

SUPPLEMENT TO CHAPTER 3

EXTRACT
from
CONSTITUENT ASSEMBLY DEBATES

**The extract from the Constituent Assembly Debates reproduces
Dr. B.R. Ambedkar's speech in the final substantive debate on
the "Presidents Rule" provisions on the floor of the
Constituent Assembly on 3rd August 1949
(See IX C.A.D. 130 to 135)**

Articles 188, 277-A, 278 and 278-A

Mr. President: Then we come to article 277.

The Honourable Dr. B. R. Ambedkar: I would like to hold article 277 back, for the present.

Mr. President: Shall we then take up article 277-A? Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar: Sir, I think it would be better if the three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting purposes. But for discussion, I think, they might be taken together.

Mr. President: Articles 188, 278 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

“That article 188 be deleted.”

Sir, I move:

“That after article 277, the following new article be inserted:—

<p>Duty of the Union to protect States against external aggression and internal disturbance.</p>	<p>‘277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.’”</p>
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And then, Sir, I move amendment No. 160 of List II, which reads as follows:

“That for article 278, the following articles be substituted :—

Provisions in case of 278. (1) If the President, on receipt of a Failure of Constitutional report from the Governor or Ruler of a machinery in States. State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

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

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed

by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of the article:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

[The Honourable Dr. B. R. Ambedkar]

“278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

- (a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;
- (b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities or the Government of India;

- (c) for the President, to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;
- (d) for the President to promulgate Ordinances under article 102 of this Constitution except when both House of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State.”

Shri H. V. Kamath (C.P. and Berar: General): Article 188 also?

The Honourable Dr. B. R. Ambedkar: I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering the general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the Province feels that the machinery set up by this

Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the provincial field in order to sustain the constitution embodied in this Constitution then it is much better that the President should come into the field right at the very beginning. On this basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted.

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, none-the-less is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial

affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some of obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the Constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitution, namely, that it shall also be the duty of the Union to the maintain the Constitution in the provinces as enacted by this law. There is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clause (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes article 278, imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor

of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that his intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative power of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made in this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered. The twelve months is now divided into two periods of six months each and after the first ratification, the Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament, so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for

Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officer of the Government of India or officers of even Provincial Government to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (1) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article—that the President also can exercise his power conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.