



PROCLAMATION OF PRESIDENT RULE IN STATES UNDER ARTICLE 356 – A PERSPECTIVE

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Article 356 of the constitution has become a focal point of heated debates, controversies and bravado in recent times because of its misuse for partisan purposes. Even the founding fathers of our Constitution apprehended the possible misuse or employment of it for 'political purposes', or being resorted to 'for unnecessary' or "intolerant action' through political prejudices. Another apprehension was that the Centre might intervene in petty Provincial matters on the "slightest pretext of " resolving ministerial crisis", or purifying or reforming maladministration", or "Mismanagement" or "inefficiency or corruption" in a Province or for "resolving a mere crisis" or "vote of no confidence in the ministry by the legislature", or for ensuring "good government". This if permitted will result in reducing the autonomy of the state to a farse.¹

Dr. B.R. Ambedkar echoed the sentiments of the framers of the Constitution when he said,²"The proper thing we might expect is that such Articles will never be called into operation and that they would remain as a dead letter". While expressing his opinion on Article 356, Dr.B.R.Ambedkar said that...

"I share the sentiments that such articles will never be called into operation and 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. I hope the first thing he will do would be to issue a mere 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. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this Article 356"

President's rule is an exception and a limitation on the principle of Constitutional Government in a State. It beings to an end for the time being, a duly elected Government in the State. During the period of proclamation, the Centre takes over the reigns of the Government in the State. It may be argued that a larger democracy temporarily takes control of a smaller democracy. This is because the Constitutional machinery in the State is not suspended. Article 356 is a very tricky power. Exercised properly, it may operate as a safety valve for the system. Abused or misused it can destroy the Constitutional distribution of powers between the Union and the States.

5.1. THE CONSTITUTIONAL PROVISION OF ARTICLE 356

¹ Constituent Assembly Debates, Vol.IX, p.133.

² *ibid.*p.133



Provisions in case of failure of constitutional machinery in States:

- (1) If the President on receipt of a report from the Governor of a 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 by Proclamation-
- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;
 - (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
 - (c) make such incidental or any consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State.

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the

expiration of that period it has been approved by resolution of both Houses of Parliament.

Provided that if any such proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or if the dissolution of the House of the people takes place during the period of two months referred to in this clause and, if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the people before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation.

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of the Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on, which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the



continuance has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been passed by the House of the People.

Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to five years.

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless –

- (a) a proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of passing of such resolution, and
- (b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

5.2. ARTICLE 356- A CRITICAL ANALYSIS

The meaning and implications of Article 356 can be easily studied by

dividing it into certain ingredients. They are:

- (i) Satisfaction of the President
- (ii) Report from the Governor or *otherwise*
- (iii) A situation where the State Government cannot be carried on in accordance with the provisions of this Constitution
- (iv) Proclamation by the President
- (v) Consequences of Proclamation
- (vi) Period of the Proclamation

5.2.1 Satisfaction of the President

The drastic power under Article 356 can only be applied with the President's satisfaction. In other words, the existence of President's satisfaction is a condition precedent to the exercise of power under Article 356.³ The President is head of the Union and also the Chief Executive. According to Article 53(1), the executive power of the Indian Union is vested in the President, which is to be exercised, either directly or indirectly through officers are subordinate to him, in accordance with the Constitution.⁴ The President, under the Constitution, is vested with enormous powers. Article 77(1) declares that 'All executive action of the Government of India shall be expressed to be taken in the name of the President.'⁵

However, as we have adopted a parliamentary system of government, the President has to be a nominal or ceremonial executive. Dr. Ambedkar said in the Constituent Assembly, "Under the Draft Constitution, the President occupies the same position as the King under the British constitution. He is head of the State but not of the executive. He represents the nation but does not rule the

³1989 AIR 100, 1988 SCR Supl. (3) 155

⁴ M.P. Singh, op.cit., p. 341.

⁵Jain, M.P. "Indian Constitutional Law", Wadhwa and Company, Law Publishers, Nagpur (2011)



nation. His place in the administration is that of a ceremonial device on a seat by which the nation's decisions are made known."⁶

Article 74 (1) stipulates a Council of Ministers with the Prime Minister at the head to aid and advise the President. But the President is not only to take advice on all matters but required to act accordingly.⁷ There has been a long controversy regarding the real position of the President vis-à-vis Council of Ministers that seemed to have settled by the 42nd amendment to the Constitution which in so many words made it clear that the aid and advice tendered to President by the Council of Ministers is binding upon him.⁸ The 44th Constitutional Amendment made a further progress by giving President an option to send back the advice, either generally or otherwise for reconsideration but he is bound to act after such reconsideration.⁹ Thus for all practical and even legal purposes, the President means the Prime Minister and his Council of Ministers who are collectively responsible to the Lok Sabha vide Article 75(3)¹⁰. The Constitution vide Article 74 (2) also makes the communication between the President and the Council of Ministers as secret and no court in India has the authority to ask the President as to what the aid was and advice tendered to him by the Council of Ministers."

The President also enjoys immunity under Article 361. He is personally immune from legal actions for his official acts and not answerable to any court for the same. He cannot be either summoned by any court or amenable to

the writs and directions issued by any court.

However, this does not give a free hand to the Council of Ministers to enjoy immunity under the President's garb. Though the court cannot inquire about the aid and advice given by the Council of Ministers, the Court can certainly ask for the production of material on which the ministerial advice was made. In Bommai case, the Supreme Court decided that the material on the basis of which, the advice is given cannot be kept away from the Court and is open to judicial scrutiny.¹¹ The apex Court ruled that the satisfaction of the President is not his personal whim, wish, view or opinion but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of or has to have sufficient proof of information with regard to or has to be free from doubt or certainty about the state of things indicating that the situation in question has arisen. The President's satisfaction has to be based on objective material.

5.2.2. Report from the Governor or otherwise:

Normally, the President acts on the report from the Governor while taking any action under Article 356 of the Constitution. Appointed by the President, the Governor is the head of the State and enjoys the same immunity as the President at the Centre. He is appointed by the President for five years but remain in the office so long he enjoys the pleasure of the President.

Under the compulsions of the parliamentary system, the Governor is to

⁶ Constitution Assembly Debates (Herein after referred to as CAD) Vol. VI, pp. 985-86.

⁷ *ibid*, p. 974

⁸ M.P. Singh, *op. cit.*, p. 341

⁹ *ibid*, p. 172

¹⁰ *ibid*, p. 172

¹¹ A.I.R. 1994 Vol. III 3 SCC S.R. Bommai & others v. Union of India & others .



act under the aid and advise of his Council of Ministers except in so far, he is to act under his discretion, which has not been defined by the Constitution. But it is very clear that his power to report the breakdown of the constitutional machinery is a discretionary power, which he is expected to exercise independently of his Council of Ministers for the Governor's report recommending executive action under Article 356 would mean death for the Council of Ministers and no sensible Council of Minister would tender such an advise and sign its own death warrant.¹²Dr. Ambedkar also said, "Such a report by a Governor can hardly be made on the advice of his Ministers, for, if the Governor is to act on their advice in the matter of suspension of the operation of the Constitution, the Ministers will never advise him to take such an action, which would inevitably put an end to their administration."¹³ In fact, by the very nature of the power (under Article 356) it cannot be exercised on the advice of his ministry for it may very often happen that the report may itself be a condemnation of the Council of Ministers to the effect that the Government run by the Council of Ministers is not being conducted or is no longer likely to be conducted in accordance with the Constitution.¹⁴

The Administrative Reforms Commission (1969) recommended that before making a report, 'the Governor should have exhausted his own right to advise and warn so that his Ministry

would have no grievance that it has been kept in dark.¹⁵

The question whether the power to report under Article 356 constitutes Governor's discretionary power was raised in 1959 subsequent to the imposition of President's rule in Kerala, which has been cited as the most classical case of abuse of Article 356. It was felt that the Governor should have sent the report on the advice of the Chief Minister. But the then Home Minister Govind Ballabh Pant stated categorically that that position was indefensible because the Governor's function in this sphere was designed to be independent function for the purpose of assisting the President in discharging a very heavy responsibility.¹⁶ But this does not prohibit the Chief Minister to advise the Governor to recommend the President to impose Article 356.

The Governor's report is a public document and not secret.¹⁷ It is also open to judicial scrutiny to determine the legality of the proclamation. In his report, the Governor must act bonafide and reasonably and must have materials to sustain his judgement that the Government of the State could not be carried on in accordance with the Constitution. If there are no materials or if the materials are such that, no reasonable person could come to that conclusion, the Governor's action would be illegal and unconstitutional.¹⁸ Although there are no fixed parameters, which the Governor is to follow while making his report, he gives details of the reasons and

¹²Basu, D.D.: "Introduction to the Constitution of India", Wadhwa and Company, Law Publishers, New Delhi (2011)

¹³ See Report of the Committee of Governors, 1971, p. 15.

¹⁴ A.K. Sen, *Role of Governors in the Emerging Patterns of Centre-State Relations in India*, (Delhi, ICPS, 1975) p. 65.

¹⁵ ARC Report p.27.

¹⁶ A.K. Sen, op. cit., p. 66.

¹⁷ GOI Reports 1954.

¹⁸ Barium Chemicals Ltd. V. Company Law Board, A.I.R.1967 S.C. 295, quoted in A.K. Sen, op. cit.p.66.



incidents, which he thinks result in the breakdown of the constitutional machinery.

The importance of the report and especially its content can hardly be overlooked since it is liable to be the basis of judgement of the court if the proclamation is challenged. The Karnataka High Court dealt with this issue and analysed the concept of report. The Court made a differentiation between report and opinion and ruled that the Governor's report should contain the facts reflecting the situation that has arisen in the State and the inferences drawn and conclusions reached by him on the basis of those facts. In case the report only contains the opinion of the Governor and the President invokes Article 356 on that basis, then such a proclamation will be void because it is not issued on the basis of President's satisfaction. In such a case, the Court ruled, it will be factually an expression of satisfaction of the Governor by the President as his own, instead of expressing his (President's) satisfaction. Further, the Court held, "However, if the report of the Governor discloses the relevant material facts along with his own assessment of the situation, consideration of the said report by the President would necessarily include consideration and appreciation of the relevant material facts by the President. The President's satisfaction may coincide with that of the Governor, but such coincidence will not render Presidential satisfaction illusory or non-existent one. The satisfaction arrived at by the President based on the report of the Governor which contained relevant material facts, cannot be held unconstitutional."¹⁹

The Supreme Court in S. R. Bommai case ruled that in case a Ministry seems to have lost the confidence of the Assembly, the Governor should opt for a floor-test to determine the issue. However, if due to some reason, floor test is not possible then he should record the reasons in his report.²⁰

However, there is the *otherwise* clause, which implies that the President's source of information could be other than the Governor's report.²¹ In extreme case, it may be due to the inability of the Governor to send such a report. In fact, the Draft Constitution did not contain this *otherwise* clause. It was introduced during the second reading of the Draft Constitution. Dr. Ambedkar justified it on the ground of newly introduced Article 355 (then Article 277A), which made it a necessity since it was the duty of the Centre to protect every State from external aggression and internal disturbances, and to ensure that the government of the State is carried on in accordance with the provisions of the Constitution. Dr. Ambedkar apprehended that the Governor did not make a report but... 'Nonetheless the facts are such that the President feels that his intervention is necessary and imminent, and in such a situation, we must also give liberty to the President to act even when there is no report by the Governor.'²²

The Sarkaria Commission report pointed out those situations in which Article 356 is not to be used. They are:

- (i) Mal-administration in the State where the Ministry is enjoying the majority support in the Assembly.
- (ii) Subsequent to the resignation/dismissal of the

¹⁹ AIR 1990 Karnataka p. 20.

²⁰ S.R. Bommai v. Union of India 1994.

²¹ Shriram Maheshwari, *President's rule in India*, (Delhi, Macmillan, 1977), p.84.

²² CAD Vol. IX, p. 134.



Ministry, Governor does not explore the possibility of alternative Ministry.

- (iii) Without going for a floor test, the Governor comes to the conclusion that the Ministry has lost the majority support.
- (iv) The ruling party at the state has suffered a massive defeat in the general elections to the Lok Sabha.
- (v) In the situation of internal disturbances, not amounting to or verging of its abdication of its governmental powers all possible measures have not been exhausted by the Centre.
- (vi) If the President does not give any warning to the concerned State Government to correct itself. Such a warning is, however, not needed when immediate action is absolutely necessary.
- (vii) Subsequent to the direction or warning, the State Government complies with the direction or satisfies the Union Executive that the warning or direction was based on incorrect facts.
- (viii) To sort out internal differences or intra-party problems of the ruling Article
- (ix) Stringent financial exigencies of the State.
- (x) Serious corruption charges against the Ministry.

Extraneous or irrelevant to the purpose of the Article.²³

It may be concluded that Article 355 imposes duty upon the Union Government

to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. The President can act under Article 355, i.e., without imposing President's Rule, but it has not been done in practice. Article 356, however, provides power to the President to impose President's Rule in case constitutional machinery fails in a State. Article 365 also empowers the President to impose the President's Rule where any State has failed to comply with, or to give effect to, any directions under Articles 256 and 257 issued by the Union Government. These provisions make Union Government competent for the use of legislative, administrative and financial powers of the State concerned. During President's Rule the Indian federal system turns into a Unitary system and the State administration comes under direct control of the Union Government. The State Governor becomes the real ruler of the State concerned and no more remains a mere ceremonial head. Therefore, these provisions are a negation of the principles of federalism. As A.S. Narang (2005) points out, in its present form Article 356 is not only dangerous for State autonomy, but also is against the basic norms of democratic governance.²⁴

It is evident that there is a lack of effective safeguards against the abuse of Article 356 of The Indian Constitution. The safeguard of 'parliamentary approval' - outlined in Article 356(3) - of a Proclamation under Article 356(1) could be biased because the Party that is in power at the Centre generally dominates

²³ *ibid*, p. 173.

²⁴ Narang, A.S. (2005), "President's Rule and Governance of States", cited in Akhtar Majeed (ed.) (2005), *Federal India: A Design for Good*

Governance, New Delhi: Manak Publications, p. 146.



Parliament by a majority vote. Furthermore, even a vote in Parliament declaring a particular imposition (or failure to impose) of President's Rule to be wrongful cannot undo the damage already done.

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.

To enable the Governors to perform their functions properly in accordance with the provisions of the Constitution, it is essential that only right persons are appointed as Governors. A Governor must be an impartial person who by his ability, character and behaviour inspires respect. Discredited, defeated and "burnt out" politicians should not be appointed as Governors.

It is further suggested that a Governor should remain in office for his full five years term and the procedure for his removal should be made the same as prescribed for judges of the Supreme Court and he should be ineligible for any other office under Government after retirement.

It is also necessary to evolve and develop certain healthy and democratic conventions and the Governor should be guided by these conventions while exercising their discretionary powers under Article 356. It is equally important to evolve and develop certain norms, principles and procedure in order to protect the federal and democratic federal fabric of the Constitution.

Another option is to introduce further checks on the exercise of power under Article 356, by amendment. Even this is not advisable because it defeats the very purpose of the Article of dealing expeditiously with emergencies of constitutional failure in a State.

In fact, the provisions contained in Article 356 relating to the 'Failure of the Constitutional Machinery in States', needs a fresh look for protecting State autonomy.

In the long run 'public opinion' alone can effectively curb the abuse of the power, exercised under Article 356. In order to achieve this purpose, we will have to mobilise 'vigilant public opinion'. Thus, if will also be necessary to evolve certain norms for this purpose so that political considerations are kept aside while exercising the power under Article 356, so that democracy and federalism may properly flourish in our country.