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Analysing the scope of Article 356: Emergency on the grounds of Breakdown of State machinery

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Article 356 of the Constitution of India vests the Union with the power of implementing the President's Rule and suspend the functioning of the state legislature and executive in case of breaking down of constitutional machinery. This provision was first added in the Constitution to ensure the welfare of the people and restrict the state governments from overreaching and infringing the basic rights of the individuals of a particular state as enshrined in the Constitution. However, it has become evident that the provision has become a political weapon that can be used to remove the government from office on the frivolous accusation of the breakdown of constitutional machinery. This article evaluates the provision on its merits and provides an in-depth understanding of the reasons why in most cases, Article 356 has not been able to serve the purpose for which it was added to the Constitution.

Keywords: *article 356, emergency, state machinery, president's rule.*

INTRODUCTION

President's rule under Article 356¹ of the Indian Constitution allows the Union to suspend the functioning of the state legislature and executive in a state where constitutional machinery has broken down. The recent proclamation of President's rule was invoked in Maharashtra in 2019

¹ Constitution of India, 1950, art. 356

when the election did not show any clear majority and then governor Bhagat Singh Koshyari took charge of the state machinery on behalf of the Union. The application of this law, which originated in the British era, has been subjected to legal scrutiny in the recent past. Although, enough judicial safeguards exist in favour of the states, i.e., against invoking the President's rule. However, beyond these safeguards, there are fewer options available to the state. This paper will analyze whether the ambiguities of Article 356 and its wide scope of it when read with other emergency provisions allow for possible misuse and unfair political ventures by the Union.

HISTORIC RELEVANCE

Origin of Article 356

Article 356 of the Indian Constitution was derived from Section 93² of the Government of India Act 1935. While section 93 did deal with the power of the Governor to issue proclamations, the same was not included under the emergency provisions. Therefore, the inclusion of Article 356 under the emergency provisions was not a by-product of any British era legislation. The drafting committee of the Constitution of India constructively debated on this issue and reached an original decision in favor of its inclusion.³

Why was Article 356 included under Emergency Provisions?

The members of the Constituent Assembly, who were in favor of including Article 356 under the purview of emergency provisions stated examples of internal disturbances in foreseeable future in several states including West Bengal, Madras, and Hyderabad. They labeled this situation as of grave concern which might require necessary intervention by the Union in the near future. This argument points to a grave misunderstanding amongst the members of the assembly, as the examples stated by them would actually fall under the purview of Article 352⁴, and not under Article 356. However, the drafting committee had a different perspective on this issue. The perspective was coherent with Karl Loewenstein's definition of 'militant

² Government of India Act, 1935, s 93

³ D.D. Basu, *Commentary on the Constitution of India Vol II*, (S. C. Sarkar & Sons 1955) 875

⁴ Constitution of India, 1950, art. 352

democracy’ which is a democracy that is unable to contain fascism and is a form of constitutional democracy authorized to protect civil and political freedom by pre-emptively restricting the exercise of such freedom. Therefore, the main objective of the committee must be to establish a provision that could be invoked to tackle political forces, principally communism, that might not come into power through violence but through the ballot box and then process to subvert constitutional democracy. The idea was to authorize the Union and give it a legal option in the form of a safety blanket to deal with such political issues. However, it is important to note that the problems stated above were an incipient threat to the constitutional order and not an immediate response to a clear threat to public safety, therefore, the inclusion of Article 356 under the purview of the Emergency provision is still vague.⁵

CRITICAL EVALUATION OF THE PROVISION

Excessive invocation of the provision (1970-1985)

Since India attained independence, Article 356 has been invoked by the Union government more than a hundred times. The provision was often used by the Union to suspend state legislature and executive in states ruled by the rival political parties merely on the grounds that the ruling majority has suffered a significant backlash and has lost the trust of the voters so much so that it would fail to form a government if a fresh election was conducted. This provision turned into a tool of vendetta politics, evidence of which relegates back to the 1970s when the Janata Party invoked article 356 to dismiss 9 state governments led by the Congress Party. When Congress returned to power in the 1980s, they settled scores by dismissing 9 state governments led by the Janata Dal by invoking the same provision. This dismaying situation led to the formation of the esteemed Sarkaria Commission in 1983 to decide upon the Union-State relations at the time. The report of the commission explicitly stated that “these 18 cases are typical instances of wholesale misuse of Article 356 for political purposes, extraneous to the one for which the power has been conferred by the Constitution.” However, it is pertinent

⁵ Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, *The Oxford Handbook Of The Indian Constitution* (Oxford University Press 2016)

to mention that the recommendations of the commission were never formally accepted by Union Government. Therefore, the precedential value of the same is not clearly definitive.⁶

Vagueness in the Wording of the Provision

The definition of the statement, 'in accordance with the provision of the Constitution' exists in a legal grey area and is widely open to interpretation and therefore, often subjected to ambiguities and vagueness. There exists the possibility of a narrow as well as a wide interpretation of these words. While it could mean to include strictly the words of the constitution or could go on to include the underlying democratic ideas behind the various provisions. The existence of this vagueness was pointed out in a situation that took place in Kerala in 1959. The communist majority took charge of the state government of Kerala in 1957. In the following years, the state witnessed large-scale discontent and public outrage along with events of sizeable violence. Various reports stated the breakdown of the constitutional machinery in the state and Article 356 was invoked by the central government in a situation where the state government refuted the claims of the law-and-order situation having been broken down. Furthermore, the communist government had attained a significant majority in the past election. After a fresh election, a new state government was introduced into office with the proclamation remaining in force for 6 months. Keeping this case in mind, one could argue that the functioning of the government enjoyed the majority in the state legislature and theoretically, was functioning in accordance with the constitutional provisions. However, another argument is that the words 'provisions of the constitution must be interpreted in a wider sense to include conventions and the democratic spirit underlying the constitution. Apart from the case of Kerala, the state legislature of Haryana witnessed large-scale defections which led to the invocation of the provision. There are many such instances wherein, the state government enjoyed a clear majority, yet were ousted by the invocation of the provision be it based on instability, unconstitutional functioning, or internal disturbance.⁷

⁶ Danish Hasnain, 'Dynamics of Article 356 of the Constitution of India: A Trepindation Turns True' (*Uttarakhand Judicial & Legal Review*) <https://ujala.uk.gov.in/files/ch11_1.pdf> accessed 07 March 2022

⁷ D.D. Basu (n 2)

LEGISLATIVE INTERPRETATION

*a. Rajasthan v Union of India*⁸

This judgment was delivered in the aftermath of the National Emergency of 1975. The Janata Party won the Lok Sabha election with an overwhelming majority and, therefore formed the government at the center. Charan Singh, the then central Home Minister suggested the various Chief Ministers of States where Congress-led government was in power, resign from the state legislature. The state of Rajasthan along with the other states filed a suit in the Supreme Court to label this directive of the home minister as illegal and in violation of the constitutional provisions. The court stated that the letter sent by the home minister in this particular case was not a directive and was merely advisory in nature which comes within the purview of maintenance of democratic norms. It cannot be considered a perverse or irrelevant ground for the exercise of power under Article 356. Furthermore, it was observed that Article 356 can be invoked with the President's assent even if it is not approved by the parliament. However, in such a case proclamation remains in force for only 2 months. Although it is possible to legally scrutinize the proclamation issued by the president if the reasons or the grounds stated are wholly extraneous or malafide. Therefore, as per the court, judicial scrutiny of the proclamation issued under Article 356 may be possible but the case must be of a rare nature since even the grounds remotely connected to the maintenance of democratic norms would make a legal proclamation.

*b. SR Bommai v Union of India*⁹

This judgment was one of the most significant precedents in relation to the scope and constitutional interpretation as the legality of a total of 6 proclamations was evaluated by the Supreme Court. The Karnataka state government led by SR Bommai moved to Karnataka High Court over the validity of the proclamation issued by the president upon the report by the governor conveyed without conducting a floor test in the house and allowing the ruling party to prove the majority support. This was in the aftermath of a substantial number of defections

⁸ *State of Rajasthan & Ors. v Union of India* (1977), AIR 1361

⁹ *S.R. Bommai v Union Of India* (1994), AIR 1918

from the Janta Dal Government. The Karnataka High Court dismissed the petition based on the fact that the governor is not obliged or bound to conduct a floor test as long as his evaluation of the situation and the reasoning is not far-fetched, extraneous, or clearly malafide. Proclamations were issued in 6 states during the period between 1989-92. While the proclamations in Meghalaya and Nagaland, the states of Madhya Pradesh, Himachal Pradesh, and Rajasthan witnessed a proclamation in the wake of the controversial demolition of the Babri Masjid because the governments in these three states were led by the BJP, who were closely related to the organisation responsible for the demolition. It was argued that the governments of these states failed to function in accordance with the direction of the central government and therefore the constitutional machinery had broken down. The broad interpretation laid down in this judgment included laying down a checks and balances system upon the power of the executive under Article 356(1) when the same cannot be ensured by Article 356(3) during the period when parliament is not in session. The judgment stated that until the proclamation is approved by both the houses of the parliament, the state legislature cannot be dismissed and that while the proclamations await the approval from the parliament, the President ought not to make any irreversible decisions as there is a possibility of disapproval of those proclamations. The bench also stated that the governor must not decide by himself whether the ruling government still enjoys a majority or not, rather the same should be tested on the floor of the house. This interpretation overruled the decision delivered in the Rajasthan v UOI case where the court observed that the governor is not obliged or bound to conduct a floor test. Based on these grounds, the proclamations in the states of Karnataka, Meghalaya, and Nagaland were declared unconstitutional. On the other 3 proclamations, the court emphasized the reasoning and the grounds of the proclamation to be in coherence with the constitutional philosophy. The government of any state must never function in such a way wherein supports one religion over the others even if there is no active involvement in the events which led to the failure in upholding the basic principles of the constitution such as secularism. The court held that on all three occasions there was enough substance to support the reasoning and grounds on which the proclamations were issued, that was, unable to ensure the upholding of the principle of secularism in the Babri incident.

Therefore, the court validated the constitutionality of the 3 proclamations issued in the states of Madhya Pradesh, Rajasthan, and Himachal Pradesh.

SCOPE OF ARTICLE 356

The ideal connotation of defining the situation wherein Article 356 can be invoked is when the state government cannot be carried on in accordance with the provisions of the Constitution. One exception the recommendations of the Sarkaria Committee comes into existence when Article 356 is read with Article 355 which technically allows the invocation of the provision when there are serious allegations of corruption against the representatives in the state government.

RECOMMENDATIONS OF THE SARKARIA COMMISSION

Upon evaluating the viability of invoking Article 356, the commission was able to come up with four specific situations wherein the provision may be used to dismiss the state government.

- If a particular political party or an alliance of parties fails to form a majority large enough to govern the state.
- Internal disturbance gave rise to the functioning of the State government which may lead to subversion and undermine responsible governance.
- Failure to respond to internal disturbance or natural calamity.
- The state government refuses to comply with the Union in situations like maintaining national infrastructure or following orders during the war.

By laying down these four broad criteria for invocation of the provision, the Commission disregarded the reasoning given by the Union governments for the excessive usage of this provision during the stated period. The commission also superseded the judgment of *State of Rajasthan v Union of India*, one of the first cases of the judicial review of Article 356, and stated that to make the ground of mala fides more meaningful in future judicial reviews, it should be laid down through and appropriate amendment that material facts and grounds on

which Article 356(1) is invoked should be made an integral part of the proclamation. The precedent laid down in the Rajasthan case will be discussed in detail in the upcoming section.¹⁰

INSTANCES OF NECESSARY AND CONVENTIONAL INVOCATION

The provision may be invoked in a situation wherein it is not considered viable or possible to form a clear majority government in a state. One such instance was witnessed in the state of Uttar Pradesh in 2002 when the elections resulted in a fragmented verdict with no party or alliance gaining a clear majority. The governor of the state was not convinced by the claims of the ruling government to be able to prove their majority on the House floor and therefore, recommended the central government take over. This procedure of not conducting a floor test was, however, invalidated in the *SR Bommai v UOI* case. Another fair instance of invoking the provision includes the situation wherein the ministry of a particular state government resigns for any possible reason such as bifurcation of a state legislature or even in cases involving large-scale public protests. Such situations were witnessed across the states of Punjab, Pepsu, Andhra, Travancore-Cochin, and Orissa. In the instances where the coalition ministries weren't stable enough to sustain a long-term government in a state, invocation of the provision becomes a necessity. Such instances were witnessed across the states of Punjab, Bihar, Uttar Pradesh, and West Bengal. Gujarat Assembly witnessed the resignation of 2 ministries over a very short time span mainly due to large-scale public protests.¹¹

CONCLUSION

Article 356 of the Indian Constitution deals with the invocation of the president's rule in a particular state in case of a breakdown of constitutional machinery. Over the period of time, this article has been invoked on multiple occasions to settle political scores among rival political parties. Through legal precedents and committee recommendations, the checks and

¹⁰ Ministry of Home Affairs, *Report of Sarkaria Commission* (1983) <<http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERVI.pdf>> accessed 07 March 2022

¹¹ Venkat Ananth, 'How President Rule in India has been imposed over the Years' (*Livemint*, 26 January 2016) <<https://www.livemint.com/Politics/S3mETZ7H1cjKNlodkcM8O/How-Presidents-Rule-in-India-has-been-imposed-over-the-year.html>> accessed 07 March 2022

balances on the powers of the Governor and the President have been implemented to ensure valid grounds for invoking the president's rule. The scope of this article can be differentiated as Pre-1970s and Post-1970s. This time period witnessed the landmark judgments and commission reports which significantly brought clarity to the interpretation of this article. The landmark judgment of *Rajasthan v UOI* laid down a significantly broad interpretation of Article 356 wherein it was stated that the governor was not obliged to conduct a floor test before sending a report to the president and is well within the vested rights of the governor to do so based on mere apprehension as long as it is not completely or clearly malafide. Moreover, it was stated that the Court of Law has no power to question the satisfaction of the president to implement the President's rule in any particular state and the grounds on which the proclamation is issued cannot be evaluated on merits. A breakthrough recommendation by the Sarkaria Commission superseded *Rajasthan v UOI* which stated that the actual grounds which influenced the President's satisfaction must be included in the actual proclamation that is issued. However, this commission was not officially recognized by the Union government. The interpretation of this Article in the Post-1970s was mainly driven by the landmark judgment of *SR Bommai v Union of India*, wherein the validity of 6 proclamations was evaluated by the court of law. It was laid down that the governor must conduct a floor test in order to prove that neither the current ministry nor any alternative ministry enjoys a clear majority in the house. The court also observed that the recommendation by the cabinet to the president and the grounds which influenced the President's satisfaction can be evaluated. However, it was interpreted in a literal sense stating that even if a single ground holds valid for the invocation of the article, the other illegal or invalid grounds if any mentioned in the recommendations would be considered irrelevant and the proclamation would be considered valid.