

A Study of the Nature and Extent of Imposition of President Rule under Indian Constitution

¹Dr. Mahendra Singh Khichar & ²Anukriti

¹Professor, OPJS University, Churu(Raj.) (India)

²M.A, UGC-NET (Political Science), Research Scholar, OPJS University, Churu(Raj.) (India)

1. Introduction

Imposition of President's Rule under the provisions of Article 356 shall be in rarest of rare cases only. It was expected to be a dead letter in the Constitution of India.ⁱ Whereas the reality is that it has been extensively used by the Centre. Sometimes the Centre has resorted to Article 356 in the garb of discharging its obligations under Article 355 or the Constitution of India, which imposes a duty on the Centre to ensure that the Government or every State is carried on in accordance with the provisions of the Constitution. It is in fulfillment of this obligation that the Centre takes over the Government of a State in case of breakdown of the constitutional machinery therein.ⁱⁱ

An interesting and significant question arising out of the obligation of the Centre to ensure that State Government is carried on in accordance with the Constitution is whether the Centre can take cognizance of complaints made from time to time regarding the deeds of omission or commission, bordering on corruption, against State Chief Ministers. It has been a common feature of the Indian political life that such complaints are usually made to the Centre against State Chief Ministers. If the Centre intervenes, it may be accused for interfering too much in State matters and its *bona fides* may become suspect if the parties controlling the State and the Centre happen to be of different complexion. On several occasions, the Centre has moved against the State Chief Ministers. It appointed a commission or enquiry to go into certain charges against the Chief Minister or Punjab who later resigned because of an adverse report by the Commission.ⁱⁱⁱ

2. Instances of Presidents Rule in States

In 1973, a centrally appointed commission consisting of a Judge of the Supreme Court was appointed to enquire into some complaints against the members of the Karunanidhi Ministry in Tamil Nadu, which was dismissed earlier by the President under Art. 356. The Chief Minister had earlier asserted on the floor of the State Legislature that under the Constitution, the Centre had no right to interfere in the powers conferred on the State under List II. It was asserted that the State cabinet was responsible only to the State assembly, which was supreme in so far as the affairs of the State were concerned.^{iv} These arguments did not however, prevail with the Centre. Later the legality and constitutionality of the appointment of the commission was challenged in the Supreme Court but it upheld the same.^v

At times the Chief Minister is advised through a 'Directive' issued by the Home Minister, Government of India, to recommend to the Governor dissolution of the Legislative Assembly of the concerned State. Such a

situation arose in *State of Rajasthan v. Union of India* when the Home Minister advised the Chief Minister to recommend to the Governor its dissolution. The Court observed that there was nothing wrong in it and it was not a 'directive' at all it has no constitutional authority behind it. It was just an advice which was always open to the Home Minister of the Central Government to give advice or suggestion to the Chief Minister of a State. It is for the Chief Minister of a State either to accept it or reject such advice or suggestion as he thought fit.^{vi}

The provisions relating to the President rule in the States have been provided under Article 356 of the Indian Constitution, which runs as follows:

"Provisions in case of failure of Constitutional machinery in States - (I) 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 and 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 any part of the operation of any provisions of this Constitution relating to anybody or authority in the State;

Provided that nothing in this clause shall authorize 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 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 unless 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 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 with respect to such Proclamation has been passed by the House or the People before the expiration or that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House or 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 also 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^{vii} 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 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 with respect to the continuance in force such Proclamation 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 also 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.^{viii}

(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 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 the 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:

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May 1987 with respect to the State of Punjab."

3. Position in Respect of Jammu and Kashmir:

Keeping in view; the special status given to the State of Jammu and Kashmir, in case of failure of Constitutional machinery in that State, the situation shall be governed by Section 92 of the Constitution of Jammu and Kashmir. Section 92 reads as under : "Provisions in case of failure of Constitutional machinery in the State:

(1) If at any time the Governor 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 Governor 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 anybody or authority in the State ;

(b) make such incidental and consequential provisions as appear to the Governor to be necessary or desirable (or giving effect to the objects of the Proclamation, including provisions for suspending in whole or in any part the operation of any provisions of this Constitution relating to any body or authority in the State;

Provided that nothing in this clause shall authorize the Governor 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 Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation and previous Proclamation cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Governor by a Proclamation under this section assumes to himself any of the powers of the Legislature to make laws, any law made by him in the exercise of that power shall subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature and any reference in this Constitution to any Acts of or laws made by the Legislature shall be construed as including a reference to such laws.

(5) No Proclamation under sub-section (1) shall be issued except where it is a Proclamation revoking a previous Proclamation, be laid before each House of the Legislature as soon as it is convened."

Amendment of Section 92 of the Jammu and Kashmir Constitution:

It may be noted that by Section 2 of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, the words "Sader-E-Riyasat" were omitted and the word "Governor" was substituted in Section 92 of the Constitution of Jammu and Kashmir.

Position in respect of National Capital Territory of Delhi:

In case of the National Capital Territory of Delhi, provisions in case of failure of the Constitutional machinery, have been provided under Article 239-AB of the Constitution of India, which runs as follows:

239AB. Provision in case of failure of Constitutional Machinery -

If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied --

- (a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of Article 239AA or of any law made in pursuance of that article; or
- (b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of Article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in Accordance with the provisions of Article 239 and Article 239AA.^{ix}

4. Position in respect of Union Territories:

Provisions relating to President's Rule in the Union Territories have been provided under Section 51 of the Government of Union Territories Act, 1963, which are as follows:

"Section 51: If the President, on receipt of a report from the Administrator of a Union Territory otherwise, is satisfied-

- (a) that a situation has arisen in which the administration of the Union Territory cannot be carried on in accordance with the provisions of this act; or
- (b) that for the proper administration of the Union Territory, it is necessary or expedient so to do, the President may by order suspend the operation of all or any of the provisions of this Act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union Territory in accordance with the provisions of Article 239".

5. Imposition of President Rule

According to Article 356(1) to get rid of State Government solely on the ground that different Political Party has come to power at Centre is not admissible. Law and order situation alone may by itself: be not a ground for imposition of President rule but as disclosed by the facts reported by the Governor to the President and his being satisfied that a situation has arisen that the governance of the State in accordance with the provisions, of the Constitution was not possible, it is sufficient to impose the President's rule.^x Report of Governor to the President must contain material facts reflecting the situation that has arisen in the State and his opinion and assessment of the situation,^{xi} where after imposition of President's rule in the State on the ground of failure of Constitutional Governance, there was no improvement in the situation, extension of rule from time to time is not invalid. Internal

disturbance can be a ground for Proclamation of emergency in a state, notwithstanding, that it is provided for by Article 355." Proclamation means 'Public announcement'.^{xii} The Governor justified in sending a report to the President inviting him to exercise powers under Art. 356 when he finds that the ruling party has lost majority support by some of the legislators and there is no evidence those members of some other party was lending support. Recourse to floor test is before sending report is not compulsory or obligatory on the Governor to test the veracity of support to the ruling party.^{xiii}

The power to issue a proclamation is a Constitutional power of the President and not the executive power of the President. Justice Sawant quoted in *S.R. Bommai V. Union of India*^{xiv}, that the exercise of power by the President under Article 356(1) to issue Proclamation is subject to judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation has been satisfied or not.

The provisions of S.92 of the J&K Constitution is an integral part of the Constitution of the State of Jammu and Kashmir and which operate in its defined area is not repugnant to Art. 356 of the Constitution of India. The doctrine of repugnancy has no application to whatsoever, while interpreting provisions of two separate Constitutions each enacted by a distinct Sovereign Constituent Assembly.^{xv}

6. Consequences which follow after imposition .of president's rule in a state:

Constitution some consequences follow, during this period the Legislative Assembly may either be dissolved or suspended. If the Legislative Assembly is dissolved, steps are taken to have fresh elections for constituting a new Legislative Assembly in the State. But when Legislative Assembly is suspended then by virtue of Clause (I) of Art. 357, the Parliament is empowered:

- i) to confer powers on the President for making laws for the State and to authorize him further to delegate such power to any other authority,^{xvi}
- ii) to authorize the President or any other authority on his behalf for making laws and imposing duties upon the Union or its officers and authorities, and
- iii) to authorize expenditure from the Consolidated Fund of State when the House of the People is not in session.

The President may make such incidental and consequential provisions as appear to him to be necessary or desirable for giving effect to the objects of the Proclamation. These may include provisions for suspending in whole or in part the operation of any provisions of the Constitution relating to any body or authority in the State.^{xvii} The administration is delegated by the President to the Governor of the State, who discharges his responsibility with the help of advisors. The President is to enact laws for a State during the President's rule in consultation with the members of Parliament from that State.^{xviii}

7. The president's rule and the parliament

The Constitution makers thought, the Parliament of

India to be primary safeguard against the abuse of emergency powers. The Constitutional provisions regulating the proclamation of President's rule contained in Article 356 of the Constitution requires that when a Proclamation under Article 356 has been issued in respect of a State, the President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. However, the Parliament can confer on the President the powers of the Legislature of the State to make laws and to authorize the President to delegate, subject to such conditions as the President may think fit to impose the power so conferred to any other authority to be specified by him in this behalf.^{xix}

irrelevant to the purpose for which the power under 356 had been conferred by the Constitution namely, a breakdown of the Constitutional machinery in a State, or in other words, where there is no nexus' between the reasons disclosed and the satisfaction of the President, because in such a case, it can be said that there has been no 'satisfaction' of the President which is a condition for exercise of the power under article 356.

(b) that the exercise of the power under article 356 has been *mala fide*, because a statutory order which lacks *bonafides* has no existence in law.^{xx}

8. Judicial Review Of Proclamation Under Art. 356:

The judicial review of a Proclamation under article 356 would lie on any of the grounds upon which any executive determination, which is founded on subjective satisfaction, can be questioned. The doctrine that the satisfaction reached by an administrative officer based on irrelevant and relevant grounds and when some irrelevant grounds were taken into account, the whole order gets vitiated has no application to the action under Art. 356. It may be submitted that the judicial review of the Presidential Proclamation is not concerned with the merits of the decision, but to the manner in which the decision had been reached. The satisfaction of the President cannot be equated with the discretion conferred upon an administrative agency. Following examples can be cited to clarify the position:

(a) that the Proclamation has been made upon a consideration which is wholly extraneous or

9. Conclusion

Thus, Presidential Proclamation dissolving a State Legislative Assembly is subject to judicial review.^{xxi} Since the coming into force of the Constitution President's rule has been promulgated for more than 120 times^{xxii} on various grounds. In Punjab for the first time the President's rule was invoked. The causes which have led to President's rule in States have been varied in nature in different States. In India, There are the instances of invoking Art. 356 on various grounds such as popular agitation against the ministry, corruption and maladministration by ruling govt., party wranglings, prevention or facilitation the bifurcation of the state, pendency of legislative elections and loss of public confidence. Apart from this, on political grounds the article 356 had been widely misused. It also attempted to dilute the position and functioning of the Governors of the states.

End Notes

ⁱ Constituent Assembly Debates, Vol. IX, p. 177. Dr. Ambedkar remarked while debating on Draft Articles 277 and 277 A

ⁱⁱ Such provision is not peculiar to the Indian Constitution only. A parallel to this is to be found in the American Constitution, which places the Centre under a duty to maintain the republican form of the Government in each State, in the Australian Constitution, which provides that the central executive power extends to the execution and maintenance of the Constitution. See Kelly & Harbinson, *The American Constitution*, p.864

ⁱⁱⁱ A.K. Chanda, *Federalism in India*, 127-133. In this case the ruling party at the Centre and the State was the same. But the things may be difficult when the Central and the State Governments belong to different political parties.

^{iv} *The Times of India*, 16th December, 1973.

^v Dr. M.P. Jain, *Indian Constitutional Law*, fourth ed. reprint 2002

^{vi} AIR 77 SC 1361

^{vii} The period of six months which had been raised to one year by the 42nd Amendment, has been resorted by the 44th Amendment Act, 1978.

^{viii} Changes made by the 44th Amendment Act, 1978

^{ix} Introduced with effect from 1st February 1991 by the Constitution (Sixty-ninth Amendment) Act, 1991 Section 2 thereof.

^x Capt. Kanwaljit Singh v. Union of India, AIR 1991 P&1154. S.R

^{xi} AIR 1990 Kant. 5.

^{xii} In the Matter of A. Sreerarnulu, AIR 1974 AP 106 at P- 110

^{xiii} AIR 1990 Kant. 5.

^{xiv} Ibid

^{xv} (1987) 4 Reports (J&K) 56 DB.

^{xvi} Article 356(1) (a) imposes a bar against the assumption by the President of the legislative powers of the State Legislature, which can only be transferred to Parliament. Yet, the President, however, cannot assume to himself any of the powers vested in or exercisable by the High Court, nor can he suspend in whole or in part the operation of any provision of the Constitution relating to the High Courts.

^{xvii} Article 356(1)(c) of the Constitution of India

^{xviii} It is as per well-established practice that the President enacts the laws in consultation with the Members of Parliament of that State. There is no such requirement under the Constitution of India.

^{xix} Art.356 (1) of the Constitution of India.

^{xx} State of Rajasthan V... Union of India, AIR 1977 SC 1361; Roy V. Union of India, AIR 1982 SC 710

^{xxi} Justice K. Ramaswamy, J, in S.R. Bornmai v. Union of India, AIR 1994 SC 1922 at p. 2048.

^{xxii} Hari Jaishingh, "Playing with Article 356 Question 01" exercising restraint". *The Tribune*, 6th November 1998.