

# **THE POWER STRUGGLE BETWEEN THE CENTRE AND THE STATES: THE EXAMINATION OF EMERGENCY PROVISION (ARTICLE 356)**

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## **INTRODUCTION**

This research paper has been written with the aim to examine the emergency provision imposed on states under Article 356 of the Indian Constitution, also known as the President's rule. The examination of the provision will be done through the route of understanding the genesis and the concept of the federal structure of the Indian state and then proceeding on to the brief description of the distribution of power between the Centre and the States. After the basic understanding of the Indian federal structure the emergency provisions mentioned in the Indian Constitution will be discussed with specific focus on President's rule mentioned under Article 356. This paper will deliberate the misuse of the above-mentioned article by the Centre to establish political dominance in case of an opposition party government in a particular state.

## **INDIAN FEDERALISM**

The word federalism is not mentioned in the Indian Constitution; however, in essentiality India has a federal government within the framework of a unitary state. The concept of federalism in the Indian context is unique. It developed from the British Era Indian state till after the Independence. The need for a federal structure arose from the need to create a political set up that unites the diverse population of the sub-continent of India. The main idea of the present-day federalism came into existence in the Simon Commission Report published in 1930<sup>1</sup>. It was further discussed in the Round Table Conferences held over the next few years but, was not successful. The Government of India Act, 1935 was enacted which forms the basis of the post-Independence federal government structure in India. It introduced the concept of Lists of subjects divided between the Centre and the States, then known as the Provinces. After the

Independence, it was established in the Resolution put forth by Pandit Jawaharlal Nehru that the Independent Indian State will function as a federal structure of government along with aspects of unitary form of government. He said, "...the said territories... shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union..."<sup>ii</sup>. Indian federalism, according to JC Johari, is horizontal with a strong unitarian bias<sup>iii</sup>. Many scholars believe that the Indian structure of Government cannot simply be classified either as federal or as unitary. It is a special structure fabricated just to meet the needs of the Indian society. The underlying idea of the federal set up in India is that the Centre and the State are independent bodies with dominant powers for the Centre.

## **DISTRIBUTION OF POWERS BETWEEN THE CENTRE AND THE STATE<sup>iv</sup>**

The legislative and administrative relations between the Centre and the States are inscribed in Part XI, Articles 245-263 of the Indian Constitution. The Seventh Schedule of the Indian Constitution gives a detailed division of powers between the Centre and the States through the three Lists, i.e. the Union List, the State list and the Concurrent list. The first list consists of matters of national importance like, state security and administrative competence and economy, etc. The State government has exclusive power to legislate on subjects mentioned under the second list. The subjects listed enumerated under the Concurrent list can be legislated by both, Central and State Governments. However, in case of disagreement between the two on a matter of legislation under this list, the legislation of the Parliament will overrule the legislation by the State Legislature. This is mentioned under Article 254 of the Constitution which establishes the power of the Centre over the States. The residuary powers are given to the Centre under Article 248 of the Constitution. Despite the subjects being divided between the governments at the Centre and State there is an imbalance of power. The Constitution favours the centre enormously with provisions under Articles 249 and 250<sup>v</sup> which enable the Parliament to legislate on matters listed under the State list. Similarly, Articles 256 and 257<sup>vi</sup> give the Central government an edge over the governments at state level. This can be used to unfair advantage

by the ruling party at the Centre in case of dispute with the opposition party in power in a particular State.

## **STATEMENT OF PROBLEM**

The statement of problem thus identified after further reading is that the structure of government of India is highly centralized despite being dubbed a federal government. This title has been questioned several times since the Independence. The States do have autonomy to a certain extent; however, the power of the State legislature is often override by the power of the Central Government because of the Indian Constitution. It created such a power imbalance purposefully, keeping in mind the bloodshed at the time of the drafting of the Constitution due to the partition, to maintain the unity and integrity of the Union of India. But, with time these provisions that came into being to protect the integrity of the State have been misused by Governments at the Centre to their own advantage.

## **LITERATURE REVIEW**

The topic of the present research paper is a popular area of research. Several journal articles talk about the Emergency provisions, notably Article 356, enshrined in the Constitution of India and how they have been used arbitrarily over the years by the Central Government. The illegality has often been called into question and examined. Some such literatures surveyed by the author for the purpose of the paper are, *Crisis Government in the Indian Constitution* by Sri Ram Sharma<sup>vii</sup>. This piece of work can be perceived as highly suspicious and critical of the emergency provisions provided in the Indian Constitution. Assuming the circumstances at the time it was written the article the suspicion had its rightful place with the author. The author has described the circumstances across the world in democracies because of which this provision exists, acting as a safeguard. But, in a newly birthed democracy such as that of India it was presumed to be perilous given the volatile situation that was prevalent. Another piece of literature examined as reading for the research paper was *Emergency Government Provision in the Indian Constitution* by I.D. Sharma<sup>viii</sup>. This is a descriptive work that focuses on explanation of the emergency provisions in the Constitution. It also presents a comparative study of these provisions and the emergency provisions provided in the Government of India

Act, 1935. The author of this work too presents some of the same grievances about the provisions as the author of the previous work of literature. The next piece of literature read for further understanding of the research topic by the author was *The Indian Union and Emergency Powers by Krishna K. Tummala*<sup>ix</sup>. The author here has examined the provisions of emergency under the Constitution of India in tremendous depth. Specific focus has been put on the role of a governor and the misuse of the Article 356 by the Central government on whose recommendation President's rule is imposed. It discusses the arbitrary nature of use of the above-mentioned provision along with several instances of aforesaid use.

All the mentioned literatures have talked about how the provision has severe cons if the wrong person comes into power. The work also lacks recommendations or solutions to the problem in question. However, it can be noted that the literature on the present research topic dwindled in 21<sup>st</sup> century. The area of research here has a huge gap as the research should advance with time. The issue is just as prevalent and makes for an interesting research in the current scenario as well.

## **RESEARCH QUESTIONS**

The research questions identified are –

- i. Is the imposition of President's Rule subject to judicial review?
- ii. What has been done to keep in check the immense power that has been bestowed upon the Central government by the Constitution of India?
- iii. Is there still a need for such a provision in the Constitution of India in the present day and time?

## **RESEARCH OBJECTIVES**

The following are the research objectives –

- i. To form an in depth understanding of federalism in the Indian context.
- ii. To understand and analyse Article 356, and its misuse by the autocratic Centre.

- iii. To attempt to come with a suitable recommendation to help in preventing further misuse of the provision.

## **THE CENTRE- STATE RELATIONS: PRESIDENT’S RULE AND ITS MISUSE**

The Constitution of India provided for immediate action in case of breakdown of constitutional machinery by adding Part XVIII, Emergency Provisions – Articles 352-360, to the Constitution. The incorporation of these Articles was a result of the predominant conditions of the time the Constitution was drafted. The country witnessed arson, loot, murder along with severe political tumult created an obligation on the drafters of the Constitution to prevent such a thing from happening again. The violence witnessed at the time was never before seen in the history of our country. The communal outrage between the Hindus and the Muslims reached extremes of violence. To prevent reoccurrence of such a situation now was the responsibility of the Constituent Assembly. Therefore, the emergency provisions became a necessity.

As mentioned, Articles 352-360<sup>x</sup> consist of the emergency provisions. The situations in which a state of emergency can be imposed are –

- i. Article 352 - external aggression or war or armed rebellion;
- ii. Article 356 - breakdown of constitutional machinery in a State; and,
- iii. Article 360 - financial instability.

The primary focus of this paper is Article 356 of the Indian Constitution or the President’s rule. This Article bestows the power to proclaim emergency and dissolve the elected state government if the report presented by the Governor of that particular state ‘satisfies’ him. This halts the entire state machinery. In this situation the President takes over all the executive power of the particular state. During such a time the legislative powers of the state assembly are transferred to the Parliament. A lot of things may affect the validity of the proclamation of an emergent situation in a state. The position of the Governor is one that is seen as highly influential in such a scenario and is oftentimes a point of contention. The position of a Governor is a Constitutional Office. However, no guidelines have been laid down concerning the appointment. This has led to a practice of appointment of Governors who were favourable to



the ruling party at the Centre. Hence, the Governor becomes a liaison of the Centre. The legitimacy of a report on the affairs of a state government penned by them comes under inquiry. In a case<sup>xi</sup>, after the resignation of a Chief Minister the leader of the opposition had filed a claim to form the government. The Governor of the state rejected the claim and President's rule was imposed in the State. This decision was questioned in the High Court and it was held that the Governor had acted without determining the facts and had acted in opposition to norms established by the Constitution. He did not allow the claim and the subsequent floor test. But the petition was dismissed by the court as conventions cannot be implemented and the conduct of the Governor was not justiciable<sup>xii</sup>. In yet another case<sup>xiii</sup> it was established that the Governor of a state is not an agent of Government of India only because their appointment is made at the pleasure of the President. They are not an employee of the Government of India; the Governor's office is a high constitutional position with important functions.

The provision has been grossly perverted by governments at the Centre purely because of political vendetta. The numbers of duly elected state governments that have been dismissed under Article 356 of the Indian Constitution are over 100. It is noted that dismissals have occurred due to intolerance between the ruling party at the Centre and the opposition party ruling the state government. It was seen that after Congress lost the 1977 elections, the Janata Party at the helm dismissed nine Congress led state governments. When Congress again became the ruling party at the Centre it too dismissed several state governments endorsed by the previous Janata Party government. In 1991 when the Congress government was ruling at the Centre, Bharatiya Janata Party (BJP) was in power in three Hindi-speaking states, i.e., Madhya Pradesh, Uttar Pradesh and Rajasthan. At the time the Ram Janabhumi movement had turned into a political problem raised by the BJP. The issue turned violent resulting in the Uttar Pradesh state government resigning and the dismissal of the Madhya Pradesh and Rajasthan governments along with declaration of emergency under Article 356. The Chief Minister of Madhya Pradesh filed a claim against the dismissal. In this case<sup>xiv</sup>, the High Court of Madhya Pradesh ruled in his favour stating that failure of the state government to maintain public order itself was not a reasonable ground for suspension of the government. "... Public disorder must be of such an aggravated form as to result in failure of entire law and order machinery of the State" to justify the invocation of Article 356. The Court concluded that "The Union of India has not been able to support on any material produced...the imposition of the President's rule only in the State ruled by Bharatiya Janata Party...and the imposition of the President's rule in

that State was wholly uncalled<sup>xv</sup>. The appeal presented before the Supreme Court of India, however, overruled this judgment holding the emergency imposed legal and required given the prevalent situation. The two parties have been at loggerheads with each other for a long time resulting in political rivalry between them. They have used this constitutional provision against each other resulting in impediment in the working of the state.

## **SR BOMMAI CASE: THE GAME CHANGER**

In the year 1988 a non-Congress party won the elections and formed the government with S.R. Bommai as the Chief Minister. One MLA defected from the party and showed letters to the Governor apparently signed by several other MLAs withdrawing their support from the party. The Governor wrote a report stating that there were defections from the ruling party government because of which Chief Minister Bommai did not enjoy majority to continue as the state government. He recommended that President's rule be imposed in the state. But, some of the MLAs who had apparently signed the letters expressed their support to the Bommai government protesting that their signatures were forged and misrepresented. After another report to the President by the Governor, the Bommai government was ousted and President's rule imposed.

A writ was filed before the High Court of Karnataka but was dismissed leading in a writ petition being filed before the Supreme Court of India. This is a landmark case<sup>xvi</sup> which put forth the strict guidelines within which imposition of Article 356 is to take place. The declaration of President's rule was brought under the purview of judicial review, hence, reducing the scope of Article 356 of the Constitution. The power of the President was also declared as a conditional and not an absolute power and there should be a responsible cause for imposition of President's rule<sup>xvii</sup>. The Court also stated that several such matters had been misjudged and that in such scenarios there was lack of constitutional potency. From then onwards the majority of the government in power has to be decided on the floor of the assembly.

### ***Aftermath of SR Bommai***

The SR Bommai case was a turning point in Indian polity. The imposition of President's rule can no more be used as a tool in political rivalries. It is a Constitutional instrument with severe

repercussions and should not be reduced a mere political play between political parties. Yet, it was seen over the years after the judgment of the SR Bommai case that certain governments found loopholes and imposed Article 356 of the Constitution to prove political supremacy. The introduction of judicial review in these cases has helped in maintaining the constitutionality. In 2005 the Bihar assembly was dissolved unconstitutionally and writ petition was filed before the Supreme Court. The Court held the emergency proclamation unconstitutional but, the Legislative Assembly remained suspended<sup>xviii</sup>. Another case in which such an order of imposition of president's rule was held unconstitutional by the Supreme Court of India was Nabam Rebia and Ors. v Deputy Speaker and Ors<sup>xix</sup>. One judgment though has been overruled by the Supreme Court. In 2016, the High Court of Uttarakhand held that the respondent's recommendation of imposition of President's rule in the State of Uttarakhand is quashed. A floor test was to be held and the Legislative Assembly reconvened<sup>xx</sup>. An appeal against this order was filed in the Supreme Court by the Union of India. The Court, in this case, held that the proclamation of president's rule is reinstated as according to the submission requested the Court cannot direct the Members of the Legislative to participate in the Assembly. The judgment passed by the High Court of Uttarakhand was thus set aside<sup>xxi</sup>.

## **CRITICAL ANALYSIS**

The thorough reading for the purpose of this research paper has led to understanding of the issues with Article 356 of the Indian Constitution. All the readings and personal research has revealed that the emergency provisions exist as safeguard to the constitutional machinery; however, over the years their usage has become more of a blockade rather than a facilitator to the machinery of the State. Often times it was seen that the provision poses as an obstruction to the political and administrative processes of the State. They were incorporated in the Indian Constitution to enable a systematic procedure in times of crisis to protect the Constitution and thus the statehood of our Country. In times of need these actions help the central government to work successfully and speedily in the absence of interference by state government. Yet in the hands of autocratic governments at the centre these provisions have been abused multiple times. Also, a hindrance to the process of democracy is unhealthy political rivalries which lead usage of such provisions as personal vendetta between them. In such situations it is necessary to realize that the absence of direct governance might lead to formation or increase of



nongovernmental institutions that may pose a threat to national integrity and security. Therefore, there it is the need of utmost importance to introduce a mechanism in the Constitution itself to prevent the abuse of emergency provisions as mere precedents will not be completely successful on their own.

## **CONCLUSION AND RECOMMENDATION**

The paper shall be concluded by answering the research questions posed at the beginning of the paper,

- i. The first question can be answered in affirmative. Yes, the proclamation of president's rule is subject to the purview of judicial review. It was in the case of *SR Bommai v Union of India*<sup>xxii</sup> that the scope of judicial review was extended to this provision.
- ii. From the research it can be concluded that the only control over the imposition of president's rule on a state is by the discretion of the Governor and judicial review. There should be introduction of more mechanisms to minimize the possibility of abuse of this provision.
- iii. The third question cannot be purely answered in affirmative. There is a need for a constitutional machinery to protect the Indian Constitution in emergent situations. However, the conditions which prevailed at the time of the drafting of the Constitution are not present now. So, an amendment to the provision in accordance with the present times is much needed.

### ***Recommendation***

After research on the topic of this paper it is recommended that the Articles 74(2) of the Indian Constitution which prevents a Court of Law from questioning the advice given to the President by the Cabinet of Ministers in case of emergencies be amended. A similar amendment should also be made to introduce more responsibility on the Governor while presenting a report for proclamation of President's rule to reduce the possibility of misuse of Article 356 of the Indian Constitution.

## ENDNOTES

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- <sup>i</sup> Benjamin N. Schoenfeld, *Federalism in India*, *The Indian Journal of Political Science*, JANUARY-MARCH, 1959, Vol. 20, No. 1 (JANUARY-MARCH, 1959), pp. 52-62
- <sup>ii</sup> Official Reports, *Constituent Assembly Proceedings*, vol. 1, p. 57.
- <sup>iii</sup> J.C. Johari, *Indian Government and Politics*, Delhi, 1977, p. 405.
- <sup>iv</sup> Satya Prakash Dash, *Indian Federalism and Distribution of Responsibilities*, *The Indian Journal of Political Science*, OCT. - DEC., 2007, Vol. 68, No. 4 (OCT. -DEC., 2007), pp. 697-710
- <sup>v</sup> *The Constitution of India*
- <sup>vi</sup> *Ibid* 5
- <sup>vii</sup> Sri Ram Sharma, *Crisis Government in the Indian Constitution*, *The Indian Journal of Political Science*, October—December—1949, Vol. 10, No. 4 (October—December—1949), pp. 11-14.
- <sup>viii</sup> I.D. Sharma, *Emergency Government Provision in the Indian Constitution*, *The Indian Journal of Political Science*, Oct.-Dec. 1960, Vol. 21, No. 4 (Oct.-Dec.1960), pp. 355-360 .
- <sup>ix</sup> Krishna K. Tummala, *The Indian Union and Emergency Powers*, *International Political Science Review / Revue internationale de science politique*, Oct., 1996, Vol. 17, No. 4, *New Trends in Federalism. Les nouvelles formes du fédéralisme* (Oct., 1996), pp. 373-384.
- <sup>x</sup> *Ibid* 5
- <sup>xi</sup> *Bijayananda Patnaik and Ors. v President of India and Ors.*, AIR 1974
- <sup>xii</sup> *Ibid* 9
- <sup>xiii</sup> *Hargovind Pant v Raghukul Tilak Dr and Ors.*, (1979) 3 SCC 458
- <sup>xiv</sup> *Sunderlal Patwa v Union of India and Ors.*, AIR 1993MP 214 (FB)
- <sup>xv</sup> *Ibid* 9
- <sup>xvi</sup> *SR Bommai and Ors v Union of India (UOI) and Ors.*, AIR 1994 SC 1918
- <sup>xvii</sup> B.N. Hosamani and M.G. Khan, *Government's Rule – An Analytical Study of the Role of Governor in Karnataka*, *The Indian Journal of Political Science*, July - September, 2012, Vol. 73, No. 3 (July - September, 2012), pp. 465-476
- <sup>xviii</sup> *Rameshwar Prasad and Ors. v Union of Indian (UOI) and Ors.*, AIR 2005 SC 4301
- <sup>xix</sup> 2016 (7) SCJ 1
- <sup>xx</sup> *Harish Chandra Singh Rawat v Union of India and Ors.*, MANU/UC/0007/2016
- <sup>xxi</sup> *Union of India v Harish Chandra Singh Rawat and Ors.*, MANU/SC/0611/2016
- <sup>xxii</sup> *Ibid* 16