

Art.356 & Its Implications on Centre-State Relations

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*"The Draft Constitution is, Federal Constitution in as much as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution....."*¹

- Dr.B.R.Ambedkar

Article 356 of the Constitution of India deals with the failure of the constitutional machinery of the Indian state. In the event that government in a state is not able to function as per the Constitution, the state comes under the direct control of the central government, with executive authority exercised through the Governor instead of a Council of Ministers headed by an elected Chief Minister accountable to the state legislature. **Article 356** is one among the nine Articles, beginning from Art. 352 and ending with Art. 360, known as **Emergency Provisions**, enumerated in **Chapter XVIII** of the **Constitution of India**. Art. 356 was introduced as Draft Article 278, on August 3, 1949 by the then Union Law Minister, **Dr. B.R. Ambedkar**, in the Constituent Assembly, and was cleared by it the subsequent day.

Following its landmark judgement in 1994, **the Bommai case**², the Supreme Court of India has clamped down on arbitrary impositions of President's rule by central governments. During a state of emergency, the President is vested with tremendous discretionary powers. Any legislation or constitutional provision that abrogates any of the basic principles of democratic freedom is anathema to most people and the more so to the people of the largest democracy in the world. If the members of the Drafting Committee of the Constitution included a provision that permits a Government to dismiss a duly elected representative body of the people and suspend those freedoms in violation of even the crudest interpretation of a '**separation of powers**,'³ then common sense suggests that it is only to deal with the direst of circumstances and nothing less. But it seems that the remedial nature of the Article has been perverted to impose the domination of the Central Government upon a State Government that does not subscribe to its views. Central control over regional governments is

¹ Ambedkar, B R (1949): Constituent Assembly Debates, Vol. IX, Government of India Publication.

² S.R.Bommai v. Union of India, AIR 1994 SC 1918.

³ C.K.Takwani, '*Lectures on Administrative Law*', (2008), p.31.

essential for the integrity of nations that have federal systems of government, and Article 356 was designed to preserve this integrity, but what remains to be seen is whether it is being used at the cost of sacrificing the interests of democratic freedom.

Grounds for imposing President's rule:

A President's rule could be imposed in any state in India as per the Indian Constitution on the following grounds or circumstances:-

- ❖ State Legislature is unable to elect a leader as Chief Minister;
- ❖ Breakdown of a coalition;
- ❖ Elections postponed for unavoidable reasons;

However most often, until the mid-1990s, it was imposed in states through abuse of the authority of Governors in collusion with the federal government.

Drafting Committee of the Constituent Assembly:

On **August 29, 1947**, a Drafting Committee was set up by the Constituent Assembly. Under the chairmanship of **Dr. B.R. Ambedkar**, it was to prepare a draft Constitution for India. When it was suggested in the Drafting Committee to confer similar powers of emergency as had been held by the **Governor-General** under the **Government of India Act, 1935**, upon the President, many members of that eminent committee vociferously opposed that idea. Dr. Babasaheb Ambedkar then pacified the members stating:

*'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 a dead letter. 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.' He added: 'I hope the first thing he will do would be to issue a clear warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution.'*⁴

By virtue of this earnest advice given by the prime architect of the Indian Constitution, we can safely conclude that this is the very last resort to be used only in the rarest of rare events. A good Constitution must provide for all conceivable exigencies. Therefore this Article is like a safety valve to counter disruption of political machinery in a State.

⁴ National Commission to Review the Working of the Constitution, 'A Consultation Paper on Article 356 of the Constitution' II (2002), available at <http://lawmin.nic.in/ncrwc/finalreport/v2b2-5.html>.

The Sarkaria Commission Report, 1987:

In spite of the precautions laid down in Article 356, the Article was invoked on several occasions by the Center due to ambiguities in its wording. It was only in 1987 when the Sarkaria Commission submitted its report that part of the obscurity surrounding Article 356 was cleared. The Commission, headed by **Justice R.S. Sarkaria**, was appointed in **1983** and spent four years researching reforms to improve Center-State relations.⁵

a) Rare use of Art.356:

According to the Commission, Article 356 provides remedies for a situation in which there has been an actual breakdown of the constitutional machinery in a State. Any abuse or misuse of this drastic power would damage the democratic fabric of the Constitution. The Commission, after reviewing suggestions placed before it by several parties, individuals and organizations, decided that Article 356 should be used sparingly, as a last measure, when all available alternatives had failed to prevent or rectify a breakdown of constitutional machinery in a State.

b) Avoiding Disastrous Consequences:

According to the Commission's report, these alternatives may be dispensed with only in cases of extreme emergency, where failure on the part of the Union to take immediate action under Article 356 would lead to disastrous consequences. The report further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.

c) The Duty to explore alternatives:

In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without delay, the report recommends that the Governor request the outgoing Ministry to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and agrees to continue.

The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should merely carry on the day-to-day government and should desist from taking any major policy decision.

⁵ Government of India Press (1987), Report of the Commission on Centre State Relations. Part-1, Government of India Press: Nasik.

d) The Proclamation of Emergency and the Governor's Report:

The Governor's Report, which moves the President to action under Article 356, 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.*' The Commission's report also recommends giving wide publicity in all media to the Governor's Report.

It will be seen from this peremptory examination of the important passages of the Sarkaria Commission Report that its recommendations are extensive and define the applicability and justification of Article 356 in full. The views of **Sri P.V. Rajamannar**, former Chief Justice of the Madras (Chennai) High Court, who headed the Inquiry Commission by the State of Tamil Nadu to report on Center-State relations⁶, concur broadly with the views of the Sarkaria Commission. But it is unfortunate that the principles and recommendations given by them are disregarded in the present day and that actions have been taken that are prima facie against the letter and spirit of the Constitution of India.

A Milestone Judgement

S. R. Bommai v. Union of India was a landmark case in the history of the Indian Constitution. It was in this case that the Supreme Court boldly marked out the paradigm and limitations within which Article 356 was to function. In the words of **Soli Sorabjee**, eminent jurist and former Solicitor-General of India, '*After the Supreme Court's judgment in the S. R. Bommai case, it is well settled that Article 356 is an extreme power and is to be used as a last resort in cases where it is manifest that there is an impasse and the constitutional machinery in a State has collapsed.*'⁷

The views expressed by the various judges of the Supreme Court in this case concur mostly with the recommendations of the Sarkaria Commission and hence need not be set out in extenso. Thus it can be seen from the conclusions of this Bench of the Supreme Court that the President's power under Article 356 is not absolute or arbitrary. The President cannot impose Central rule on a State at his whim, without reasonable cause.

The Misuse of Article 356

Since the adoption of Indian constitution in 1950, the central government has used this article several times to dissolve elected state governments and impose President's rule. The article was used for the first time

⁶ Government of Tamil Nadu, Report of the Centre-State Relations Inquiry Committee, 1971, Madras, p.1.

⁷ S. Sorabjee, *Constitutional Morality Violated in Gujarat*, Indian Express (Pune, 21/09/1996).

in up 1954. It has also been used in the state of Patiala and East Punjab States Union (PEPSU) and then during 'Vimochana Samaram'⁸ to dismiss the democratically elected Communist state government of Kerala on **31, July 1959**. In the **1970s** and **1980s** it almost became common practice for the central government to dismiss state governments led by opposition parties. For Example, Indira Gandhi's government between 1966 and 1977 is known to have imposed President' rule in 39 times in different states. Similarly Janata Party which came to power after the emergency had issued President's rule in 9 states which were ruled by Congress.

It is only after the landmark judgement in 1994 in the **S. R. Bommai v. Union of India**⁹ case that the misuse of Article 356 was curtailed. In this case, the Supreme Court established strict guidelines for imposing President's rule. Hence since the early 2000, the number of cases of imposition of President's rule has come down drastically. Article 356 has always been the focal point of a wider debate of the federal structure of government in Indian polity. **The National Commission to Review the Working of the Constitution (NCRWC)**, which was established on February 22, 2000, on the basis of a joint resolution of the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), submitted its extensive report in March 2002. In its analysis, the NCRWC stated that in at least twenty out of the more than one hundred instances, the invocation of Article 356 might be termed as a misuse.

One other extreme of misuse of Article 356 was the failure of the Union Executive - which was of the same political belief as the Government in Gujarat - to invoke Article 356 during the carnage following the Godhra train incident on February 27, 2002, in the State of Gujarat.¹⁰ Vital statistics tells us that there are more than 100000 persons in refugee camps and more than 30,000 people have been charge sheeted. These figures are more than enough to compel the government to take action under articles 355 and 356. The Constitution may not have envisaged a situation where an emergency has arisen in a State where the ruling party is of the same political persuasion as the one at the Center and, hence, the Center might be biased against dissolving that government by invoking Article 356.

Conclusion and Suggestion

It is evident that there is a lack of effective safeguards against the abuse of Article 356 of the Indian Constitution. However, the repeal of Article 356 is not advisable because the Indian polity is rife with crises and there has to be some contingency against a constitutional deadlock in a State. The National Commission to

⁸ Namboothiripad, E.M.S., Communist Party Keralathil, Trivandrum, 1986, p. 115.

⁹ AIR 1994 SC 1918.

¹⁰ 'The Facts from Godhra', Frontline, Vol. 19 - Issue 15, July 20 - August 02, 2002.

review the working of the Constitution [NCRCW] also advised against the repeal of Article 356, stating that this would create an imbalance in Union-State relations in upholding constitutional governance throughout India and that in many more instances than not the use of Article 356 was inevitable. In considering the issues raised regarding article 356 it could be noted that a great part of the remedy to prevent its misuse lies in the domain of creating safeguards and constitutional conventions governing its use. The ultimate protection against the misuse of article 356 lies in the character of the political process itself.

Article 356 has been lodged in the Constitution as a bulwark, a giant protection and a remedy of the last resort. The invocation of article 356 is a constitutional device, the operation of which is vested in the executive domain. In invocation, it is therefore essential to preserve its stature in the constitutional scheme. If the exercise of this power is perceived to yield to political expediency, it will greatly damage the majesty of the executive power and the federal balance.

In a large number of cases where article 356 has been used, the situation could be handled under article 355 i.e. without imposing President's rule under article 356.

However it is most unfortunate that article 355 has hardly been used. Similarly in case of political breakdown, before issuing a proclamation under article 356 the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defense of the country, or for other reasons necessitating urgent action. Therefore the only practical course left before us is to ensure that Art.356 of our Indian Constitution is used sparingly and as a last resort as the Father of our Constitution Dr.B.R.Ambedkar had stated. It is the only way to pay homage to that ardent fighter for social justice and the prime architect of our constitution.