



## Article 356 and an activist judiciary

The recent order of the Andhra Pradesh High Court directing the Andhra Pradesh government to come prepared to argue on the 'breakdown of constitutional machinery in the state' is shocking as it opens up the possibility of use or even misuse of Article 356 by the judiciary. Though the Supreme Court of India has stayed the order, we need to go deeper into this observation and look at the controversial provision of Article 356 because of which the High Court could make such an observation. The devil is in the provision itself.

### The power of a word

Many members of constituent assembly criticised the word 'otherwise' and said the only God knows what 'otherwise' means. The Andhra Pradesh High Court could pass such an order due to this very term 'otherwise'. But for this word which negates the ideals of constitutionalism by giving unlimited powers to the Centre, the High Court could not have overstepped the line as it did.

### The record

1. Article 356 has been used/misused more than 125 times though B.R. Ambedkar had assured that it would remain a dead letter. Both on Article 356 and the Governor, experience has proven Ambedkar wrong.
2. In almost all cases it was used for political considerations rather than any genuine breakdown of constitutional machinery in the States.
3. All Presidents signed presidential proclamations without demur except K.R. Narayanan who twice returned the cabinet's recommendation on October 22, 1997, in respect of the Kalyan Singh government in Uttar Pradesh which had just won the controversial confidence vote and stating that imposition of President's Rule would be constitutional impropriety.

### Conclusion:

Today, when many constitutional experts are of the view that the judiciary is increasingly becoming more executive-minded than the executive itself, the observations of the Andhra Pradesh High Court are a worrisome sign. Ideally, the word 'otherwise' should be deleted from Article 356 and the provision be used only sparingly and to never remove a majority government.



Judicial activism may be good as a rare exception but an activist judiciary is neither good for the country nor for the judiciary itself as it would encourage the government to appoint committed judges. Sometimes even the collegium's recommendations on the transfer of judges and chief justices today look more like an executive order transferring IAS officers.

### Background:

**Article 356.** Provisions in case of failure of constitutional machinery in State

(1) If the President, on receipt of a report from the Governor of the State **or otherwise**, is satisfied that a situation has arisen in which 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 anybody 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;

## Recharging DTH

### Highlights:

1. The Union Cabinet's approval of a revised scheme for the Direct-to-Home (DTH) television distribution sector beginning with 100% FDI brings a measure of calm to an industry buffeted by technological change and revenue pressures this year.
2. Under the new norms, the licence period will go up to 20 years from the present 10, and, importantly, the fee has been reduced to 8% of Adjusted Gross Revenue, after setting off service tax, as opposed to 10% on Gross Revenue now.
3. The DTH operators have also been facing a challenge from high bandwidth Internet and new generation entertainment providers using Over The Top (OTT) channels that are chipping away at their urban viewer base so valuable to advertisers.



## Limits of sovereignty

### Highlights:

1. The tariff-free trade accord in goods that the U.K. and the EU signed on Thursday, days before the post-Brexit transition expires, should mitigate somewhat the consequences of Britain's narrow decision, in 2016, to leave one of the largest trading blocs.
2. Brexit's biggest trade-off for the ordinary citizen is perhaps the restrictions on the right to free movement and work.
3. Among the more contentious issues in the talks, the arrangement allays apprehensions about the potential economic threat from the "Singapore-on-Thames" growth model the U.K. might pursue outside the EU.
4. A major challenge now would be to keep border checks and red tape to the minimum, besides ensuring that supply chains are not unduly disrupted.