

ARTICLE 356- USE OR ABUSE

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INTRODUCTION

Article 356 talks about the Provisions in case of failure of constitutional machinery in states.¹The state's governor issues the proclamation, after obtaining the consent of the President of India. If it is not possible to revoke Governor's rule within six months of imposition, the President's Rule under Article 356 of the Indian Constitution is imposed. The president rule is imposed in any state in case of failure of constitutional machinery, when on the recommendation of the Governor or by any source if president is of the opinion that there is breakdown of constitutional machinery or such situation has arisen that the government of the state cannot be carried in accordance with the provision of constitution for the better functioning of that state. But sometimes this power is misused that can be due to defection of ruling party lawmakers. According to Sakaria commission reports this power has been used over 100 times since Independence, the reason can be of spreading their party's power in the state whereas Judicial Review refers to the power of Judiciary to interpret the constitution to declare any such law or order of the legislature and executive void, if it finds

¹ Bare text, Constitution of India

them in conflict the Constitution of India². The researchers have chosen this topic so that they could find out about the uses and misuse of this article in contemporary time.

HISTORY OF ARTICLE 356

The British colonial rule legacy in India was power of President to impose the President's rule. The British Government came up with this rule so that they may satisfy their magnificent advantages. They came up with strong central because they wanted maintain their legacy over the Indian provinces. ³Section 93 of the Government of India Act reads as "If at any time the Governor of any province and of the opinion or satisfied by the other sources that a situation has emerged that government and functions of government cannot be carried with or accordance with the provision of the said Act, he could, by method for decree, expect to himself all or any of the forces vested in or exercisable by a provincial body or authority including the Ministry and the Legislature and to discharge those function in his discretion"⁴. In any case, the special case to this arrangement was that the Governor cannot interfere or encroach on power of High Court⁵.

Article 356 is mostly based on the Section 93 of the Government of India Act with some changes and alterations. In sec 93 of GIA the Governor has full power and authority to carry out duties and take decision on his discretion but Article 356 of the Constitution does not give full power and authority to Governor to carry out duties on his discretion.⁶ Now, the Governor has only one function, which is to present the report to the President regarding the failure of constitutional

² K.K. GHAI, JUDICIAL REVIEW IN INDIA: MEANING FATURES AND OTHER DETAILS, (9 Feb, 2018), <http://www.yourarticlelibrary.com/essay/judicial-review-in-india-meaning-features-and-other-details/40369>

³Article 356 : A Tension Area Between The Centre And The States, SHODHGANGA (March 4, 2018 11:20 am), http://shodhganga.inflibnet.ac.in/bitstream/10603/96292/12/12_chapter%206.pdf.

⁴Id.

⁵ Id.

⁶ Id.

machinery in the state, the power of proclamation thus, now rests with the President. In Draft Article, the power of President was restricted, he was required to declare emergency or take action only on the recommendation or on the basis of the report submitted by the Governor wherein he himself did not have the power to declare failure of constitutional machinery in the state⁷. However, today, Article 356 inclusive with the word otherwise that increase the power of President and limit the restrictions now if President otherwise is satisfied that in any state such situation has rise that it is not possible to run the state according to provision of constitution or it is going against the constitutional machinery or there is breakdown of constitutional machinery, the President can impose Presidential rule there.⁸

At the time of framing of the constitution, several controversies arose and the framers of the Constitution had to face the questions and concerns of the constitutional assembly that the Article 356 was against federal structure of the Constitution and the ruling party will misuse this Article⁹. It will shake the federal polity of the India it is against the constitutional structure. However, Dr. Ambedkar countered all the objections and defended this provision by calling this rule as dead letter and will only be used in rarest of the rare case¹⁰.

LANDMARK CASES

STATE OF RAJASTHAN V. UNION OF INDIA

In this case, a constitutional controversy of great significance was raised related to Article 356.¹¹ After lifting of emergency of 1975, the general elections for Lok Sabha were conducted in the year

⁷*President's Rule : Misuse of Article 356*, SHODHGANGA (March 4, 2018 11:30 am) http://shodhganga.inflibnet.ac.in/bitstream/10603/96292/12/12_chapter%206.pdf.

⁸*Historical Background of President's Rule*, SHODHGANGA (March 4, 2018 11: 40 am) http://shodhganga.inflibnet.ac.in/bitstream/10603/21992/8/08_chapter%202.pdf

⁹Dharmendra Kumar Singh, *An Analysis of Pre and Post S.R. Bommai Scenario with Reference to President's Rule in States*, 6 *IJHSSI* 5, 5-6 2017.

¹⁰ *Id.*

¹¹*Rajasthan V. U.I.O*, A.I.R.1977,S.C.1361.

1977 in which Janta Party won with large number of seats and thereby formed government at the centre. At that time many states have Congress Government they still have time to complete their term of 5 year, but Janta Party badly routed out the congress government from the state by imposing president rule or declaring the breakdown of constitutional machinery in the state. The state of Rajasthan was one of these states and filed the suit against the union.

However, the suit was dismissed by the supreme court, the court asserted that it could not interfere in the centre's exercise of power under Article 356 merely on political and expediency policy, there must be infringement of some constitutional provision. Art. 74(2) restricts the court from interfering or inquiring in to the ministerial advice to president.¹²

Article 356 can be used by the state for securing compliance with democratic rules. The interpretation of Art. 356 is quite loose and wide it can be molded. Justice Bhagwati was of the opinion that the satisfaction of President rule is very subjective one and cannot be tested by any reference to any objective test or by judicially discoverable and manageable standard.¹³

However, the court make it clear that the president satisfaction open to judicial review and can always be challenged on the ground that it is male fide intention or based on wholly extraneous or irrelevant ground. The court observed, that it would be extremely hazardous on the part of the Supreme Court to proceed on the assumption that the Council of ministers would take only the grounds mentioned in the letter by the Union Minister to the 9 State Governments while deliberating whether any action under Article 356 was to be undertaken or not and that it was quite plausible that certain "new grounds" were liable to emerge.¹⁴

¹² M.P. JAIN, INDIAN CONSTITUTIONAL LAW, Pg 772-3(7th ed. 2014).

¹³ Rajasthan V. U.I.O, A.I.R.1977,S.C.1361.

¹⁴ *Id*

S.R. BOMMMAI V. UNION OF INDIA***Facts***

The Governor of Karnataka had answered to the President that there were disputes and abandonments in the current decision party as nineteen letters were sent to him by the committee of clergymen from pulling back their help. He additionally expressed that on the withdrawal of the help in the decision party, the Chief Minister (S. R. Bommai) additionally neglected to bring in for dominant part of get together, which is improper under the Constitution. Thus, the State is to be managed by the Center. It was seen that seven out of the nineteen lawmakers have whined about distortion in their particular letters and along these lines, the Chief Minister and the Law Minister met the Governor that day to summon the Assembly to demonstrate the certainty of get together in his administration. The same was sent to the President through wire message. Be that as it may, on the extremely same day, Governor has sent another report expressing that the Chief Minister has lost certainty of most of the House and asked for President's Proclamation under Art 356 and in the long run the same was allowed.¹⁵

A bench of 9 judges in Bomnai case to consider the various issue and following are the guidelines given in this case-

- Judicial review can be done on the ground of mala fide intention.
- Based on relevant material; centre has to justify.
- Court can revive dissolved or suspended the state government.
- Corruption allegation, financial instability is not enough.
- Opportunity to correct itself (state government).
- Secularism is the part of basic structure.
- Governor's efforts to form alternative government.
- Article 356 to be used in extreme situation.¹⁶

¹⁵ S.R. Bommaiv.U.I.O., A.I.R. 1994, S.C. 1981.

¹⁶ Id.

Other cases

Jagdambikapal v. UOI

- President sent back cabinet's recommendation
- Violence in the house cannot be equated to constitutional breakdown.
- President rule has to be ratified by the parliament.

Nabamrabia v. Deputy speaker & others

SC stated censoring the governor for “humiliating the elected govt. of the day”, the SC restored the Nabaamtuki Govt. , and declared s unconstitutional all decisions of the governor that had first led to imposition of president's rule in the state and later formation of new govt. led by the ruling party's break away function.

The SC held that while restoring the previous govt. that the assembly was not dissolved immediately, but only kept under suspended animation until both house of parliament approved president's rule.

SARKARIA COMMISSION REPORT

The continuous and grave rise in the growing dissatisfaction and suspicion of threat to the autonomy of the States made the Chief Ministers of numerous States to put pressure on Centre to form a Commission that would work upon the Centre-State relations in order to get, find or obtain a clear picture with respect to their position or status in ta federal state. After immense pressure of Mrs. Gandhi, the Commission was in constituted in 1983 which was headed by Justice Ranjeet Singh Sarkaria which presented its report in 1988.

The Commission in its report stated the following conditions which could constitute “A failure of Constitutional Machinery” under Article 356:

A. **Political crisis**- A constitutional break-down may be the outcome of the political crisis or dead-lock wherein¹⁷:

- i. Coalition of parties or any party is unable to secure a full majority in the Legislative Assembly, and such a circumstances arises wherein parties are not able to form a government commanding confidence of the Legislative Assembly is only showcased, inspite of exploring all possible alternatives by the Governor in this regard.
- ii. On resignation of a ministry or dismissal on loss of its majority support in the Assembly and no other government commending the confidence of the Assembly can be constituted.
- iii. The party which in majority in the Assembly denied to form or continue the Ministry and all possible options explored by the Governor to find a coalition Ministry commending a majority in the Assembly, have failed.

Herein, the President would be justified if dissolve the Assembly and can conduct fresh elections in the state, thereby leaving the political deadlock to be resolved by the electorate. Furthermore, the Governor may, in addition, continue the outgoing Ministry for a short period as a proxy government until elections are held and a new Ministry come in the rule.

B. **Internal Subversion**- The following are some instances of a situation of constitutional break-down due to internal subversion¹⁸:

- i. the government of a State has deliberately been conducted for a significant period in utter disregard of the Constitution in that situation president declare constitutional breakdown in the state.

¹⁷Report of the Sarkaria Commission, (March 5, 2018). Available at <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/>.

¹⁸*Id.*

- ii. Where the State Government has deliberately created a dead-lock, or has the intention to bring the system of responsible governance a policy to envisaged by the Constitution, to a stand till;
- iii. Where the State Government, flouts principles and conventions of responsible Government to bring for them some form of dictatorship.

In the above given conditions, the alternative steps, including other correctives and warnings, have miserably failed to remedy the distortion or bring back the errant State Government to the Constitutional path.

C. ***Physical break-down***: The following instances would be seeming as physical break-down¹⁹:

- (i) Where a Ministry, either denied to perform its responsibilities to deal with a situation of 'internal disturbance', or is not able to handle such a situation resulting in the paralyses of the administration, and threat to the security of the State.
- (ii) Where a natural disaster or calamity such as an hurricane, earthquake, cyclone, epidemic, flood, etc. of unprecedented magnitude and severity, completely destroy the administration and hampered the security of the State and the State Government is indifferent or incapable to exercise its governmental power to relieve it .

D. ***Non-compliance with constitutional directions of the Union Executive***

The following are situation of a breakdown due to non-compliance by a State Government with the directions of the Union Government: —

- (i) A direction issued by the Union in the exercise of its executive power under any provision of the Constitution, such as, Articles 256 and 257 or, during an Emergency under Article 353, is not complied with by the State Government despite adequate

¹⁹*Id.*

warning and opportunity, and the President on holds under Article 365 that a circumstance, such as that contemplated in Article 356, has arisen;

- (ii) Any magnitude public disorder that hampers the security of the state than ot is the responsibility of the state to inform central government about such disorder, and if the State does not do that, such irresponsibility may amount to impeding the exercise of the executive power of the Union Government and justify the latter giving suitable directions under Article 257(1).

If such a direction given to the State by the Union Executive under Article 257(1) is not complied with in spite of enough warning, the President thereupon may hold that a situation such as the one given in Article 356, has arisen.

RECOMMENDATIONS

In the light of the rampant abuse and total disregard to the spirit with which the Article had been enacted, the Committee came up with the following recommendations:²⁰

- Article 356 should be used extreme cases and use only as a measure of last resort, when all available options distorted and cannot prevent or stop a break-down of constitutional machinery in the State.
- A warning should be issued to the State, the other party should be given chance to be heard. The warning should be given in specific term.
- When an 'external aggression' or 'internal disturbance' deaden the State administration by creating a situation moving towards the failure of the Constitutional machinery of the State,

²⁰*Id.*

all other courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to handle the situation.

- In a situation of political failure, it is the responsibility of the Governor to explore all possible situation where a government enjoying majority support in the Assembly. If it impossible for such a government to be installed and if fresh elections can be held with ease and without much avoidance, it is his duty to ask the outgoing Ministry, if there is one to continue as a caretaker government,
- Proposal on each of the house of parliament on every proclamation, it should be done in 2 months.
- The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been put before Parliament and it has had a sufficient time or opportunity to consider it
- Every Proclamation should be put before both of Parliament as soon as possible, in any case before the expiry of the two-month period contemplated in clause (3) of Article 356.
- The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it
- Safeguards corresponding, in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a Proclamation
- To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the Proclamation issued under that

Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective

- The report of the Governor is placed before each House of Parliament. Such a 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.
- The Governor's report, on the basis of which a Proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.

CONCLUSION

The President's rule is inspired from the Section 93 of Government of India Act, so it is inserted in the constitution while framers of the constitution framing .the objective and intention of the framer was to protect the state in case of the failure of its government they knew that several state has zero experience of parliamentary form of government they aware about the state. Failure and breakdown of constitutional machinery in a state could easily fore seen, this provision was made for rarest of the rare case as stated by the Dr. Ambedkar it is a dead letter, but with the time this article has been misused by several times for political gain, in the year 1977, nine state legislation has been dissolved because it is not as the ruling party at the centre. By analysing all the things the researcher is of the opinion that Article 356 which is inserted in constitution by framers in good faith has been used arbitrary by ruling party for their political gains. But the situation was improved with the formation of Sarkaria commission, the recommendation given by this commission has provided relief to state who the victims of misuse of Article 356 were. The hypothesis of the author made in the beginning of the research that the Art. 356 which is safe measure only use as a last resort in a situation of failure of state machinery but the provisions of Article 356 have been invoked many a times so as to serve the ulterior intensions of the ruling party at the centre is proved correct. All the

objective of the researcher has been fulfilled and the researcher also gets the answer of the research question. And with this research the true nature of Article 356 is revealed. From the above research it was concluded that the abuse or misuse of Article 356 is more than its use. Ruling party for its personal gain and interest-imposed state emergency by proving failure or breakdown of its constitutional machinery.

Despite the fact that Article 356 had been abused even by Jawaharlal Nehru to expel the dominant part Communist legislature of Kerala, Indira Gandhi is synonymous with having utilized it as a weapon against state governments. Its recurrence expanded forcefully post-1967 when Congress gathering lost power in a few states in India.

Article 356 has positively given wide powers to the focal government to declare its position over a state if common distress happens, and the state government does not have the way to end it. Despite the fact that the reason for this article is to give more powers to focal government to protect the solidarity and uprightness of the country, it has frequently been abused by the decision parties at the inside, who utilized it as an appearance to disintegrate state governments administered by political rivals. Hence, it is seen by numerous individuals as a danger to the government state framework. Since the appropriation of the Indian Constitution in 1950, the government has utilized this article a few times to break up chose state governments by forcing President's rule.

The arrangement, thusly, is to change the Constitution, making it compulsory to allude inside two days, each instance of the President's standard to a full Bench of the Supreme Court and making it substantial just if a major share of judges maintains the equivalent. Obviously, the endorsement of President's standard by Parliament would stop in such a circumstance. This game-plan is vastly improved than the circumstance where expelled governments approach the Supreme Court, with decisions decreased to scholastic intrigue. Such an answer additionally would set very still discussions on abuse of Article 356 by governments and on whether it ought to be erased from the Constitution.

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