

# An Overview of the Use and Misuse of Article 356 of the Indian Constitution

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## 1. Introduction

Article 356 was incorporated in the Indian Constitution, having consideration of the past as well as present. In the past, whenever there was lack of central control over the province, there was chaos, indiscipline and ultimately disintegration. Therefore, Art.356 gives guardian like power to supervise the Constitutional functioning of the States. The main concern is the means through which it is implemented. This is indeed a very drastic power which, if misused or abused, can destroy the constitutional equilibrium between the Union and the States and its potential for harm was recognized even by the Constitution makers.<sup>1</sup>

It is rightly said that the power of "dissolution of the state assemblies points to a deep-seated anomaly in the Indian federal structure. The power of the President to dissolve state assemblies and to dismiss state governments under Article 356 is intended to be used only in emergency situations when other constitutional remedies fail to meet the threatening situation." Moreover, Article 356 comes under the emergency provisions of the Constitution, which means that the extraordinary powers under this article are to be exercised rarely and only in extremely abnormal situations when the state assembly and the government are unable to function according to the provisions of the Constitution.<sup>2</sup>

According to the constitutional norms it is to be used in the circumstances as mentioned below:

- (a) Where the ministry having resigned the Governor finds it impossible to form alternative Government;
- (b) Where the party having majority in the Assembly declines to form ministry and the Governor's attempt to find a coalition ministry able to command have failed;
- (c) When a new State is created as a result of territorial reorganization or upgrading of union territory and there is no legislature for such state until elections are held and therefore, recourse may be had to Art. 356 as a stop gap arrangement;
- (d) A subversion of the Constitution by the State Government while professing to work under the Constitution or creating disunity among the people to disintegrate the democratic social fabric or to subvert is basic feature, such as federation or democracy;<sup>3</sup>
- (e) Where the State Government fails to comply with the directions issued by the union under following Articles even after working: Art. 257(2)(3), 353-A, 360(3), 392(2);

(l) Where the ministry, although having confidence of the majority in the legislature fails to meet extraordinary situation e.g. on outbreak of unprecedented violence, a great natural calamity etc.

(g) Further, a danger to national integration or security of states or aiding or abetting national disintegration or claims for independent sovereign status, large scale breakdown of law and order of state.

In a federal Political party, where it has become difficult to bring political stability under mature political parties due to peculiar nature of multi-party system and the resultant governmental instability, the ruling parties at the center in order to create a stable situation which may be temporary but convenient for the present, use the constitution as a pliable instrument even it is unjustifiable.

There are many instances to show that Article 356 has been frequently used by the party in power at the center as an instrument of political management to regulate, adjust, promote & stabilize the political process in favour of ruling party at the center and to create in convenience for the opposition.

In other words we can say that whenever there occurred political chaos, confusion in the states run by opposition parties it was treated, as a matter of great concern that the Constitutional Machinery had broken down and President's Rule declared without making effects to restore to normal conditions.

There have been large number of occasions when the President of India has acted under Article 356 of the Constitution of India on the ground of the failure or the Constitutional Machinery in the State.

Sometimes the President Rule was imposed primarily to enable the ruling party to overcome the crisis of internal dissensions which might even take the form of hatred towards the ruling CM by the party High Command.

The misuse of Art. 356 began as early as in 1951 in Punjab for resolving an internal crisis in the ruling party contained in it the seed of the coring crescendo or its misuse. During the 54 years since the inauguration of the Constitution in 1950, the Article was invoked about hundred and ten times for various reasons. Kerala, Punjab, UP have been the States in which the President Rule has been imposed many times. This was quite contrary to the assurances and expectations of Dr. Ambedkar that "*such Articles will never be called into operation and that they would remain a dead letter*".<sup>4</sup>

The use or misuse of this Article can be looked at from different angle i.e. during the period of different Prime Ministers. The graph will be as under:

<sup>1</sup>State of Rajasthan v. Union of India, (1978 (1) SC), AIR 1977 SC 1361) at p. 1407

<sup>2</sup>Chandra Pal, The Tribune, Sunday Reading, 8th November 1998.

<sup>3</sup>S.R Bommai v. Union of India, AIR 1994 SC 1918.

<sup>4</sup>CAD Vol. IX p. 177

During Nehru era there were six cases, in Lal Bahadur Shastri era two cases, in Indira Gandhi era twenty eight cases, in Janata rule twelve cases. The latest figure about the use of Article 356 is more than 86.

In none of these 86 cases, the procedure mentioned by Dr Ambedkar was followed. It was reported in the press that the President Dr Shankar Dayal Sharma was reluctant to sign the Proclamation under Article 356 with respect to the States or Uttar Pradesh, Madhya Pradesh, Himachal Pradesh and Rajasthan in 1992. He was right in expressing his disapproval. But, it appears that he ultimately agreed to sign as he had no other option under the Constitution. In this behalf it is submitted that Dr Shankar Dayal Sharma should have asserted himself by inviting the attention of Prime Minister Narasimha Rao to what Dr Ambedkar has observed in the Constituent Assembly and advised him to act accordingly.<sup>5</sup>

In the initial years, since the promulgation of the Constitution, the instance of its use were not many.<sup>6</sup> But with the passing of years this Article has been invoked with increasing frequency. Imposition of the President's Rule can be classified into seven broad categories.

## 2. Dismissal of Ruling Governments:

President's Rule in the nine states of Haryana, Punjab, HP, UP, Bihar, Orissa, MP, WB, TN and Rajasthan by the Janta Government in 1977 and Congress (I) government was imposed mainly to defeat of the ruling party in those states.

While President's Rule imposed by the Narsimha Rao Govt. was based on the satisfaction of the President that Central ordinances banning communal organizations such as RSS, VHP, Bajrang Dal etc. was implemented by the concerned BJP Government in the States of MP, UP, HP and Rajasthan.

## Imposition of Art. 356 on charges of Corruption and Maladministration:

Maladministration many a times have become sufficient reason cited by the center to dislodge the State Government. This has been further added by the corruption. Tamil Nadu (1979) and Manipur (1979) are two states placed under President's Rule in this category,

Tamil Nadu government in 1979 was headed by M. Karunanidhi was dismissed in the basis of the report of the Governor that government, indulged in serious acts of Mal administration, corruption and misuse of power of setting all norms and, all canons of justice and equity.<sup>7</sup>

The dismissal of Yagneshwar Shaiza's (Janta) ministry in Manipur in 1979 was also based on the report of the Governor declaring it as "*such a corrupt ministry*".<sup>8</sup> Similarly charges of corruption had been made as a basis for dismissing a Govt. of S. Pratap Singh Kairon in Punjab, 1963, Devraj Urs in Karnataka (1977), Ch. Bansi Lal in Haryana (1972), AR Antulay in Maharashtra (1983) and the

Assemblies were dissolved.

## 3. Imposition of Article 356 in case of Hung Assemblies:

President's Rule was imposed, when the election results to the state legislative assemblies were not conclusive viz, no party or preexisting coalition of parties wins a majority of seats in the Assembly.

In the Kerala incident in 1965 it was seen that newly elected Assembly CPI (M) was dissolved, it emerged single largest party in the Assembly. Similar situation was followed in the UP in 1996 with a slight difference that Assembly was not dissolved but kept in state of suspended animation as BJP stated the claim for forming the Government.

Further the Rajasthan (1967) & Orissa (1971) incident were similar as no party got clear majority.

Congress emerged as largest single party, United Front in both cases claimed support for viable ministry and requested the Governors to give them opportunity to form the Government. Even the opposition parties assured the Governors to form the Government but Governors of both the states denied their rights and instead President's Rule was imposed.

As recently The President Rule was imposed in 2005 in Bihar & Goa due to hung Assembly.

## Imposition of Art. 356 due to the alleged breakdown of law and order:

In all the instances stated below break down of law and order was one of the lame excuse for imposition of Article 356:

Kerala government was dismissed under this category. In 1950 Communist Government had introduced Structural/radical innovations in the socio-economic system of the State, which disturbed the vested interest of dominant economic, caste and religious groups. As result the affected groups launched the 'liberation struggle.' Congress party of the states and center also supported the liberation struggle for their own political motive that is to dismiss the 1<sup>st</sup> elected Communist government and dissolve the Assembly although it enjoyed majority. According to TK Tope "*invocation of Art. 356 in Kerala in 1959 was an instance of abuse of power conferred by the Article on the Government of India*".<sup>9</sup>

Application of Article 356 in Tamil Nadu in 1991 against M. Karunanidhi shows that this emergency provision was used as a tool to gain the support of the Chandra Shekhar's Ministry and from other Parties like the AIADMK.<sup>10</sup>

The Mohanta Government in Assam in 1990 on the ground of the incapacity of the State Government to combat the worsening of law and order situation in the state. It was alleged that United Liberation Front of Assam (ULFA) had been indulging in criminal and Secessionist activities.

But after having a close observation of the facts it was held that it was not law and order problem but the CM's close allegiance with VP Singh which, threatened Chandra

<sup>5</sup>President's Rule in the States in 1978, ILI Publication.

<sup>6</sup> Between 1950 and 1954, it was invoked only on 03 occasions, it was invoked on 09 occasions between 1965 and 1969; it rose to 21 instances during the period 1975-1979 and to 18 during the period 1980-1987.

<sup>7</sup>Sarkaria Commission Report.

<sup>8</sup>K. Surya Prasad p.140.

<sup>9</sup> TK Tope, Constitutional Law of India, 2<sup>nd</sup> Ed (Eastern Book Co., Lucknow, 1992)

<sup>10</sup> The Statesman, 23 Feb 1991.

Shekhar's Government.<sup>11</sup> Thus, the motive behind Central intervention was political and not constitutional.

The Dismissal, of the Rashtriya Janta Dal (RJD) government headed by Rabri Devi, under Article 356 on the ground of failure of law and order had given a clear picture as to how the HP Government had used constitutional position of the position of Governor For the sake of political convenience.

Breakdown of constitutional machinery, an essential requirement of Article 356, has been explained by MP High Court as:

*"mere worsening of law and order situation in a state due to sudden outbreak of violence doesn't attract the extreme step of imposition of President's Rule unless the President is satisfied that law and order situation in the state, due to sudden disturbances, has made or likely to make the functioning of the state government impossible in the state"<sup>12</sup>.*

#### **Imposition of Art.356 ground of party wrangling:**

In certain cases, President's Rule was imposed primarily to enable the Legislative Party of the Ruling Party to tide over the crisis of internal dissensions which might even take the form of dislike of the ruling CM by the party High Command.

This was done in Punjab (1951 & 1966) UP (1973 & 1975) AP (1973) Gujarat (1974), Orissa (1976) and Karnataka (1990). In all these cases President's Rule was imposed when functionalism crossed the reasonable limit of party discipline.

Imposition of Article 356 as a result of Re-organization of States: When the new state of Kerala was created by uniting parts of Travancore-Cochin and Malabar districts of the Madras State, Travancore-Cochin was already under President's Rule. Thereto are, Presidential proclamation was issued on 1st November 1956 to continue the President's Rule.

Similarly when Manipur & Tripura were created as separate political entities in 1972, there had been no election to the respective legislature. Thus, President's Rule was imposed for two months to enable elections to be held.<sup>13</sup>

#### **Imposition of Art. 356 on the Allegation of Paralysis of Parliamentary Process<sup>14</sup>:**

This method was one of the new dimensions of the imposition of President's Rule in the states. According to this method special use to adjourn the House and prevent the House from functioning. This instance can be seen when President's Rule was imposed in West Bengal (1968), Nagaland (1975), Tamil Nadu.

In these cases the Speaker was acting of the behest of ruling party and the constitutional crisis were created with deliberate intention of preventing the opposition party which

formed the Government from providing confidence.

The spirit of "Corporate Federalism" can preserve the balance between the Union and States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty does not lie in anyone institution or in anyone wing or the government. Even assuming that center has been given certain dominance over the States, that dominance should be strictly for the purpose intended, not for the oblige purposes. An unusual and extraordinary power like Art. 356 cannot be employed for furthering the prospects of a political party or to destabilize a duly elected government and a duly constituted Legislative Assembly.

Unfortunately, however, it so happened that over the years, the center has not always kept in mind to concept of co-operative federalism or the spirit and object with which the Article was enacted while dealing with the states and has indeed grossly abused the power under Article 356 on many occasions.<sup>15</sup>

The Proclamation of Art. 356 by the non-congress governments is worse than those of the Congress governments. This is borne out by the fact that while the Congress governments had to their credit twenty-six justifiable instances out of seventy-four proclamations, the non-Congress rule could be credited with only four such instances out of the total of eighteen proclamations. The record of Congress backed non-congress minority regimes, shows four justifiable instance out of the total eight proclamations made,

However, when we take into account both the length of service and frequency with which it had proclaimed the President's Rule, the two Congress backed minority rulers, namely Charan Singh and Chandra Sekhar stand in the forefront, i.e. Charan Singh declared President's Rule four times during a brief spell of five and half months and Chandra Sekhar also proclaimed in four times during a short period of seven months and eleven days, as against the notional average of two times a year.

#### **4. Conclusion**

From the above historical survey, one can say with candour that all political parties are culpable of using or misusing Article 356 whenever they were in power or were supporting those in power. This amply illustrated the saying that "whosoever goes to Lanka becomes Ravana," it is an irony that while most political parties criticize what they perceive as the 'misuse' of the Article when they are out of power, they never resist the temptation to 'misuse' it when they get an opportunity to do so solely for settling political scores and to achieve their objectives. This substantiates the simple truth that our political parties and leaders are thinking of themselves and not of the nation and the people. They have probably forgotten what transpired during the debates in a Constituent Assembly on the use of Article 356. The way politics in independent India has been shaped itself prompted the political parties to find the loopholes in the Constitution. While doing so they failed to understand the spirit of the democratic federal constitution.

<sup>11</sup> Sunil Deshta, President's Rule in the States, Constitutional Provisions and Practices p. 118

<sup>12</sup> Sunderlal Patwa v. Union of India, AIR 1998 MP 214.

<sup>13</sup> Sarkaria Commission Report.

<sup>14</sup> K, Surya Prasad

<sup>15</sup> Constitutional Review Committee Report 2002

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