision. Even in the typical federal Constitution of the United States where State sovereignty is recognised more than in any other federation, you will find a provision therein to the effect that it is the duty of the Union...
Government to see that the State is protected both as against
domestic violence and external aggression. In putting in that
article, we are merely following the example of the classical or
model federation of America. Then again, there is a similar
provision in section 60 of the Australian Common-wealth
Constitution to the effect that it is the duty of the Union
Executive Government to maintain the Constitution."

4. K. SANTHNAV

Speaking in favour of articles 278 and 278-A the
honourable Shri K. Santhnam said, "whether the power is
exercised by a local Legislature or by Parliament is a matter of
convenience and the actual essence or principles of democracy are
not involved. In this case, while ordinarily certain powers and
functions are exercised by the Provincial legislature, when the
State Constitution breaks down these powers and functions 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. After two months every
proclamation will become null and void, unless it has been
approved by resolutions of both Houses of Parliament. The upper

85. Ibid P. 150.
House consists of delegates elected by the local legislatures and the lower House includes representatives from constituencies of the States concerned, elected on adult franchise. Therefore, the Government of the States is not taken away even from the representatives of the State concerned. Only the representatives of the State concerned have to govern the State in co-operation with the representatives of other parts of India. That is the only limitation which is being placed and this limitation is necessary because the Constitution has broken down in a particular State. Therefore, it is not as an infringement of the principles of democracy that these articles can be objected to. It is rather from the scope of the article that they have to be properly scrutinised because articles 278 and 278-A come into operation when the Government of the State can not be carried on in accordance with the provisions of the Constitution.

5. PANDIT THAKUR DAS BHARGAVA

He also spoke in favour of Presidential Rule in a State. He observed that the retention of Art. 188 would have been a great mistake. After all this taking away of Art. 188 and substitution there of by articles 278 and 277-A predicate that the Governor will have no emergency powers and instead of the Governor acting in his own discretion, a single individual deciding the fate of

86. Ibid P. 153.
the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions. I can not understand how the Provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing. Now we have already provided fundamental rights and we have provided the powers of the Supreme Court. We know that the army and navy are all under the Centre. How can Provincial autonomy remain totally unrelated and the State can have absolute rights? Supposing the Constitution fails, how can a State guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a Province by itself be able to meet the situation when the use of army and other forces are required by the State? It is, therefore, but proper that in regard to Provincial autonomy also we must realise that the Centre has got a duty to discharge and a very great duty to discharge.87

6. BRAJESHWAR PRASAD

He too supported the articles relating to Presidential Rule in a State. He was of the opinion that if there is a

87. Ibid. P. 167.
conflict between the security of the State and the personal liberty of the individual I will choose the former and lay stress on the security of the State. For the first time in the chequered history of India we have got an independent State of our own; are we going to barter it away in the name of some new-fungled notions which have been discredited in their own homelands? The best thing of course is to have both of the State and personal liberty of the individual. But the ideal thing is not always possible; and when there is a conflict between these two, my friends will have to make a choice; I would choose the security of the State.88

Brajeshwar prasad was critical of the provision that the period of emergency shall not last beyond a period of three years. He said, "this is like king Canute telling the tides not to touch his royal feet. How can you lay down in advance that the period of emergency shall not extend beyond three years? The forces of disorder and lawlessness are increasing and spreading fast in this country; and we do not want this article to be used as a clock for other activities. I ask my honourable friends to calmly consider the dangers and the threat to which our attention has been drawn by Mr. Kanath - the danger of dictatorship arising in this country. I will say that the

88. Ibid P. 171.
question of success of democracy in this country does not depend on the sort of Constitution that we make here; it is vitally related to our economic set-up and our social institutions. A mere democratic Constitution will not save us unless we reform our social and economic institutions". 89

7. B.R. AMBEDKAR

Speaking in favour of Articles 278 and 278A relating to Presidential Rule in a State the Honourable Dr. B.R. Ambedkar said, "In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a 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. In fact I share the sentiments expressed by my honourable 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. I hope the first thing he will do would be to issue a mere warning to a

89. Ibid.

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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 we could then say that these articles were imported in vain or that the President had acted wantonly.  

8. L. KRISHNA SWAMI BHARATHI

Bharathi, was not in favour of deleting Article 188. He said that we must understand what Article 188 is for. It is not for normal conditions. It is in a State of grave emergency that a Governor was, under this article, invested with some powers.... The article was necessitated because it was convincingly put forward by certain Premiers. There may be a possibility that it is not at all possible to contact the President. Do you rule out the possibility of a State of inability to contact the Central Government? Time is of the essence of the matter. By the time you contact and get the permission, many things would have happened and the delay would have defeated the very purpose before us.  

90. Ibid. P. 177.  
91. Ibid. P.158.
Shastri observed that Article 188 embodied in the fourth part of the draft Constitution and Article 275 embodied in the 11th part, should be retained as they are in the draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration I may make mention of the difficult situation, existing in Bengal and Madras to-day. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this article, by proclamation, take the Constitution machinery of the Province in their own hands.92

C. FINAL ADOPTION

History has the uncanny knack of often thrusting on people and institutions' roles of which they were at one time out-spoken critics. Section 93 of the Government of India Act, 1935, had constituted during the period of the British Raj, the proverbial mote in nationalist India's eyes, conferring as it did drastic powers on the Governor of the Province. When, however, the

92. Ibid. P. 172.
nationalist leaders, into whose hands the power of governance of India passed in 1947, began framing the Constitution of free India, they took a leaf out of the Government of India Act, 1935, and became votaries of the once-condemned provision. The draft Constitution, prepared by the drafting committee of the Constituent Assembly of India, contained Article 188 which empowered the Governor to proclaim the taking-over of the State Government, such a proclamation was to have the maximum validity of two weeks. The Article 188 spoke such\textsuperscript{93}:

1. 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 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

\textsuperscript{93} The Draft Constitution of India (New Delhi: The Constituent Assembly of India), 1949 P.85
this Constitution relating to any body 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 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 proclamation 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.

Moreover, Article 278 in the draft Constitution sought to bring the 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 conducted in accordance with the provision of the Constitution, could take over in his hands the functions of the State Government and declare that the powers of the legislature
of the State shall be exercisable only by Parliament.

Such was the original provision made in the draft Constitution. However 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 there.

The Constituent Assembly discovered the two-phase intervention in the State sphere, first by the Governor on his own and later by the President to be plainly anomalous? First, if the President was ultimately to swing himself into the State field it would be more logical that he came into it at the very beginning. Second, the President may issue the proclamation of take-over on the basis of a report by the Governor or on his own initiative. This marks a departure from the earlier stipulation under which the President could not act except on a report by the Governor duly preceded by the Governor's proclamation under Article 188. The original provision of the Governor's report being obligatory for the invocation of the President's Rule was made flexible, or rather optional. If the Centre is responsible for protecting the Constitutional machinery in the States, as is the acknowledged position under the Constitution, why make the Presidential action absolutely dependent on the Governor's report? Finally, the functions of the State legislature were, according to the provisions of the draft Constitution, to be assumed by the Parliament which was not explicitly authorised to
confer such powers on the President. No such bar on the part of Parliament operates now.

Though an extraordinary feature in a federal Constitution, the provision seeking dismissal of State Government by Presidential action 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 her history in the wake of partition, communal riots and other disturbances. The Constituent Assembly itself, which originally contemplated a rather weak Federal Government, ultimately became the champion of a powerful Centre. Article 278 (which later became Article 356) was but one manifestation of the prevalent national sentiments.

Article 278 (which on renumbering became Article 356) was endorsed by the Constituent Assembly. Its provisions are far reaching in their intent and implications. Under the Constitution, the Central Government has assumed the ultimate responsibility of assuming Constitutional Government in the State. If the President (which in practice means the Central Cabinet) is satisfied on the report of a Governor 'or otherwise' that there has occurred a Constitutional breakdown in a State, he may assume any or all the functions of the State Government and declare the powers of the State Legislature exercisable by or under the authority of the Parliament. However, he can not
assume any of the functions of the High Court or modify any provision of the Constitution relating to the High Courts. Finally, the duration of President's Rule in a State has the outer limit of three continuous years.

The above noted views of the Fathers of Indian Constitution, regarding the provisions of the breakdown of the Constitutional machinery, reveal that the Founding Fathers of our Constitution had a clear intention to have an upper hand of the Centre over the constituent Units in order to cope with the anti-national elements during the period of an emergency. The basic objective of the Fathers of the Constitution was to protect the unity, integrity and security of the country as a whole either from external attack or from internal disorder. They intended that the intervention of the Centre in the domestic affairs of a State should occur when there was a pressing need for its role for the maintenance of the Parliamentary system. Hence after a heated and detailed discussion in the Constituent Assembly all the draft Articles from 275 to 280 were accepted by the Constituent Assembly, including the amendments moved by Dr. Ambedkar.