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PRESIDENT RULE UNDER ART. 356 - A CONSTITUTIONAL MECHANISM FOR ABUSING AUTHORITY: AN ANALYSIS

Wasim Raza¹

ABSTRACT

Under Schedule VII of the Indian Constitution, the powers of the Central Government and the State Government are clearly defined. However, there are times when the federal structure of the country changes and powers are transferred to the Centre in order to protect the country's sovereignty, unity, integrity, and security, as well as the democratic political system and the constitution. One such measure is the imposition of President Rule in the state under Art. 356 due to the failure of the Constitutional Machinery or the failure of the State Government to comply with the Central Government's orders. However, in recent years, this action has been perceived as a deviation from constitutional expectations and a move by the Central Government to seize control of the State Government. The imposition of President's Rule has long been a source of discussion among legal experts. This paper examines the justification for this Art.'s imposition against other states by nearly all Central Governments as well as how this imposition affects the nation's democratic structure. This paper will also examine whether the Central Government's imposition of President Rule on several instances since the Indian Constitution's implementation up to this point has been able to live up to constitutional expectations.

KEYWORDS: President Rule, Unionism, Art. 356, Republic, Democracy

¹ Senior Research Fellow, Ph.D., University College of Law, MohanLal Sukhadia University, Udaipur.

I. INTRODUCTION

India endured a protracted war for independence, so maintaining all forms of freedom offered by a democratic society is in the nation's best interests.

The Union is obligated under the Indian Constitution to defend each state from outside attack and internal unrest as well as to ensure that each State Government upholds the Constitution's provisions. However, the clause was criticized as an intrusion by the Union into the business of the State Government. But Dr. B.R. Ambedkar said that the Constitution's framers rejected the criticism².

The clause of emergency has been added to the constitution to ensure that the Union complies with the responsibility. The Indian Constitution has provisions for the following categories of emergencies:

- I. National Emergency³
- II. Emergency on Grounds of failure of Constitutional machinery⁴and
- III. Financial Emergency⁵

The imposition of Art. 356 also known as the President's rule among the aforementioned remedies has long been a topic of discussion in the nation because it alters the entire democratic fabric of the nation. The essence of Art. 356 is that when the state government cannot function in accordance with the Constitution or disobeys Union orders, the President, upon receiving a report from the governor of the concerned state, determines that the state's constitutional machinery has failed and issues a proclamation of emergency, ignoring the state legislature and the government.

² IX Constituent Assembly Debate 133.

³ The Constitution of India, 1950, art. 352.

⁴ The Constitution of India, 1950, art. 356.

⁵ The Constitution of India, 1950, art. 360.

These provisions were included in the Constitution with the intention of assisting India in dealing effectively with any unforeseen circumstances. It is undeniable that the members of the drafting committee thought this clause would only be applied in the most extreme circumstances and as a last resort at the time it was included in the Indian Constitution. However, it appears that the original intent behind its introduction has been compromised, and since the Constitution came into effect, the Central Government has abused this corrective measure to overthrow state governments in states where it was unable to do so through democratic channels, posing a grave threat to the nation's democracy.

The original intent of Art. 356 was to protect the nation's unity and integrity and to offer backup plans in case the democratic system ever failed. But it is still necessary to assess whether the application of Art. 356 can live up to constitutional expectations.

II. Origin and Evolution of Art. 356

The Government of India Act, 1935, is where Art. 356 first appeared.

III. The Government of India Act, 1935

In terms of three lists the Federal List for the Centre, the Provincial List for the provinces, and the Concurrent List for both it provided for the division of powers between the Centre and units. The Viceroy received residual authority. By including comparable clauses in the newly formed constitution's VII Schedule, the Constitution of India's framers preserved this method. According to Section 93 of the 1935 Act, the Governor of a province was required to anticipate to himself any or all powers granted to or exercisable by any provincial body or authority, including the Ministry and the Legislature, and to carry out those duties in his official capacity if the governor became convinced that a situation had arisen where the administration of the province could not continue

in accordance with the provisions of the said Act⁶.

IV. THE CONSTITUENT ASSEMBLY

The members of the Drafting Committee believed that the newly drafted constitution should give the President identical powers to those of the Governor General as under Section 93 of the 1935 Act.

Therefore, it can be concluded from the foregoing that the Drafting Committee's goal was that the Centre should only overtake a duly elected representative government by using Art. 356 in the rarest of circumstances and should not become a frequent means of impairing the autonomy of the state.

There are claims that the Constitution favors the Centre. Although the Centre is given more authority, it is also made sure that the state's independence is not jeopardized. In the case of *S.R. Bommai v. Union of India*⁷, the state's autonomy was justified as follows: "The Constitution of India has created a federation, albeit with a bias in favor of the Centre. They are favored in the space assigned to the United States.

Thus, it can be concluded that the states must operate in accordance with the constitution's provisions, and that the union's efforts to do so do not constitute an infringement on the states' autonomy.

V. USE OF ART. 356 OR ITS IMPROPER USE

Art. 356 of Part XVIII of the Indian Constitution's "*Emergency Provisions*" section allows for the installation of the president's rule if the state's constitutional machinery fails. There are 5 clauses in it.

The reasons for imposing Art. 356 and the results of such a declaration

⁶ National Commission to Review Working of the Constitution, *A Consultation Paper on Article 356 of the Constitution* at Para 2.1 (2001), at <https://legalaffairs.gov.in/sites/default/files/Article%20356%20of%20the%20Constitution.pdf>.

⁷ AIR 1994 SC 1918.

are covered in Clause 1. Art. 356 (1) declares as follows⁸

"If the President determines that there are circumstances in which the State Government cannot be carried out in accordance with the provisions of the Constitution of India, he may by declaration, based on his satisfaction with the report of the Governor of the State or otherwise."

- I. Take over all or any of the State Government's duties or any of the Governor's powers or those of anybody else in the State other than the State Legislature.
- II. Assert that the Parliament shall exercise or authorize the powers of the State Legislature
- III. Make any additional incidental and consequential provisions that the President deems appropriate or necessary to carry out the Proclamation's objectives, including provisions for the full or partial suspension of the application of any provisions of this Constitution relating to any person or authority within the State.

The clause does not, however, give the President the authority to assume or exercise any of the powers held by or exercisable by a High Court or to suspend whole or in part the application of any provision of this Constitution related to the High Court.

It is clear from the aforementioned clause that in order to impose Art. 356, also known as the President's Rule, the President must be satisfied that the state's affairs are not being conducted in accordance with the Constitution, whether due to the state governor's error or some other reason.

Therefore, it is necessary to examine the key components of the clause,

⁸ The Constitution of India, 1950, art. 356.

namely: the role of the Governor, the failure of the constitution President's Satisfaction:

Real authority is vested in the Council of Ministers, not the President, which is one of the main characteristics of a parliamentary form of government. The President is primarily a ceremonial leader who follows the Council of Ministers' guidance and recommendations. The similar idea is outlined in Art. 74 of the Indian Constitution, which calls for the creation of a Council of Ministers led by the Prime Minister to assist and advise the President, who will follow their recommendations when performing any of his duties.⁹ With the caveat that the President may consult the Council of Ministers for advice, the 42nd and 44th Constitutional Amendments have made the advice of the Council of Ministers binding on the President.

The President received advice from the Council of Ministers to declare an emergency in Uttar Pradesh in 1997¹⁰ and Bihar in 1998¹¹; in both cases, the President sent back the recommendation for reconsideration under Art. 74(1), but it was not taken into consideration. Thus, it can be concluded that the Constitution anticipates the President and the Council of Ministers acting in harmony and cooperation with one another. The President has been granted limited authority, not unlimited authority. Before enforcing Art. 356, pertinent conditions must exist. As a result, the president ought to be satisfied with the governor's report or with other factors, such as judgement based on political beliefs or principles.

Therefore, it is important to understand whether the presidential satisfaction is subject to judicial review, or whether it can be challenged in court.

⁹ The Constitution of India, 1950, art. 74 (1).

¹⁰ XXXXIII Asian Recorder (1997) 26897.

¹¹ XXXXIV Asian Recorder (1998) 27682.

It has been clear over time that the judiciary and legislature have never agreed on whether the presidential satisfaction is subject to review. Clause 5 was inserted to Art. 356 by the 38th Constitution Amendment Act of 1975 in order to give the president a way to avoid the reach of judicial review. It declared that, “*no matter what else in this Constitution states, the President's satisfaction described in clause (1) is final and binding and cannot be challenged in court*”. This was later removed by the 44th Amendment Act of 1978, signaling that judicial review of the president's satisfaction is still possible.

The Janta Dal government of Karnataka, which was headed by the state's then-CM S.R. Bommai, experienced a political crisis, and was ultimately ousted without being given the chance to demonstrate its majority in the Legislative Assembly. President's rule was then established in 1989 after the State Legislative Assembly was dissolved. By submitting the writ, S.R. Bommai contested the proclamation's constitutionality.

The Court decided that while the Legislative Assembly of a State under to President's Rule may be suspended, it should not be dissolved prior to the Parliament's approval of the Presidential Proclamation. Additionally, the Court established the floor test principle to determine the Ministry's strength on the floor of the State Legislative Assembly because it is not a matter that can be resolved to the Governor or President's or President's subjective satisfaction.

VI. ROLE OF GOVERNOR

The governor's report serves as the foundation for presidential satisfaction. The President appoints the Governor in accordance with Art. 155 of the Indian Constitution. He is given responsibility for the state's executive functions.¹² In his name, the state takes all executive

¹² The Constitution of India, 1950, art. 154 (1).

actions.¹³ He has the authority to act at his discretion, and his decisions in that regard will be final and cannot be challenged on any grounds, even while the Council of Ministers is present in the state to assist and advise him. As a result, he now serves as a vital and trustworthy information source between the union and the state. He serves as a link between the Centre and the State Government and is a key player in the relationship between the two. Because of his position inside the state, the governor may easily assess the state's current condition of affairs and tell the president about it. That is why Art. 356 uses the phrase "*on Governor's report*". Only in cases when the Governor's report is unreliable due to legal malfeasance can the President turn to other reports.

When the current government fails the floor test, the governor must prepare for the constitutional machinery to fail.

Only when the Chief Minister refuses to step down after being the subject of a resolution of no confidence in the State Legislative Assembly would the governor have the authority to dissolve the State Government.

The statement of facts that exist in the state, based on which the President can satisfy himself for the imposition of Art. 356, must be stated in the President's report explicitly and plainly.

The Governor should therefore act truthfully, honestly, and in accordance with his oath while sending his report, it might be inferred.

VII. FAILURE OF CONSTITUTIONAL MACHINERY

The Constitution makes no mention of the constitutional apparatus failing. "There exists a situation in which the State Government cannot function in accordance with the provisions of this Constitution," is all

¹³ The Constitution of India, 1950, art. 166.

that is mentioned in Art. 356. While conducting their daily business, states frequently fail to uphold constitutional requirements. Therefore, it is important to determine whether this will be regarded as a constitutional machinery failure.

VIII. CONSEQUENCES OF PRESIDENT'S RULE

When a state is put under the President's administration, the President gains extraordinary powers about that state:

1. The ability to act in the capacities of the State Government, the Governor, or any other state executive power.
2. Declare that the Parliament should exercise the State Legislature's authority.
3. Take any additional essential actions.

A legislation passed by the Parliament, the President, or any other designated authority when President's Rule was in effect remains in effect long after President's Rule has ended.

He cannot, however, claim for himself the authority granted to the relevant High Court. In other words, the installation of the President's Rule has no impact on the status of a High Court.

- a) The entire nation has been declared to be under a state of emergency, and
- b) The electoral commission certifies that it is difficult to hold elections for the state's legislative assembly.

IX. CONCLUSION AND RECOMMENDATIONS

India is a democratic nation, and the will of the people should always be honored. When examining the history of the application of Art. 356,

it can be deduced that, at least until 1967, this Art. was not frequently applied because the same government was in power in most of the States and at the Centre. The use of Art. 356 only became common after 1967. The State of Jammu & Kashmir, where president's rule has been in place since July 2019, is the most recent instance, and the Sarkaria Commission estimates that it has been implemented more than 100 times since the Constitution came into force. Under the guise of the constitutional mechanism failing, it has been noted that the Union attempts to extend its power over states where it cannot do so democratically by imposing Art. 356.

Therefore, it is recommended that in order to uphold the constitutional expectations of the framers, the Union Government try every available method to resolve the political crisis in the state before imposing President's Rule rather than abruptly suspending the government. When submitting his report on the state of the State's affairs, the Governor should exercise responsibility and discretion and should avoid acting solely in the capacity of the Central Government's agent in the State.

Finally, it is suggested that the union has a responsibility to ensure that the nation's democratic foundation and the State's autonomy be upheld. The will of the people as expressed in the state elections should be respected, and Art. 356 should not be exploited to sow discord in the state and try to exert control in places where democracy cannot bring about change.

As the leader of the State, the Governor should contribute to preserving a positive relationship between the Centre and the State.