

“ROLE OF JUDICIARY ON PRESIDENTIAL RULE”

Author: Dr. Brahm Dev Pandey

Assistant Professor

Faculty of Law

CMP Degree College

Allahabad

Co-Author: Sameer Pandey

Research Scholar

Faculty of Law

CMP Degree College , Prayagraj

Abstract

The Constitution of India is an instrument that provides for a federal set-up in the country and also specifies definite functions for central and state government. The jurisdiction of central and state government with regard to the law-making process has been explicitly mentioned in Schedule 7 of the Constitution. However, there are certain circumstances through which the central government can enter the jurisdiction of states and the Presidential proclamation of emergency is one of them. The President of India can overtake the legislative and executive power of the state by imposing the emergency in a state in case of “failure of Constitutional machinery”. Article 356 states that “If the President, on receipt of 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 be Proclaim emergency in a state”. With the proclamation of President rule in a state, the elected government is dismissed and legislative assembly got suspended and the administration of the state is directly controlled by the President through his representative governor. Normally President's Rule in a State should be proclaimed on the basis of Governor's report under Article 356(1). The Governor's report should be a 'speaking document,' containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy

himself, as to the existence or otherwise of the situation contemplated in Article 356. Since its inception, Article 356 has been a matter of debate and discussion because the President's rule has a probability of hampering the federal structure of the nation. The origin of Article 356 can be traced back to Section 93 of the Government of India Act that provided the same provision of imposing emergency by the governor in case the province can't be run in accordance with provisions of the act. This section was incorporated in the Indian Constitution by replacing 'governor' with 'President'. However, various members of the Constitutional assembly had opposed this provision of imposing President rule in a state citing the reason that Article 356 may result in union dominance over the state because of the vague and subjective nature of the word 'otherwise'.

Key words: Democracy, politics, Emergency provision, India, presidential rule, Article 356

Introduction

Emergency provisions are listed in Part XVIII of the Constitution. President's Rule is dealt with under Article 356 of the Indian Constitution. Article 356 of the Indian Constitution gives the President the power to impose the President's Rule on any state in case the constitutional machinery of that state fails. When and if the President gets a report from the Governor of the state or is otherwise convinced or satisfied that the state's condition is such that the state government cannot rule as per the Constitution's provisions, he can then, based on his assessment, impose President's Rule in that State or, if a state fails to adhere to all orders made by the Union on subjects over which it has authority, President's Rule can be enforced.

The establishment of the President's Rule in any state requires parliamentary consent and must be approved by both House of Parliaments within two months of its execution. Hereafter, a simple majority's approval is required for the establishment of the President's Rule, which can stay in effect for six months. It can be prolonged for three years with legislative permission every six months after its implementation. Article 357 contains some consequential measures relating to the exercise of legislative powers under the proclamation established under Article 356.

But, the chairman of the drafting committee B.R. Ambedkar was of the view that any provision of the Constitution or a law can be abused but the same can't be used as a reason to not

incorporate the law. In the constituent assembly debate, he stated that “In fact, I share the sentiments expressed by my Hon’ble friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain as dead letters. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces”.

Basically, Ambedkar was trying to say that Article 356 can be used in the rarest of rare cases and not randomly on trivial issues. The founding fathers of the Constitution have considered that the socio-political diversities across the nation has the probability of attracting difficult situation as the road to the democracy is not so smooth and therefore, the President should be given such power to protect the state from a situation of the breakdown of law and order and to maintain peace and harmony in the state.

Since then, there are numerous instances where Article 356 was used as a device to surpass state government by the central government to achieve their political good. It is an established principle of Indian democracy that Governor Acts under the pleasure of President and President eventually work under the aid and advice of the council of ministers who belong to a particular political party. From this fact, it can be derived that the central government can use this provision as a device to surpass the opposition party in a state.

Therefore, the validity of the exercise of discretionary power by the President to impose Presidential rule is questionable as there is a strong chance that the President opinion of imposing an emergency in a state is influenced by the ideologies of a political party at the center. The author in this article has analyzed the nature and scope of Article 356 of the Constitution with special emphasis on the judgment of the apex court in Bommai’s case. Furthermore, the paper has scrutinized the instances of President rule applied over a period of time i.e. 2014 to 2020, its reason and validity in accordance with Constitutional provisions, and the need to amend the concerned provision.

Indian emergency laws : the origin

In many democratic countries, there arise times when certain powers, which in normal situations are beyond the scope of the government, get vested on it to address situations of emergency. The emergency provisions differ from country to country. Some countries have their emergency provisions very detailed and meticulously defined, whereas others do not.

In Germany, the emergency provisions are very much meticulously defined, and India borrowed its emergency laws from Germany. Both Germany and India have national and state emergencies, which are often not present in other major democracies such as the United States of America, which has national and financial emergencies.

In India and Germany, the emergency declaration depends on the central executive who has the power of proclaiming it. Furthermore, in both these countries, the consequences of emergencies are specified in the constitution, and hence there is no dependence on the judiciary or its interpretation. This however does not mean that they are free from a judicial review which will be elaborated upon later in this research.

Therefore, it can be argued that as the emergency provisions of India, both at the national and state level, find their origin in Germany, the two countries continue to share many similarities in this regard.

Article 356- its nature and scope

The nature and scope of Article 356, it has been observed that there are two essential components of Article 356. Firstly, the President can impose President rule in a state based on a report sent by the governor of the concerned state or it can be also imposed in other circumstances that deem fit to the President on the aid and advice of the council of ministers to protect the state. The same can be reflected in the use of the word 'otherwise' in Article 356. Secondly, President rule can be applied in a state when there is a failure of Constitutional machinery. Failure of Constitutional machinery refers to a situation when the state government can't carry out its functions following provisions of the Constitution.

Under article 356, the governor has the power to prepare a report and send it to the President in case there is a condition of failure of Constitutional machinery, or political crisis such as

house riding prevailing in a state. However, the President has also the power to impose an emergency in a state based on information gained through sources other than the governor's report. Till now, the scope and nature of the phrase 'failure of Constitutional machinery' and 'otherwise' have not been defined by legislature and it remains a wide and subjective issue i.e., depend on case-to-case basis.¹ But, the subject matter of the governor's report that can be a probable ground for imposition of President rule has been brought under the ambit of judicial review.

The courts can examine the subject matter of the governor's report that has attracted 'President's satisfaction'. Governor acts under the pleasure of President and President acts on aid and advice of the council of ministers belonging to the ruling party at the center. Therefore, there is a great probability of the governor's report being influenced by the ruling party's interests and agendas at the center and it has also been observed in various times. For example, India Gandhi as PM has a record of imposing President rule the most number of times and in 90% circumstances, it was imposed in states that were ruled by opposition parties or in states that didn't run in accordance with her party interests. Considering all these things, the apex court of the country in *S.R. Bommai v UOI*² stated that courts have the right to examine the objectivity of the governor's report.

President's rule: Parliamentary approval is necessary for the imposition of President's Rule on any state. The proclamation of President's Rule should be approved in both Houses of the Parliament within two months of its issue. The approval is through a simple majority. The President's Rule is initially for a period of six months. Later, it can be extended for a period of three years with parliamentary approval, every six months.

The 44th Amendment to the Constitution (1978) brought in some constraints on the imposition of the President's Rule beyond a period of one year. It says that President's Rule cannot be extended beyond one year unless:

¹ J.R. Siwach, *State Autonomy and Presidential Rule*, 46(2) Indian Political Science Association 150-166 (1985).

² [1994] 2 SCR 644

- There is a national emergency in India.
- The Election Commission of India certifies that it is necessary to continue the President's Rule in the state because of difficulties in conducting assembly elections to the state.
- The governor carries on with the administration of the state on behalf of the President. He or she takes the help of the state's Chief Secretary and other advisors/administrators whom he or she can appoint.
- The President has the power to declare that the state legislature's powers would be exercised by the Parliament.
- The state legislative assembly would be either suspended or dissolved by the President.
- When the Parliament is not in session, the President can promulgate ordinances with respect to the state's administration.

The role of Dr. B. R. Ambedkar

At the time when the Constituent Assembly discussed the need to incorporate Article 356 in the Constitution, stout opposition to it was put forth by some members and it was argued that if power was given to the Centre to intervene, there was a possibility of this Article "being abused or employed for political purposes". But it was hoped by Dr. B. R. Ambedkar that the occasion for invoking these powers under the relevant Article would be very rare and that " *they would remain a dead letter*". However, the Constitutional practice shows that this Article has been invoked one hundred and twenty times during the last six decades. As a result, it is now a subject of controversy and with every invocation of Article 356 the controversy scales new heights.

The main intention of Constitution makers in view of Article 356 was that it must be used solely as an 'emergency power' and it must be invoked only in the event of "failure of constitutional machinery" in the state. Dr. Ambedkar wished that Article 356 would continue to be a "dead letter." However, the reality is entirely different. President's rule was imposed one hundred and seven times till date in various states. Well-functioning state governments were collapsed to pave the way for the Union government's party to acquire power in the state.

The Judiciary Role of Article 356

Although Article 356 was misused by many Prime Ministers, Indira Gandhi is prominent for using it as a political tool against state governments. During her tenure from 1966 to 1977, President's rule was imposed thirty-five times in various states where Congress lost power. Another duration where Article 356 was frequently used was during the post-emergency period. The government led by Janata Party dismissed most state governments where Congress was in power. Expectedly, Indira Gandhi acted similarly when she came back to power in 1980 by dismissing non-Congress governments. However, this frequent political misuse of Article 356 has reduced gradually due to the timely intervention of the judiciary. Judiciary has actively taken measures to curb the misuse of an article and preserve the federal structure.

Article 356 gave the Central government wide powers to stamp its authority on the state governments. Although it was meant only as a means to preserve the integrity and unity of the country, it had been used blatantly to oust state governments who were ruled by political opponents of the centre.

- Between 1966 and 1977, Indira Gandhi's government used it about 39 times against various states.
- In the *S.R. Bommai case (1994)*¹, the Supreme Court of India put forth strict guidelines for the imposition of Article 356
- The proclamation (of President's Rule) is subject to judicial review on grounds of mala fide intention.
- The imposition of Article 356 should be justified by the centre.
- The court has the power to revive the suspended or dissolved state government if the grounds for the imposition is found to be invalid and unconstitutional.
- The state assembly cannot be dissolved before parliamentary approval for the imposition of Article 356 and the President can only suspend the assembly.
- Serious allegations of corruption against the state ministry and financial instability are not grounds for the imposition of Article 356. o Any action by the state government that leads to the security of secularism (which is a basic feature of the Constitution) cannot be grounds for the use of Article 356.

- Article 356 cannot be used to sort out any intraparty issues in the ruling party.
- If the Ministry of the state resigns or is dismissed or loses the majority, then the governor cannot advise the President to impose this article until enough steps are taken by the governor for the formation of an alternative government.
- The power under Article 356 is to be used only in case of exigencies. It is an exceptional power.

Serious questions regarding the misuse of Article 356 have been raised before the Supreme Court in Bommai's Case. In this case, the Chief Minister of Karnataka has been dismissed before providing him a chance to prove his majority at the floor test by the governor and subsequently, the President's rule has been imposed. The court stated that generally the President's satisfaction is not questionable but the governor's report can be examined to ascertain the grounds for the President's satisfaction.

The court held that "the President's satisfaction has to be based on objective material, that material may be available in the report sent to him by the Governor or otherwise or both from the report and other sources. Further, the objective material so available must indicate that the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus the existence of the objective material showing that the government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition precedent before the President issues the proclamation. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question."³

The same has been held in the case of *Rameshwar Prasad v State of Bihar*, in which the court has disqualified the proclamation of President rule in the state after examining the report sent by the governor. It was observed that there was no objective material in the report that has the probability of gaining the satisfaction of the President. Then, in such circumstances, where there is the absence of reasonable grounds in the governor's rule, the court can question the President's decision of imposing President rule.

The objectivity of the governor report here means that the concerned report must show the prevalence of circumstances that result in hampering Constitutional machinery in the state. The

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

situation should be grave as a mere violation of certain provisions of the Constitution can't be termed as a failure of Constitutional machinery and it should be shown that without the proclamation of emergency, the government can be run in accordance with the Constitution.⁴ The court was of the view that imposing an emergency should be the last measure and the governor is required to opt for all the other measures before the proclamation of President rule.

Additionally, another significant aspect of Bommai's case is that the court held that the President's power to impose an emergency is not an absolute power and is subjected to provisions of the Constitution. In simpler words, it can be stated that the President is a Constitutional post and hence, the President is required to act in accordance with the Constitution.

The court held that "The power conferred by article 356 is a conditioned power; it is not an absolute power to be exercised in the discretion of the President. The condition is the formation of satisfaction – subjective, no doubt- that a situation of the type contemplated by the clause has arisen. This satisfaction may be formed on the basis of the report of the Governor or on the basis of other information received by him, or both. The existence of relevant material is a pre-condition to the formation of satisfaction. The use of the word "may" indicate not only discretion but an obligation to consider the advisability and necessity of the action.

The extraordinary power of imposing emergency has been provided to safeguard the state against the crisis of grave nature not to enter into its arena by misusing Article 356. Despite allowance of judicial review of governor's report, misuse of Article 356 still continues because of the broad ambit of Article 356. There is no specific definition of what the terms 'otherwise' and 'failure of Constitutional machinery' mean, eventually leading to its misuse in hands of the central government.

⁴*Nabam Rebia v Deputy Speaker Arunachal Pradesh Legislative Assembly*, (2017) 13 SCC 326.

Conclusion

One needs to understand the gravity of President rule; it's like an encroachment in the ambit of state government thereby violating the federal structure of the country. Additionally, the researcher observed that there are no sufficient grounds to state that there is a failure of Constitutional machinery in the state as there no prevalence of governor's report and such incidents that surpassed the Constitutional principles. The political crisis was there, but no steps such as floor tests were taken to resolve it before suspending the legislative assembly. What the President should do would be to issue a mere warning to the State that has erred, that things are not happening in the way in which they were intended to happen by the Constitution. If the warning fails, the second thing for him to do will be to order an election allowing the people of the State to settle matters by themselves. It is only when these two remedies fail that he should resort to this Article. These pre proclamation steps should be incorporated in the Constitution.

The so-called 'dead letters' of the Constitution that was expected to be used in the rarest of the rare cases has become a device to encroach upon the ambit of state government. It has been observed through analyzing the imposition of emergency in five states that President rule has been even without the prevalence of reasonable grounds and the same has become the dark side of Indian politics. Both central and state governments are supreme in their domain and none of them can claim their superiority over others. Due to the vague nature of Article 356, there is no effective measure that prohibits the misuse of Article 356 in hands of the union government. To protect the federal structure of India, it is compulsory to amend Article 356 in line with recommendations put forward by the court in Bommai's case as well as by the Sarkaria Commission. President rule should always be the last resort and all the steps such as warning the state government that it is not working in accordance with Constitutional provisions, floor test to prove majority, etc. should be followed by the governor.

However, even if Article 356 would be amended while taking into consideration all the recommendations of the Sarkaria Commission, still, there will be a chance of abuse of power because the efficiency of any law depends upon the condition that how well it has been implemented. Therefore, it can be only expected through a strict interpretation of Article 356 that the spirit of 'co-federation should be maintained while opting for President rule and union government

shouldn't use this power to seek their own political interests.

References

1. Constitutional Assembly Debate, IX, August 4, 1949 *Speech by B.R. Ambedkar*.
2. H.M. Rajashekara, *President's Rule in the Indian States*, 48(4) Indian Political Science Association 632-642 (1987).
3. Rukmini S, AMP & Samarth Bansal, *President's Rule: A Story of 100 Years*, The Hindu, (January 29, 2016),
4. *Keshavananda Bharti v State of Kerala*, AIR 1973 SC 1461.
5. Prasad Raj Singh, *Article 356 and Judicial Review*, Social Science Research Network, (October 16, 2010).
6. Anil Ghantas, *State Emergency under Article 356 vis-à-vis Indian Federalism*, 4(1) International Journal of Law 100-110 (2018).
7. K. Madhusudhana Rao, *Authority to recommend President's rule Under Article 356 of the Constitution*, 46 (1) Indian Law Institute 125-132 (2004).
8. J.R. Siwach, *State Autonomy and Presidential Rule*, 46(2) Indian Political Science Association 150-166 (1985).
9. H.S. Jain and Others v. Union of India and Others, (1997) 1 UPLBEC 594.
10. Reddi Govinda Rao v. State of Andhra Pradesh, 2020 SCC OnLine AP 961.
- Tamanaha, Brian Z. (2004). *On the Rule of Law*. Cambridge University Press. p. 3.
11. Durga Das Basu; *Shorter Constitution of India*; New Delhi; Wadhwa and Company, Edition 13th
12. A.G. Noorani; *Presidential System - Indian Debate*; Sage Publications, New Delhi, 1989
13. Venkat Iyer; *States of Emergency : The Indian Experience*, (New Delhi : Butterworths India , 2000)
14. Soli Sorabjee; *Constitutional Morality Violated in Gujarat*, Indian Express, Pune, India, Sept. 21, 1996
15. P.M Bakshi; *The Constitution of India*; Universal Publication Edition, 2002
16. M.P Jain; *Indian Constitutional Law*; Wadhwa and Company, Edition 2003