
EXAMINING THE SCOPE AND IMPLICATIONS OF ARTICLE 356: A CRITICAL ANALYSIS OF PRESIDENTIAL RULE IN INDIA

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ABSTRACT

In the Constitution of India, Article 356 which discourse the president discretionary powers to impose emergency, has traditionally been a hot subject in politics & occasionally a source of great ire within India's legal intellectual community. Even though constitution of India entails for a federal system of government, the way it has been implemented over time, coupled with a number of its clauses, jeopardizes its definition and interferes with its operation. The governor's role and emergency powers are specifically covered in this article. It also discusses the broad powers granted to the federal government to impose its will on a state in the event of civil disturbance and the state government's inability to put an end to it. It also highlights the rules and observations outlined in the Sarkaria Commission Report, 1987, and discusses the historic rulings that resulted in numerous modifications to the article to protect against abuse by the government. This paper's main thesis is that, despite their support for a powerful federal government, the Indian constitution's founding fathers would likely have been shocked and perplexed by the arbitrary and capricious way, the federal government has used some of its powers over the states, especially the opposition ones.

This study addresses the following research questions:

- Is Article 356 being applied as the framers intended?
- Did the Sarkaria Commission succeed in preventing Article 356 from being abused?
- Does the article stifle democracy's core principles?

INTRODUCTION

Because of its purported abuse, Article 356 has secured a great deal of disrepute. If President is convinced "on receipt of a report from the Governor of a State, or otherwise" that constitutional machinery is broken in that state, Article gives him the authority to dissolve the validly elected state government. The main idea of the article is that President determines the "constitutional machinery" in that State has failed when a specific affair of state is violated, as established and documented by the Governor of that particular State in question (or in another way). The President then dismisses the State Legislature and Executive by issuing a "Proclamation of Emergency." President has a great deal of discretionary power when a state of emergency is declared. Most people, especially those in the world's greatest democracy, oppose any laws or constitutional provisions that violate any among the fundamental tenets of civil liberties. Naturally, the Indian people would be most interested in maintaining all the liberties envisioned in a democratic society, having recently achieved independence after a protracted and ongoing battle. Common sense dictates that if the members of Constitutional Drafting Committee include a clause allowing government to suspend those liberties and remove a validly elected people's representative body which even contrary to the most basic perception of "separation of powers," it should only be used to address the direst situations. However, it appears that the Article's remedial purpose has remained twisted to force the Central Government's dominance on a State Government that disagrees with it. The integrity of countries with federal systems of government depends on central control over regional governments. Article 356 was created to protect this integrity, but it is unclear if this is being used at the expense of democratic freedom.

Except for the High Court's provisions, the President may suspend any or all of the Constitution's provisions that apply to that state and take over the state's entire administrative branch by declaring an emergency. The Parliament will exercise the state's legislative authority

during emergency.

As a result, the central government can essentially change the federal system into a unitary one.

SCHEME OF THE STUDY

The governor's role and emergency powers are specifically covered in this article. This paper's main thesis is that, despite their support for a powerful federal government, the Indian constitution's founding fathers would likely have been shocked and perplexed by the arbitrary and capricious way the federal government has used some of its powers over the states, especially the opposition ones. The country's federalism and centre-state ties are discussed in the first chapter, along with how the authority permitted by Article 356 has turned out to be both arbitrary and extraordinary. The second chapter provides an explanation of the historical context of Article 356 and the intention for its inclusion in the Constitution of India. The Sarkaria Commission's recommendations and submissions are covered in the next chapter. This paper's Chapter IV discusses the conclusions drawn from the momentous case *S.R. Bommai v. Union of India* ruling. Emphasises how Article 356 in India and how various political parties have abused it are covered in the following chapter. The author's conclusion is emphasized in the final chapter, which also attempts to summarize the results and explores the author's personal viewpoint.

FEDERALISM AND ARTICLE 356

India's federalism is both similar to and different from other federations, such as the one in America. The former is different in that Instead of a set of separate States unifying to outline a federation by giving up some of their governmental rights, it is a dispersed organization that stems from its authority from a lone source—the Union Within the Indian constitutional framework, a number of organizations and organs share and distribute sovereignty and governing authority. The Constituent Assembly's Drafting Committee head, Dr. Babasaheb Ambedkar, emphasized the significance of referring to India as "Union of States" as opposed to a "Federation of States." There he stated:

"... The crucial thing is that the word "Union" is used intentionally. Although the nation and its citizens may be separated into many states for administrative convenience, the nation is a single, cohesive entity, and its citizens are a single people living under a single imperium that

comes from a single source."¹

With the exception of several emergency clauses in the Indian Constitution, which would give the Union complete authority within the State, this is essentially the manner in one might characterize centre-state relations in India. Union List, State List, & Concurrent List are the three lists into which specific powers are separated. As a result, India's political structure can be categorized as both federal and unitary. It may be regarded as unitary due to constitutional provisions pertaining to the emergencies in which all the state's powers would ultimately return to Centre, and it may be regarded as federal due to the separation of powers amongst federal government & the states, India is home to a sizable and diversified population, many of whom are living in extreme poverty. The Indian political landscape is not new to extraordinary circumstances. Therefore, in order to handle severe situations, extraordinary powers are required. The authority granted by Article 356 is both arbitrary and unusual.

Dr. BR Ambedkar declared on August 4, 1949, that "every part of the Constitution" may be misused for political ends, dismissing the concerns expressed in the constituent assembly regarding the adoption of emergency provisions, such as the president's control in states. He was correct, but figuring out how to prevent its misuse has perhaps captured the nation's attention more than any other subject.

A double-edged sword that is frequently questioned is Article 356 of Indian Constitution, which provides the federal government a leave to assume dominion of a state in the event that the constitutional framework fails. It has been criticized for upsetting the constitution's federal structure by providing room for abuse against legitimately elected provincial administrations run by opposing political parties. Although it is currently difficult to make sure that Article 356 is used frugally, B.R. Ambedkar ironically emphasized that members should anticipate that "such articles will never be called into operation and that they would remain a dead letter" when he was advocating for the passage of provisions 355 and 356. By asking for a vote on the presumption that the clause would remain a dead letter, Ambedkar may have been able to end the debate, which had already lasted more than five hours, but it has continued ever since, with Article 356 a provision that is exclusive to India posing new problems and questions whenever it is brought up.

¹ National Commission to Review the Working of the Constitution, Report, I, (2002)

The centre's habit of using the clause to criticize state governments led by other parties or coalitions has raised concerns. There is no more convincing evidence that political factors influence decisions than this: Following the emergency, the then government took office in 1977 and used the president's rule to overthrow nine governments of opposition party in states. Additionally, the prominent national political party disbanded other party governments when it regained control in 1980. Finding equilibrium is still difficult. Because judicial delays typically place the centre, acting with malice, in a win-win situation, precedents have failed to stop misuse. Despite moral setbacks, the centre frequently achieves the political goal of stopping an opposition juggernaut, whereas a dismissed state government only receives a moral triumph because the assembly's term usually ends before the decision.

HISTORICAL BACKGROUND OF THE ARTICLE 356.

A holdover from British colonial administration in India is the president's authority to enforce President's administration in states. This regulation was put in place by the British government in order to further their colonial objectives. Founders of the Constitution of India were also mindful that some parts of nation lacked long-standing parliamentary constitutional conventions, making it impossible to rule out the potential of constitutional machinery failure in such a state. This was a reflection of the times, in a sense. Following partition, communal rioting, and the country's disintegration, the nation was at a pivotal moment in its history. The Union Council of Ministers leads the President, was given significant authority because it was thought that the Union needed strength.

The Government of India Act of 1935 is historical proximal origin of the President's Rule. Initially this Act gave Governor's emergency powers under Section 93 that they may use to seize control of the province government. Section 93 of the Government of India Act, 1935, is where Article 356 got the start. According to Section 93 of the Government of India Act, 1935, If the governor is determined that the province's government not able to be run in compliance with the Act's criteria, they have the power to implement the governor's rule.

In order to handle the unanticipated disintegration of the Constitution in States, framers of the Constitution sought to include some mechanisms. It was proposed that the province's governor ought to have the power to declare himself in charge of the province's administration for a period of two weeks if he believed that the machinery established by this constitution to manage its affairs had broken down. He would then inform the union president, who declared

that he had taken over the administration after the machinery failed. Therefore, the Constitution's founders acknowledged that in a state where the constitutional machinery broke down, the provisions of Articles 355 and 356 were required to address an extraordinary circumstance. Simultaneously, they anticipated that healthy customs would develop to help guarantee that these extraordinary powers were used for legitimate purposes in the direst circumstances.²

In Uttar Pradesh in 1954, the article was first used. Additionally, on July 31, 1959, it was employed during Vimochana Samaram which intended to overthrow Kerala's democratically chosen Communist state government and in state of Patiala and East Punjab States Union. State administrations headed by opposition parties were frequently overthrown by the federal government in the 1970s and 1980s. This technique was characteristic of the then prime minister administration and the post-emergency the opposition Party. It is known that during the 1966–1977 administration of then prime minister where, 39 states were subjected to president's control. Similarly, in nine states that were governed by own party, the latter, which took power following the emergency, imposed president's rule.

Only after Supreme Court's 1994 judgement in *S. R. Bommai v. Union of India* case rigidly imposed standards for applying the president's rule did the practice become restricted. The extensive abuse of Article 356 has been lessened thanks to this historic ruling. The ruling created stringent rules for enforcing president's rule. potential for abuse of Article 356 has been additionally curbed by later many ruling by the apex Court in the Jharkhand and a handful of states. The count of occasions of president's rule being imposed has only significantly decreased ever since the early 2000s.

THE SARKARIA COMMISSION REPORT, 1987

Despite the preventive actions mentioned in Article 356, Centre repeatedly used the Article because of its vague language. Only when the Sarkaria Commission's report was turned in in 1987 did some of the confusion regarding Article 356 disappear. After being constituted in 1983, the Commission—led by Justice R.S. Sarkaria—drained 4 years looking at ways to strengthen ties uniting the Centre and the State.

² Section 93, Government of India Act. 1935, cited in Sunil Destha (1993)

Sarkaria Commission suggested using Article 356 in very unusual circumstances. The Commission claims that Article 356 offers remedies for circumstances where a State's constitutional apparatus has truly failed. Any misuse or abuse of this extreme authority would subvert the Constitution's democratic foundation. Article 356(1) should not be interpreted literally, according to the report. According to the Commission, Article 356 should only be applied in extreme cases when no alternative measures have been able to prevent or repair a state's constitutional machinery from collapsing. Prior to using Article 356's powers, every attempt should be taken to resolve the issue at the state level³.

In Commission's report which states that these alternatives can only be used in situations of exceptional emergency where the Union's inability to act immediately under Article 356 would have disastrous results. Additionally, the report suggested that the State in question be warned that is not conducting its government in conformity with the Constitution. Any clarification given by the State shall be regarded prior to using Article 356. This might not be feasible, though, in a scenario where delaying action might have disastrous results.⁴

According to the recommendation, Article 356 should be appropriately amended to incorporate in a statement of important information and circumstances upon which the Article 356(1) is invoked. According to the paper, this would increase the effectiveness of Parliament's check on the Union Executive's use of this power and provide the judicial review remedy founded on mala fide's broader connotation. Sri P.V. Rajamannar, the former Chief Justice of the Madras (Chennai) High Court, who oversaw the State of Tamil Nadu's Inquiry Commission that produced a report on Center-State relations, mostly agreed to the Sarkaria Commission's views.

S. R. BOMMAI v UNION OF INDIA

One of the utmost prominent cases over time of the Constitution of India was S. R. Bommai v. Union of India⁵. In this instance, the apex Court clearly defined the parameters and restrictions that Article 356 had to act contained by the opinions of the Supreme Court's different judges in this case mainly agree with the Sarkaria Commission's recommendations.

In this instance, it was decided that President may only use the mastery provided under Article

³ The Sarkaria Commission Report, 1987

⁴ Id.

⁵ S.R. Bommai v Union of India, 1994 (3) SCC 1.

356 of the Constitution if he is convinced that a circumstance has developed that makes it impossible for a state's government to continue operating in compliance with provisions of the constitution. The President authority granted under Article 356 is endured to several conditions. It is not the foremost authority. Furthermore, the court stated that even though clause (1) of Article 356 may be interpreted as implicitly granting the President the authority to fuse the Legislative Assembly, it ought to be held, in light of the comprehensive constitutional framework, the President may only do so following the approval of the Proclamation by both Houses of Parliament under clause (3) of Article 356. and never before. Only by suspending the Constitution's provisions pertaining to the Legislative Assembly under subclause (c) of clause (1) can the President halt the Legislative Assembly until such approval has been granted. Article 356's clause (3) was intended to serve as both a protection against abuse and a limit on the president's authority.

As per Article 356(1), the Proclamation of emergency is conditional to judicial review. If the Proclamation is determined to be fraudulent or founded on completely unrelated or extraneous grounds, Supreme Court/ High Court may invalidate it. 44th (Amendment) Act eliminates the doubt regarding the action's reviewability by eliminating clause (5), which included by the 38th (Amendment) Act. The material upon which action was taken must be produced by the Union of India upon request. If it wants to defend the action, it cannot refuse to do so. The correctness and sufficiency of the material will not be discussed by the court. Given that there is some information that is pertinent to the action done, the court cannot become involved, even if some of it is irrelevant. The Court has the power to reinstate the dismissed Government and reinstitute the Legislative Assembly, if it is been dissolved or placed on suspension, if it overturns the proclamation. In this situation, the Court can rule that laws, orders, and actions taken during the time the Proclamation was in effect will be regarded as legitimate and unaffected. Therefore, it is evident from the rulings of this Supreme Court that the President's power under Article 356 of the constitution is neither unrestricted nor capricious. Without good reason, the President can't force Central rule on a State at his caprice.

It is evident from the rulings in *S. R. Bommai v. Union of India* and in the *State of Rajasthan v. Union of India* that there cannot be a one single rule that have a bearing on to every situation. It will inevitably change built on the topic, the kind of right, among other factors. However, when it is possible, satisfactions existence can potentially be disputed at any time on the grounds that it is dishonest or completely founded on irrelevant and unrelated factors. The

significance of judicial scrutiny in cases involving Article 356 is further highlighted by the Supreme Court's decision in *State of Madhya Pradesh v. Bharat Singh*⁸, which held that the Proclamation of Emergency did not preclude disallowing the court from assessing the validity of law to it to be ultra virus to the Constitution.

Among other things, the Supreme Court stated in this decision that it ought not to be unwilling to fulfil its constitutional duty merely because doing so requires taking political considerations into account. It shall, however, refrain from investigating depending on the facts and circumstances are adequate to satisfy the president in the case of an emergency and instead confine itself to assessing whether the Proclamation's declaration conforms with Article 352 of the Constitution.

THE SITUATION OF ARTICLE 356 IN INDIA

As the current scenario in India exhibits, the "dead-letter" provision has become an often cited, not-so-dead article, as Dr. B.R. Ambedkar had desired. It has been activated more than 100 times as of this writing. The National Commission to Review the Working of the Constitution (NCRWC) was established on February 22, 2000, by a joint resolution of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) and the Government of India. In March 2002, the NCRWC published its entire report. In at least 20 of the more than 100 cases, the use of Article 356 could be deemed a misuse, according to the NCRWC's report.

Mr. Soli Sorabjee made the point that violence in the Assembly cannot be interpreted as a sign of a malfunction in the constitutional machinery. If it were, it would be very simple for dishonest lawmakers to dissolve a legitimately elected legislature by causing chaos in the Assembly and invoking Article 356⁶ improperly.

State governments that were completely legitimate have occasionally been overturned to compel compliance or to give the Union government's party an opportunity to seize power. In order to establish legitimacy, union administrations have assumed the precise role that Dr. Ambedkar feared they would play in judging the calibre of state governance.

We will remember the most brutal implementation of Article 356 in the 1970s and 1980s. Between 1971 and 1984, it was used 59 times, with the highest usage taking place between

⁶ Soli Sorabjee, *Constitutional Morality Violated in Gujarat*, Indian Express, Pune, India, Sept 21

1977 and 1979. It was taken advantage of by the Central administration after the emergency as a personal grievance against opposition-party-led state administrations. The Favor was later returned after regaining power in 1980, and between 1980 and 1984, it was used 17 times.

The judicial review of the presidential proclamation that imposed Article 356 through the 38th Constitutional Amendment during the emergency was really prohibited by the prime minister at the time. But in 1978, Morarji Desai's 44th Constitutional Amendment Act restored Dr. Ambedkar's original Article 356.

Manipur is where Article 356 has been used the most. The Union government has often been able to force its way on the state due to protracted periods of warfare and the states deeply divided internal politics.

Governors have overthrown a number of state governments, even while those administrations held a majority in the legislature. Because each state uses a different method to select its government, the governor's participation in forming a government in the event that the legislative assembly lacks a majority has further exacerbated the resentment between the federal government and the states. Governors can use Article 356 as a weapon to overthrow opposition parties' governments in their states. Article 356 has been invoked and abused more than a hundred times, further weakening the Indian Federation, despite Dr. B. R. Ambedkar's intention that it would endure dormant.

CONCLUSION

It is clear that Article 356 of the Constitution of India is not adequately protected from misuse. Because the Party in power at the centre typically controls Parliament by a majority vote, the protection of "parliamentary approval," as stated in Article 356(3) of a proclamation under Article 356(1) could be distorted. Furthermore, even a vote in Parliament that finds a specific President's Rule imposition—or lack thereof—to be incorrect cannot undo the harm that has already been done. It's probable that Article 356 turn it into a trap that is progressively clenching around India's democracy, smothering the rights that the people are promised by the constitution. The founding fathers would probably be startled to see how arbitrary and capricious the federal government has used some of its powers over the states, despite the fact that they wrote the Constitution with the best of intentions and thought that a powerful central government was essential. It is crucial to remember that the equilibrium among the Union and

the States and the advancement of the welfare of the populace can only be maintained by the spirit of "co-operative federalism," not by outlook of dominance or superiority.

No one entity can assert primacy within our constitutional framework. No one organization or branch of the government is inherently sovereign. A prerequisite for effective governance is the division of governing authority among various organs and agencies. Even if the Centre has remained granted assured authority over the States, this authority must only be exercised for the stated purpose and not for indirect ones. Article 356 forbids the use of extraordinary and unusual powers to forward the agenda of a political party or to subvert a Legislative Assembly and government that have been duly elected. The consequences of such improper use might not be evident right away. However, they do not have no impact, and their long-term effects become apparent and may be irreversible. What ought to have been a dormant rule of the Constitution transformed into a powerful tool to undermine democracy nationwide.

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