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PRESIDENTIAL RULE: ARTICLE 356

**AUTHORED BY-
MS. DEEPANSHI TIWARI**

ABSTRACT

Our founding fathers created the Emergency Provisions to address such extraordinary circumstances that pose a serious threat to the security and democracy of India or any portion of its territory. It was set up in such a hierarchy that no constitutional post was given the authority to impose tyranny. The President, the Governor, and the Union Government were all to be equally involved in the declaration of the Emergency. Despite having the last say on whether to approve the proclamation, the President was required to consult with the Union Cabinet and, in the event of a state of emergency, be satisfied by the Governor.

INTRODUCTION

The Indian Constitution establishes the nation's federal structure and lays forth specific duties for the national and state governments. Schedule 7 of the Constitution makes specific reference to the legislative authority of the federal and state governments. The President's declaration of an emergency is one of a few situations, though, in which the federal government can invade a state's territory. In the event of "failure of the Constitutional machinery," the President of India has the authority to declare a state to be in an emergency and assume control of the state's legislative and executive branches. If the President is certain that a situation has developed in which the government of the State cannot be carried out in accordance with the provisions of this Constitution, the President may declare an emergency in a state, according to Article 356. When a state declares president rule, the elected government is overthrown, the legislative body is put on hold, and the president, acting through the governor who is designated as his agent, takes direct control of the state's administration. Article 356 has been the subject of debate and discussion since it was first enacted since the president's control may jeopardise the country's federal system. Article 356 was inspired by Section 93 of the Government of India Act, which had a similar clause that allowed the governor to declare an emergency if the province couldn't be managed in line with the act's rules. In the Indian Constitution, this clause was added by changing the word "governor" to "President." However, a number of members of the Constitutional assembly criticised the provision establishing President control in a state, stressing the possibility of union dominance due to the ambiguous and subjective nature of the phrase "otherwise," which is used in Article 356.

The federal government has frequently utilised Article 356 as a tool to override state governments in order to further their political goals. It is a well-established tenet of Indian democracy that the governor serves at the leisure of the president, and that the president ultimately receives assistance from and advice from the council of ministers that are members of a certain political party. From this fact, it can be inferred that the national government may exploit this clause as a means of defeating the state's opposition party. As a result, it is doubtful if the President's use of his or her discretionary power to declare a state of emergency is lawful because there is a good likelihood that the president's decision will be influenced by the central political party's ideas.

Background of Article 356: President's Rule

Articles 352-360 of Part XVIII of the Indian Constitution define emergency provisions. As it relates to the security of India or any state from war, external attack, and armed insurrection, Article 352 allows for the declaration of an emergency. Article 354 specifies the implementation of regulations relating to the distribution of revenues when a proclamation of emergency is in place, while Article 353 specifies the effects of the declaration of emergency under Article 352. Article 355 outlines the Union's responsibility to defend states from external invasion and domestic unrest, and Article 356 outlines emergency provisions in the event that a state's constitutional machinery fails.

In many democracies, there are occasions when the government is granted specific powers that are normally outside its purview to deal with emergency problems. Country to country variations exist in the emergency provisions. Some nations have very specific and carefully established emergency plans, whereas others do not. India adopted Germany's emergency legislation because of how carefully specified the emergency measures are there. National and state emergencies exist in both Germany and India, which are frequently absent in other big democracies like the United States of America, which also has national and financial emergencies. In India and Germany, the central executive, who has the authority to declare an emergency, is responsible for doing so. Furthermore, the constitutions of each of these nations outline the repercussions of emergencies, thus there is no reliance on the judiciary or its interpretation.

Therefore, it might be claimed that since Germany is where India's emergency provisions originated on both the national and state levels, the two nations continue to have a lot in common in this area.

Article 356

The Indian Constitution's emergency clauses include articles like Article 356. It's a paragraph in part XVIII (Article 352- 360).

Article 356 is implemented in India on a state whose constitutional apparatus has broken down. In the case that a state government cannot run its affairs in accordance with the Constitution, the state comes directly under the supervision of the federal government. In other words, it is "under President's control." As a result, the centrally chosen Governor, who is authorised to pick retired civil employees or other administrators to help him, exercises the executive authority. The Indian Constitution's Article 356 addresses President's Rule. Article 355 of the Indian Constitution, which stated that "every state must be protected against external aggression and internal disturbance and it should be ensured that the government of every state is carried on in accordance with this Constitution," does not specifically state how the Union must carry out its duty to protect a State against external aggression and internal disturbance; it is left to the Union's assessment as to how to handle any such situation. When a state's constitutional machinery malfunctions, the President of India is empowered by Article 356 of the Indian Constitution to impose President's Rule on that state.

There could be many instances in which the constitutional machinery fails. The Governor is responsible for informing the President of any such circumstances that he deems pertinent. Although the President has the authority to declare a state of emergency, he needs notification from the Union Cabinet in order to take the appropriate action under Article 74. Similar to the President, the Governor is required under Article 163 to act in accordance with the advice of the Council of Ministers of the State, but there are particular circumstances in which he may exercise his discretion. In accordance with Article 159, he is obligated to

uphold, defend, and defend the Constitution. According to this obligation, he must inform the President that a situation has developed in which the State's governance cannot be carried out in line with the Constitution's provisions without the State Council of Ministers' opinion. As a result, he must do two distinct tasks: first, act on the State Council of Ministers' advice; and second, report to the President regarding the situation under Article 356 (1) without the State Council of Ministers' advice.

The President can make a proclamation pursuant to Article 356(1) without relying on reports from the Governor by doing so. Instead, he must depend on reports that have been sent to him. These reports might come from the media, the Union Cabinet, etc. In the instance of Uttarakhand, the president not only took the letter from the governor into consideration but also letters that opposition party leaders in the State gave to him and the cabinet note. Any or all of the activities listed in clauses (a), (b), and (c) of 356 may be taken by making such a declaration (1).

Major Persons and their Role involved in Article 356

The Governor

Under The Government of India Act, 1858, the British established the role of governor. It was then established to serve as a representative of the British Crown, acting under the Governor-direction. General's He was tasked with serving as the hub of the provincial government and defending British interests in areas where they had legal agreements, such as the princely States. The Government of India Act, 1937 established provincial autonomy and provided Indians with legislative reservations. Now, the Governor had to follow the province's Council of Ministers' recommendations. Even then, he was given some unique discretionary powers that he can exercise under the direction of the governor-general even without such recommendations. Most likely, the goal was to give the British government more power than the elected one. A democratically elected type of government with a quasi-federal power structure was emphasised by the Constitution's drafters after the country gained its independence. Greater authority than the States was granted to the Union. The Governor's office remained unaltered, but his latitude for discretion was constrained. He was now made answerable only to the President who selected him.

He had a responsibility to uphold, defend, and defend the Constitution in the State where he was appointed. With the exception of situations when the Constitution specifically compelled him to exercise his discretion, the Council of Ministers of that State was to assist and advise him as he carried out his duties. Even though the Governor was chosen by the President on the Union's advice, the Union Government was not allowed any direct access to the Governor's office. A report on the state of the State is sent by the Governor to the President pursuant to Article 356. He has a responsibility to ensure that the administration is run in a way that can be recognised as good, effective, and honest governance. He may request an action to do so without the Council of Ministers' counsel in order to ascertain the Legislative Assembly's confidence in the Government. Without first becoming sure, he cannot recommend the President declare an emergency suddenly or on his own. He is never supposed to follow the counsel of the opposing party or a rebellious faction of the ruling party; instead, he must act impartially in accordance with his obligations.

Additionally, in the instance of Bommai, it was decided that the Emergency's proposal was weak because to legislative horse trading (supra). If there isn't any strong evidence to back up the decision, it was decided that the Governor's acts are mala fide and founded on simple ipse dixit.

The President

The President is the one who declares an emergency in all its forms. As recommended by the Council of Ministers, he is the last and only person with the authority to declare an emergency throughout all of India or in any particular region. The emergency is declared upon his ascent. Being the Supreme Head of the Executive, he can issue direct orders, but only with the help and counsel of the Union Council of Ministers. The President is a subordinate of the Governors of the States, and it is their responsibility to inform him of the circumstances in their jurisdiction. The President does have the ultimate right to declare an emergency under emergency provisions, such as Articles 352, 356, or 360, but he is obligated to do so in accordance with the Union's instructions under Article 74. (1). Except in rare circumstances, where he believes he should act in accordance with his best judgement to uphold the Article 60 oath and preserve, protect, and defend the Constitution. He is obligated to act whenever necessary in the Constitution's best interests. He has the same obligation toward States under Article 356. He has the power to declare a state of emergency, but only on the suggestion of the Council of Ministers because it is the responsibility of the Union to defend the States from external invasion and domestic unrest.

The disagreement must include a legal claim based on law or fact, which is one of the requirements of Article 131. The President is forced to issue a proclamation if the Central Government chooses to advise him or her to do so. This clearly demonstrates that the Central Government has the legal authority to request that the President make a Proclamation for the dissolution of an Assembly as one of the crucial tasks that a Council of Ministers must carry out in support of and guidance to the President. However, the State Governments have no such rights at all. Insofar as the dissolution of an assembly is concerned, there is no provision in the Constitution that requires the State Government to be contacted or to provide its approval before the Council of Ministers submits its advice to the President on an issue pertaining to the State.

According to Art. 356 of the Constitution, the State Government's authority to exist is dependent on its provisions. The State Governments do not have the authority to challenge the constitutional mandate set forth in Article 356 if the President chooses to follow the Central Government's Council of Ministers' recommendation and declare the Assemblies dissolved.

The Union Government

The Union Government was given higher preference in the exercise of its powers since our Constitution's drafters wanted to make India into an ideal democratic republic where the government is run by, for, and on behalf of the people. They have been given extensive authority over the States and the Executives under Article 74(1), as well as Articles 256, 257, 352, and other provisions because they are the direct representatives of the people. According to the Constitution's Seventh Schedule, the powers of both Governments are explicitly defined in reference to States. Under List III of the same schedule, the reciprocal powers are provided. The laws created by the Union Government were to be applied over the States in the event of a conflict. As a result, the Union and States were established for wider expansion and better representation of the people, respectively.

In the case of a breakdown in the constitutional machinery or any situation where the State Government cannot be managed in accordance with the Constitution's provisions, Article 356

is an emergency mechanism that imposes central government power in the State through the President. It is never intended for the Central Government to abuse its authority to oust the State's opposition party government by enforcing President's rule under Article 74. (1).

Sarkaria Commission

The Sarkaria Commission was established by the Indian national government in June 1983. The Sarkaria Commission was tasked with examining the dynamic and distribution of authority between the nation's state and federal administrations and making reforms within the constraints of the Indian Constitution. Shri B. Sivaraman, Dr. S. R. Sen, and Justice R. S. Sarkaria, a former Supreme Court justice, make up the commission's three members. The Commission conducted a thorough investigation before submitting its 1600-page final report in January 1988. The final report contains 247 recommendations, some of which are related to center-state relations, particularly those that deal with legislative issues, the governors' roles, and the use of Article 356.

The 1987 Sarkaria Report, which was filed, can be used to understand Article 356. A validly elected government that has not been defeated on the floor of the house should be given the chance to prove its majority through a "Floor-test" by summoning an early session of the parliament, according to the commission's recommendation. If the governor suggests imposing President's rule based on his personal opinion that the ministry lacks the support of the assembly, that would be an improper use of the authority granted by section 356. (1). The phrase "The government of the State cannot be carried on in accordance with the provisions of this Constitution" was broken down into four situations by the report: political crisis, internal subversion, physical breakdown, and non-compliance with constitutional directives of the Union Executive. Additionally, it was argued that a broad reading of Article 356 could lessen its misuse. The Sarkaria Commission's recommendations lacked the originality and ingenuity necessary to tackle the President's Rule issue, and they appeared to be a band-aid fix. The Sarkaria Commission endorsed the Center powers as necessary and unavoidable, refusing to look into the Union Government's actual abuse of constitutional provisions and offering solutions to defend them going forward. The panel, however, disregarded a number of issues with the initial separation of powers between the Union and the states.

Misuse of Article 356

A quick scan of the data reveals that this has not been the case at all. It has been used more than 100 times since independence, according to the Sakaria Commission.

Sometimes perfectly lawful state officials have been removed from office in order to get them to submit or to offer the Union government's own party a chance to take over the state. Union administrations have taken on the very role that Dr. Ambedkar thought they would in order to establish their legitimacy—that of being the ones who determine the effectiveness of state governance. The most malicious use of Article 356 occurred throughout the 1970s and 1980s, which will be remembered. It was used 59 times between 1971 and 1984, with the majority of those uses occurring between 1977 and 1979 under the Morai Desai cabinet. The post-emergency Central government utilised it as a weapon in its vendetta against state governments headed by the Congress. Following her return to office in 1980, Indira Gandhi later paid it forward, using it 17 times between 1980 and 1984. Even though Jawaharlal Nehru had abused Article 356 to overthrow Kerala's majority Communist government, Indira Gandhi is remembered for using it as a weapon against state governments. After 1967, when

the Congress party lost control of several Indian states, its frequency drastically increased. In actuality, Indira Gandhi blocked the courts' ability to examine the president's emergency proclamation to enact the 38th constitutional Amendment, which stifled Article 356. However, the original article 356 as intended by Dr. Ambedkar was reinstated courtesy to the 44th Constitutional Amendment Act, which was proposed in 1978 by Morarji Desai. The most frequent use of Article 356 has been in Manipur. Long stretches of bloodshed and the state's profoundly fractured internal politics have compelled the Union administration to force its will on the State.

Along with Manipur, the politically significant States of UP and Bihar have long been on the center's radar despite their fractured political systems.

Guidelines established by the Supreme Court to prevent abuse of Constitutional Article 356-

*On the House Floor, the majority enjoyed by the council of ministers will be put to the test.

*The state should receive a warning from the centre with a week to respond.

*The Court may challenge the evidence supporting the President's satisfaction, but it cannot contest the advice provided by the Council of Ministers to the President. , Therefore, judicial review will only address the following three issues:

- 1) Does the declaration have any supporting evidence?
- 2) Is the information current?
- 3) Was Power ever abused in any way?

- The Court will offer relief if Article 356 is used improperly.
- The President's authority is constrained by Article 356(3). Therefore, unless the proclamation is accepted by the parliament, the president may not act in an irreversible manner, i.e., he may not dissolve the assembly.
- Article 356 is only appropriate when the constitutional mechanism, not the administrative apparatus, breaks down.
- The center must employ Article 356 carefully; otherwise, it risks upending the constitutional framework between it and the State.

Recent Instances of Imposition of Article 356

- From February 14, 2014, until February 11, 2015, President's rule was implemented in Delhi, and the Assembly was placed in suspended animation. Following the failure of his attempt to introduce the Jan Lokpal Bill in the Assembly, Arvind Kejriwal resigned as Delhi's chief executive officer.
- Imposed in Maharashtra from September 28 to October 31, 2014, following Prithiviraj Chavan's resignation as a result of the state's 15-year Congress-NCP alliance's dissolution.
- There was a political crisis in Andhra Pradesh from February 28, 2014, until June 8, 2014, as a result of the resignation of the chief minister, N Kiran Reddy, and other Congress legislators on February 19, who were protesting the creation of the separate state of Telangana and bifurcation of the state.

- The Arjun Munda-led BJP administration in Jharkhand was reduced to a minority after Jharkhand Mukti Mocha lost support between January 18, 2013, and July 12, 2013. Munda resigned and asked for the State Assembly to be dissolved.
- In the Buta Singh case, the Supreme Court ruled that the dissolution of the Bihar assembly was invalid in January 2006. It was decided that the governor's report could not be relied upon at face value and had to be approved by the council of ministers before President's rule could be implemented.
- The State of Uttarakhand was placed under President control on March 27, 2016, citing "breakdown of governance."

States which have come under president's rule:

1. Andhra Pradesh – 3 times
2. Arunachal Pradesh – 3times
3. Assam – 4 times
4. Bihar – 8 times
5. Delhi- 1 time
6. Goa – 5 times
7. Gujarat – 5 times
8. Haryana – 3 times
9. Himachal Pradesh – 2 times
10. Jammu & Kashmir – 7 times
11. Jharkhand – 3 times
12. Karnataka – 5 times
13. Kerala – 4 times
14. Madhya Pradesh – 3 times
15. Maharashtra – 2 times
16. Manipur- 10 times
17. Meghalaya – 2 times
18. Mizoram – 3 times
19. Nagaland – 4 times
20. Orissa- 6 times
21. Punjab- 8 times
22. Rajasthan – 4times
23. Sikkim – 2 times
24. Tamil Nadu – 3 times
25. Tripura – 3 times
26. Uttarakhand – 1 time
27. Uttar Pradesh – 9 times
28. West Bengal- 4 times

The central government was granted extensive powers under Article 356 to exercise its dominance. The Indian Constitution is unified by Article 356. The fact that Article 356 has been used so frequently shows how often it has been abused. Its intent is to give the central government more authority in order to protect the unity and integrity of the country, endangering India's federal structure. More than 100 times, the State's duly elected administration has been overthrown solely for political reasons using the dead letter.

Landmark Judgements

1- State of Rajasthan vs. Union Of India (1977)

On April 17, 1977, the Union Home Minister of the Janta Party Government sent a communication advising the state governments of Uttar Pradesh, Bihar, Haryana, Madhya Pradesh, Himachal Pradesh, West Bengal, Orissa, Punjab, and Rajasthan to notify their governors for the dissolution of the legislative assembly and threatening to dissolve the legislature in accordance with Article 356. The Congress Party suffered a resounding defeat in these nine states, which compelled the state administration to seek a new mandate. The non-justiciability of the circumstance justifying invoking Article 356 was a topic that the Supreme Court looked at. Once more, the judicial review of this article was invalidated in this instance. These factors can occasionally lead to conflict between the court and executive over the question of reviewability. Since the courts were forbidden from becoming involved in these disputes, it occasionally demonstrates how the executive dominates the other branches of government.

However, the court ruled that they could not discuss the sufficiency of the facts and circumstances that the central government relies on in the current case in order to reach its satisfaction. Therefore, the courts will have the authority to investigate if the satisfaction was granted with malicious purpose or on entirely unrelated and irrelevant grounds since in such circumstances, there would be no presidential satisfaction over the topic in which he is obliged to be satisfied. Additionally, if the president's satisfaction is a requirement under Article 356 (1) and it is clear that the president was not satisfied with the situation, the exercise would be unconstitutional. It can be contested on the grounds that it is false or entirely unrelated and unrelated reasons.

People no longer have faith in the state's ruling party, according to the "State of Rajasthan v. UOI" case. Therefore, new elections should be held to determine whether or not voters still support the same party after the Congress party was thoroughly defeated in the Lok Sabha elections. Thus, never before in the history of the nation has there been such a resounding and unambiguous verdict from the people against the ruling party. As a result, the court emphasised in this ruling that the Indian Constitution is more unitary than federal. After clause 5 of the 44th Amendment was removed, the Supreme Court ruled in "A.K. Roy v. Union of India" that "any remarks made in the "State of Rajasthan v. Union of India" based on that clause cannot hold any validity."

2- S.R. Bommai vs. Union Of India (SC)

The ruling in this case is regarded as a turning point in Indian legal history. until the case's conclusion According to Article 356's provision, the presidential rule has been invoked up to 95 times in the nation. Therefore, it is obvious that there was a need to address the legal issue that was developing and to draw the judiciary's attention. We may state that the Supreme Court thoroughly considered all the problems related to article 356 in this instance. A bench of nine judges heard the arguments made by both sides in this dispute.

Due to the absence of majority support, the governor of Karnataka filed a report to the president on the council of ministers' decision to withdraw support from the party in power after receiving nineteen letters from the council of ministers declaring their intention to do so. The Governor explained in the announcement that the current Chief Minister Mr. S.R. Bommai was unsuccessful in getting a majority for the assembly, and as a result, the State should be placed under president's administration in accordance with Article 356(1) of the Indian Constitution.

Seven out of the nineteen ministers complained about the falsification in their corresponding letters on the very day after the report was sent; as a result, Mr. S.R. Bommai, the Chief Minister and the Law Minister, visited to call the assembly on the same day in order to demonstrate the majority of his government in the assembly. The President received the report of the same. However, on the same day, the Governor again gave the President a report stating that Mr. S.R. Bommai, the former Chief Minister of Karnataka, had lost his guarantee of a majority and had asked the president to declare an emergency in the state in accordance with Article 356. The president declared the emergency in light of this report. He had previously brought a writ case challenging the declaration's validity before the Karnataka High Court's special three-judge bench, but it had been rejected. Meghalaya, Nagaland, Madhya Pradesh, Rajasthan, and Himanchal Pradesh all had similar legal issues, therefore the Supreme Court's bench of 9 judges considered all of the petitions concurrently.

Judgment of the case:-

1. The Hon'ble court apprehended that the power of the president to declare an emergency in a state i.e. the presidential rule is subject to some restrictions and it should be on the source of the report and opinion of the governor and not in the sole approval.
2. The Hon'ble court also held that the court owns the power to Judicial review the declaration and if it is found to be deceptive, the court can be trapped down the proclamation even if it has received the consensus of both houses.
3. The Hon'ble court censoriously examined three broad issues i.e. the nature of Federalism, Secularism, and the proclamation being under the space of judicial review.
4. The case of S.R. Bommai V. Union of India is no doubt a very big change in the Constitution of India but it has left out a lot of predicaments and has not convincingly established the matter. Hon'ble judges have pronounced 6 different judgments and these are no single judgment that indicated the ratio of majority and minority in any part.
5. This left many of the points in dilemma and there are many points like the authenticity of Sarkaria Commission's report which left in between and no minority or majority has been made. At least, all the judgments distinct should have complied in a single order indicating the majority and the minority.

Conclusion

The Government of India Act of 1935 served as the *pari materia* source for Article 356. According to the Indian Constitution, this article should only be used in the rarest of circumstances, but as we have seen, it has been misused more than 100 times as of this writing.

In an interview with the Indian Express, the former attorney general Soli Sorabjee said, "The Governor's report is a significant document in the case. President's Rule is not only justified but also necessary if the report is not swayed by unrelated factors and presents a convincing case of the state's constitutional machinery failing.

The Indian Constitution is meant to be somewhat federal. Article 356 is not intended to be used to undermine the states' autonomy. The Supreme Court said in the SR Bommai case that article 356 should only be used in severe circumstances where the constitutional machinery has failed totally and given guidelines for its improper application. It must be applied correctly or the Indian Constitution's fundamental features, including its federal structure, will be damaged and it will turn into a unitary constitution. It was important to realize that, in contrast to a mindset of superiority and dominance, only the spirit of "Cooperative federalism" can maintain the equilibrium between the Union and the State and advance the welfare of the populace. No entity may assert dominance under our constitution.

