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## **ARTICLE 356: CONSTITUTIONAL INTERVENTION AND PRESIDENT'S RULE IN INDIA**

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### **ABSTRACT**

This article aims to examine the important implications that Article 356's president's power has had on the federal structure of a democracy in operation, like India. The Indian Constitution was drafted to define the nation's federal structure and to specify the functions of the federal and state governments. The power of the federal and state governments over the legislative branch is expressly mentioned in Schedule 7 of the Constitution. Nonetheless, one of the particular circumstances under which the federal government may impose its will over a state is the President's declaration of emergency. The President of India may proclaim a state of emergency, taking charge of the legislative and executive arms of government in the event of a "failure of Constitutional machinery." "The President may declare an emergency in a state if the President, upon 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 by the provisions of this Constitution," states Article 356. A state that declares itself to be under President's rule has its elected government toppled, its legislative assembly suspended, and the President uses his representative governor to exert direct authority over the state's affairs. Article 356(1) generally requires the president of a state to declare martial law at the governor's request. The Governor's report should serve as a "speaking document," providing the President with a clear and accurate summary of all pertinent information and logic so that he can decide whether or not the circumstances outlined in Article 356 are real. Since its inception, Article 356 has been the focus of controversy and debate since the President's authority has the potential to jeopardise the nation's federal system. Article 356 originated from Section 93 of the Government of India Act, which empowered the governor to proclaim an emergency if the province could not be administered by the act's requirements. This section was adopted by the Indian Constitution, which replaced the word "governor" with "president." However, several members of the Constitutional Assembly opposed this language, arguing that the subjective and imprecise word "otherwise" in Article 356 may lead to union dominance over the state.

*Keywords: Democracy, politics, General Elections, India, presidential rule, Article 356*

## INTRODUCTION

Nowadays in India, the ruling party's loss of the majority in the house is not enough to topple a state government. Several constitutional officials must often give their consent, if not their willing cooperation and the process must be well-planned. The speaker of the house is a crucial figure who leads the legislature and has the authority to dismiss assembly members from their positions. The Speaker's Tribunal's orders disqualifying MLAs for defection or suspending their membership can only be overturned by the Supreme Court or a higher court.

The support of the state governor and the ruling party at the centre is also beneficial. When asking an incumbent chief minister to show their majority on the house floor, the governor's decision becomes crucial. When deciding whether to hold a vote of no confidence, the governor frequently makes decisions like prolonging or terminating the mandate of a problematic chief minister. Ensuring the state's constitutional system doesn't fall apart is another duty of the governor. Should the governor at any moment discover such a breakdown and notify the Centre, the Centre is empowered to step in, enforce the President's rule, and remove the elected administration.

There have been two cases of this in Arunachal Pradesh and Uttarakhand this year. In these instances, Congress dissenters were exhorted to rise against the chief ministers in power and try to topple the deeply entrenched regimes within the legislative. Dissident MLAs were protected from possible disqualification even though they made up less than two-thirds of the party's assembly strength. The federal government supported MLAs who were defecting in their legal defences against being removed from office.

There are discussions about implementing this tactic in Karnataka, and BJP leader Kailash Vijayvargiya has already proposed such scenarios for Manipur and Himachal Pradesh. The BJP appears determined to unseat the Congress at the state and national levels. With extreme desperation, Congress is adopting a defensive stance. A transition of state government is never complete without a legal and media battle. The Congress has presumably calculated that fighting the BJP in major cases in smaller states will be more effective than fighting it in larger, more important states. An outsider can only conclude that India's quasi-federal Constitution is being applied unitarily, manifestly biased towards the Center.

Nonetheless, the founding fathers had a different perspective. In the general debate on August 4, 1949, B. R. Ambedkar gave the Constituent Assembly an assurance during the discussion on the Centre's authority to impose President's rule in the states: "It has been suggested that these articles are prone to be exploited... The prospect that these pieces could be misused or utilised for political ends is something I do not completely reject. However, that criticism of the Constitution is directed at every provision that grants the Centre the authority to supersede the provinces. I hope that before genuinely suspending the provinces' government, the President, who has these powers, will exercise due diligence.

Despite Ambedkar's assurances, independent India discovered that it was not a true federation of voluntarily acceded independent states. The central government's power to override the states developed into a powerful tool that had a long-lasting effect on the relationship between the two governments, rather than remaining a meaningless constitution.

The country's first non-Congress government, the Patiala and East Punjab States Union (PEPSU) led by Gian Singh Rarewala, was deposed in March 1953, and the Congress won the subsequent elections. Kerala became the first state in history to have an elected communist administration in 1957. The government's progressive policies were impeded by resistance from the Catholic Church in Kerala and pressure from the United States, which was arranged by the CIA. Congress President Indira Gandhi convinced Prime Minister Jawaharlal Nehru in 1959 that the President's rule should be implemented in place of E.M.S. Namboodripad's cabinet.

When the Emergency ended in 1977, the first non-Congress government at the Centre, led by the Janata Party, overthrew state governments headed by Congress chief ministers, citing a loss of the people's mandate. This led to the *State of Rajasthan v. Union of India*<sup>1</sup> case, where the petition was denied by a seven-judge panel for several reasons, including not delving into political matters. A few judges contended that the president's use of Article 356 was not warranted. After Gandhi returned to the Centre in 1980, she dismissed state administrations of the Janata Party, a move that was not contested in the courts after the Rajasthan ruling.

Throughout the 1980s, the President's control was invoked for political scheming. Famous instances include the state of Jammu and Kashmir, where Governor Jagmohan helped his brother-

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<sup>1</sup> *State of Rajasthan v Union of India*, AIR 1977 SC 1361

in-law G.M. Shah overthrow the Farooq Abdullah administration. The N.T. Rama Rao government of Andhra Pradesh was overthrown by Governor Ram Lal. Following this episode, NTR sent his parliamentarians to the Janata Party-ruled state of Karnataka, where they were later paraded before the president. This episode is largely responsible for the practice of isolating and transferring MLAs to prevent defections.

A 1985 Constitutional Amendment established retail floor-crossing as a cause for disqualification from state assembly or parliament membership. The Supreme Court in *Kihoto Hollohan v. Zachillhu and Others*<sup>2</sup> decided that a judge could review the speaker's disqualification determinations. Because of this, defection turned into a game played by naive lawmakers, aspirational leaders-to-be, and fierce legal disputes. Courts abstaining and speakers participating became critical to the political endeavour to overthrow a sitting government.

The destruction of the Babri Masjid led Prime Minister P.V. Narasimha Rao's administration to topple four state governments held by the Bharatiya Janata Party. 1994 saw the conclusion of a nine-judge panel's consideration of the appeal of this dismissal and additional cases of the President's authority in the *S.R. Bommai v. Union of India*<sup>3</sup> case.

According to the verdict, the courts could investigate whether the president was satisfied with the use of Article 356<sup>4</sup>. It was in favour of overthrowing the BJP administrations to uphold secularism, which is a cornerstone of the Constitution. The court emphasised that objective evidence was the sole basis for the president's actions and that Article 356 could only be triggered in the case of a constitutional machinery failure rather than a routine breakdown of law and order. The court further ruled that a state legislature could not be dissolved without the consent of parliament and that a test of numerical strength could only be conducted on the assembly floor. The verdict upheld the possibility of a legitimately overthrown government being reinstated, referencing a decision rendered by the Pakistani Supreme Court in the Muhammad Sharif case<sup>5</sup>. Rao's minority government saw the Supreme Court develop into a formidable defender of civility and constitutional rights.

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<sup>2</sup> *Kihoto Hollohan v Zachillhu and Ors*, 1992 SCR (1) 686

<sup>3</sup> *State of Rajasthan & Ors v Union of India*, AIR 1977 SC 1361

<sup>4</sup> INDIA CONST. art. 356.

<sup>5</sup> *Muhammad Sharif v The State*, PLD 1957 SC 201

The first significant effect of the Bommai case ruling came in 1997 when President K. R. Narayanan turned down the United Front government's request to establish President's control in Uttar Pradesh. A year later, he again rejected Prime Minister Atal Behari Vajpayee's BJP government's plan to impose the President's rule in Bihar. Narayanan's minute opposed the Bihar proposal, arguing that the Governor had not shown that the state's constitutional apparatus had failed, which is a necessary condition for applying Article 356. It further stated that it would be foolish to act in Bihar under Article 356 without first issuing warnings, issuing directions, and asking for explanations from the state. Considering the majority support the government led by Shrimati Rabri Devi possessed in the legislative assembly was imperative.

The doctrine in Bommai was applied again by the Supreme Court in the Bihar case of Rameshwar Prasad & Ors v. Union of India<sup>6</sup>. In 2005, Governor Buta Singh proposed dissolving the state assembly; however, no meeting of the assembly was held. The court denied the assembly's request to reconvene while finding that the imposition was illegal because new elections had already been set. Singh resigned following the decision.

The Bommai verdict in 1994 and the Narayanan interventions in 1997 and 1998 led to a dramatic drop in the number of examples of the President's rule being imposed arbitrarily. Notably, during the governments of the 1990s, there was never an outright parliamentary majority for any one party. Constitutional principles were first established and upheld by state bodies that were not largely dominated by strong political leadership with substantial majorities.

The long-standing dynamics have been tested by the rise of a one-party majority government centred in the capital. There has been a recent increase in Article 356 enforcement actions, and it looks like more instances may follow shortly. This year, the Supreme Court heard arguments against the use of Article 356 in Arunachal Pradesh for nearly a month. Other forces may have surpassed any justice that could have been attained through the legal system. The Supreme Court is most likely not too far away from the Uttarakhand case either.

Judicial review's guiding concepts and parameters were established by the Bommai and Rameshwar Prasad instances. The key question is whether the court will be willing to navigate the political minefield successfully and quickly enough to influence the political process. To

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<sup>6</sup> Rameshwar Prasad and Ors v Union of India, 2006 2 SCC 1

expand its empire now, a majority administration would be willing to put up with criticism in the distant future if there isn't a strong court injunction. Whether the judiciary is ready to support and apply the established doctrine in the context of the Modi era is the real question. The next several months should see the answers to these intriguing times come to light.

A few historic instances of the President's rule where the governor is certain that a state's constitutional machinery is malfunctioning are covered by Article 356.<sup>7</sup> The governor must confirm that every treatment option has been exhausted before sending a report to the President. As such, the court or cases presently under consideration centre on the state governor's report to invoke Article 356. In the most recent case, in Shivraj Singh Chauhan<sup>8</sup> case Under Rule 278 of the Madhya Pradesh Assembly Rules, the speaker approved the chief minister of Madhya Pradesh's recommendation, which led to the governor's dismissal of six members of the Cabinet. Given this, the court looks into and carefully evaluates the Governor's choice to submit a report recommending that the floor test be conducted under Article 356 and if it makes sense given the specific circumstances of that case. The rejection and reporting of the need for Presidential Rule indicates that not enough thought appears to have been given to alternative solutions to the issue before adopting Article 356.

In another recent case. E Giri Yadav<sup>9</sup>, the court examines the circumstances that might bring Article 356 into play. Although this is a long-solved point, it is worth bringing up again to clarify that Article 356 covers more than only matters about "the Government of the state is carried on, respecting the terms of this constitution."<sup>10</sup>, however, it can also be used about "internal unrest brought on by an armed insurrection, not in the event of any other internal unrest The court declares in Nabam Rebia that "Although the Governor's report is not definitive, its importance cannot be disputed. Such report may serve as the only and exclusive foundation for action under Article 356<sup>11</sup>." The court must continue to operate impartially and by the oath taken, and the governor is a crucial constitutional figure. With this in mind, the court also clearly recognises that the report might, under some circumstances, mislead or sway the President's judgement, which might have disastrous ramifications for the concept of federation. The report requests, at most, caution and places a significant deal of dependence on the governor's performance.

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<sup>7</sup> Government of NCT Delhi v UOI, 2018, MANU/SC/0680/2018

<sup>8</sup> Shivraj Singh Chouhan and Ors. V Speaker Madhya Pradesh Legislative Assembly, 2020

<sup>9</sup> E. Giri Yadav v Union of India and Ors., 2012

<sup>10</sup> The Constitution of India, Article 355

<sup>11</sup> Nabam Rebia and Bamang v Deputy Speaker and Ors., 2016 SCC Online SC 30

Since the authority to declare it has been abused in the past, the legislature must change Article 356 for the good of the country. The legitimacy and authority of state governors in India are unaffected by the proposed modification. According to Dr A.P.J. Abdul Kalam, "There are various checks and balances with the independence to rise above the day-to-day politics and override compulsions either arising from the central system or the state system," as stated in the Punchhi Commission paper. This quotation was the impetus behind the change.<sup>12</sup> This is an effort to lessen the quantity of illegal use of the power granted to Union officials. By extending the current process and placing accountability for the successful use of Article 356 on the relevant executive Union entities, the proposed change seeks to obstruct it.

Article 356 has been routinely abused by the Central Government to usurp state power since independence, which has led to an ongoing issue with its application. The initial instance was in Punjab,<sup>13</sup> where the necessity of imposing the Emergency to address a crisis inside the same party was established, laying the groundwork for future potential exploitation of the Article. Between 1951 and 1967, the clause was used just twelve times; however, in the eight years that followed, it was used sixty-two times. In 1977, it was collectively put into effect in nine states. In every instance when it was necessary, the court upheld constitutional supremacy, acting as its defender and guardian. This was evident in historical cases like *Shamsher Singh*<sup>14</sup>, *the State of Rajasthan*<sup>15</sup>, and *S.R. Bommai*<sup>16</sup>, wherein the Supreme Court created rules for enforcing Article 356 and explained the importance of Emergency Provisions about states.

Given the increasing use of emergency measures throughout the 1970s, the Indian government formed the Sarkaria Commission in 1983 to examine and evaluate the union government's relationship with the states. The governor's role and the implementation of emergency provisions, which outline when Article 356 should take effect, were two of the key subjects that the commission examined. The administration did not heed the advice, but the courts are nonetheless considering them. The laws and precedents set by the courts barely matter unless the actions of the ruling class are challenged. For example, the governors of Uttarakhand and Arunachal Pradesh ignored the guidelines outlined in the *S.R. Bommai* ruling because the President's rule

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<sup>12</sup> Constitutional Governance and the Management of Centre-State Relations', Justice Madan Mohan Punchhi, Volume 2, Centre-State Relations Commission Report, March 2010

<sup>13</sup> 1951

<sup>14</sup> *Shamsher Singh v State of Punjab*, (1974) 2 SCC 831

<sup>15</sup> *State of Rajasthan & Ors v Union of India*, AIR 1977 SC 1361

<sup>16</sup> *S. R. Bommai and Ors v union of India and Ors*, (1994) 3 SCC 1

was implemented in those states without a floor test. Consequently, the Indian government must implement the Sarkaria Commission's recommendations and adhere to the precedents set by the courts.

