

President Rule in India under Article 356: Drafting and Constitutional Provisions

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Abstract

Emergency provisions have been included in almost every constitutions of the world in one or other form. Hence Indian constitution makers also adopted emergency provisions too. President Rule under Article 356 is one of the many emergency provisions adopted in the Indian constitution. This paper primarily deals with the Constituent Assembly debates defending the provisions as well as the arguments opposing the inclusion of the Article 356 in the constitution. It also deals with the present constitutional provisions relating to Article 356 as well as Supreme Court decisions affecting the working of Article 356.

Keywords: Indian Constitution, Constituent Assembly, President Rule, Article 356, Dr. Bhim Rao Ambedkar.

Introduction

The Federal government is always weak because it involves division of powers between centre and states. Therefore, the founding fathers of Indian Constitution felt that, in the long run, some extraordinary situations could arise in which normal provisions may not work. To meet such challenges, emergency provisions were included in our constitution. Emergency provisions enable the centre to acquire the strength of a unitary system whenever the exigencies of the situation so demand.¹ Article 356 is one of those emergency provisions. This provision equips the President with the power to take over the administration of a state in his hand in case of the failure of constitutional machinery there. This provision is inspired by the Government of India Act, 1935. During Constituent Assembly debates some members expressed apprehensions on the ground that this would curtail the provincial autonomy and could be misused by centre. However, chairman of the Drafting Committee Dr. Bhim Rao Ambedkar strongly defended the provision and finally it got place in the constitution. Main objective of this study is to make readers understand the various arguments given in defence and opposition of Article 356.

Historical Background

Indian Constitution has borrowed large number of provisions from Government of India Act, 1935. This was obvious because constitution makers wanted some kind of continuity with previous British rule for two reasons. First, they did not want to leave any British provision which had been found suitable in the peculiar Indian conditions. Second, they preferred many provisions also because Indian officials had previous experience of working with pre-Independence provisions. Constituent Assembly members knew very well that sudden change could create chaos and confusion in the country and that would ultimately compromise the unity of India.

Like many provisions, constitution makers simply picked up the idea of the President's (or Governor's) Rule from the Government of India Act, 1935. It is very ironic that in the beginning many leaders of Indian National Congress wanted to destroy the Government of India Act, 1935 which was passed by British Parliament. Later, this Act became the foundation of many provisions of the Indian constitution. The framers of Indian constitution adopted federal system directly from the Government of India Act, 1935 and imposed on Indian states from above. It has not been evolved from bottom to top as it happened in United States of America.

The background for the use of Article 356 is provided by Article 355 which says that it shall be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this constitution. Moreover, Article 356 is very similar to Section 93 of Government of India Act, 1935.² which conferred on the Governor to take



Adarsh Kumar Singh

Research Scholar,
Dept. of Law,
Lucknow University,
Lucknow, U.P., India

over the sole responsibility of the administration in case of breakdown of the machinery of the provincial government in whole or in part.

Constituent Assembly Debate

During constituent Assembly debates both Article 355 and 356 were forcefully challenged. Dr. Ambedkar tried to justify the need of incorporating Article 356 on the basis of 355. He justified Article 355 saying that some people might think that 277-A (present Article 355) is merely a pious declaration and thus should not be there. He argued that Drafting Committee had taken a different view and wanted the provisions to continue in the constitution. Justifying the provision, Baba Saheb said:

"I think it is agreed that our constitution, notwithstanding the many provisions which are contained in it whereby the centre has been given powers to override the provinces, nonetheless is a federal constitution and when we say that the constitution is a federal constitution, it means this that the provinces are as sovereign in their field which is left to them by the constitution, as the centre is in field which is assigned to it..... if the centre is to interfere in the administration of the provincial affairs, as we propose to authorise the centre by virtue of Article 278 and 278 A . It must be under some obligation which the constitution imposes upon the centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorized by law."³

Therefore, Dr. Ambedkar argued that Article 278 (present Article 356) and Article 278 A (present Article 357) should not be regarded as wanton encroachment by the centre upon the authority of the province. He strongly advocated the encroachment of Article 277-A (present Article 255) in the constitution which says that it shall be the duty of the Union to protect every unit, and also to maintain constitution.

Some Constituent Assembly members were not happy with Article 278 (present Art. 356). Sri H.V. Kamath objected to word "otherwise" in the Article. Having read all those Articles, he argued that Constituent Assembly was not going about the business in an honest fashion and moved an amendment to delete the word "otherwise." Strongly opposing the inclusion of Article 278 (present Article 356), Kamath said:

"This is a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided for in this constitution and I shall pray to God that He may grant sufficient wisdom to this horse to see folly, the stupidity and the criminal nature of this transaction."⁴

Mr. Kamath wanted the President to act only on the report of the governor. He warned that if his amendment was not accepted constitution makers were laying traps in their path and could be in trouble. Opposing the provision, Kamath further said:

"It is constitutional crime to empower President to interfere not merely on the report of the Governor or a ruler of a state but otherwise. 'Otherwise' is a mischievous word. It is a diabolical word and in this context and I pray to God that this will be deleted from this Article. If God does not intervene today, I am sure at no distant date He will intervene

when things will take a more serious turn and the eyes of every one of us will be more awake than they are today."⁵

The Drafting Committee did not agree with this view and its Chairman, Ambedkar justified the inclusion of the word 'otherwise' in Article 356 on the ground that in such situations President should come on the scene from the very beginning and not after the suspension of the constitution by the Governor as envisaged under Article 188 (as mentioned in draft constitution).⁶

Another learned Constituent Assembly member Dr. P.S. Deshmukh was also not convinced by the argument of Dr. Ambedkar. Criticizing Baba Saheb, he said:

"My learned friend, Dr. Ambedkar, has quoted the American and Australian constitutions in support of Article 278 (present Art. 356). Fortunately or unfortunately there is no mention of any emergency either in the Australian or American constitution. He quoted them probably to so that there will be no encroachment from the centre so far as the units are concerned....if we mean this constitution to work, centre will have to respect the autonomy of the provinces whether we specifically say so or not...there was therefore hardly any point in the honorable doctor trying to derive support from foreign Constitution. It would have been some consolation if he could have cited an appropriate parallel to the whole scheme now unfolded for the first time. That he could not do."⁷

However, Sir Alladi and Dr Ambedkar tried their best to defend these provisions. While defending the provision, Dr. Ambedkar said: "...I would like to draw attention to the Article contained in the American constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the constitution when we that the constitution must be maintained accordance with the provisions contained in this constitution.

We practically mean what the American constitution means, namely that the form of the constitution prescribed in this constitution must be maintained."⁸ While admitting that Articles were liable to be misused Dr Ambedkar further said:

"In regard to the general debate which had taken place in which it has been suggested that these Articles are liable to be abused, I may say that I don't altogether deny that there is possibility of these Articles being abused or employed for political purposes. But that objection applies to every part of the constitution which gives power to centre to override the provinces."⁹

When H.N. Kunzru raised the question in the Constituent Assembly, Dr. Ambedkar could not explain the meaning of the expression 'failure of the constitutional machinery' too. However, when Thakur Das Bhargva tried to explain the meaning of the expression the 'failure of constitutional machinery' saying:

"No Constitution can be said to have failed to work unless and until all the provisions of the constitution relating to the state are exhausted. In my humble opinion, as soon as such a situation arises,

the first duty that Governor will perform will be to dissolve the House unless and until every attempt has been made, and unless he finds and even the ordinary liberties cannot be enjoyed, he will not come to the conclusion that the constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law, to arrange in such a way that the constitution is worked."¹⁰

Commenting on the state of vagueness and confusion in the Constituent Assembly vis-à-vis Article 278 (present Article 356), Naziruddin Ahmed said that Article 356 lacked clarity argued that this Article practically meant nothing. He said that it enabled the centre to interfere on the slightest pretext and it might enable the centre to refuse to interfere on the gravest occasion. He said that we cannot but admire the drafting committee for its vagueness and evasions.¹¹ The views expressed vis-à-vis Article 356 in the Constituent Assembly were reiterated forcefully by the Sarkaria Commission and various Supreme Court Judgments. The following observations of the Supreme Court can very well be cited in support of the proposition that the provisions of Article 356 should be interpreted literally and in a narrow sense. It said that what one might believe or think to be the spirit of the constitution could not prevail if the language of the constitution does not support that view.¹²

Present Constitutional Provisions

Article 355 says that it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the constitution. The obligation to ensure that the government of every state is carried on according to constitution prepares the necessary ground for inclusion of Article 356. Article 356 (1) says that If the President, on receipt of report from Governor of the 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-

1. 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 Legislature of the State;
2. declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
3. 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 part the operation of any provisions of this constitution relating to anybody or authority in the State:

(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 resolutions of both Houses of Parliament:

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of [six months from the date of issue of the Proclamation]

(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 by either House of Parliament 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 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.¹³

It is noted here that in the above provision the meaning of the 'satisfaction' of the President means the satisfaction of the Union Government and President's rule is actually rule of the Union Government. If any State fails to comply with the direction issued by the Union under Article 256, 257 or 353 the President may hold that there has been a failure of constitutional machinery in the state and may take over the State Government under Article 356. Here it seems appropriate to discuss the provisions relating to directions issued by Union to states.

Article 256 says the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state, and the executive power of the Union shall extend to the giving of such directions to a state, as may, appear to the Government of India to be necessary for that purpose.

Similarly Article 257 says that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and the executive power of the Union shall extend to the giving of such directions to a state as may appear to Government of India to be necessary for that purpose. It also says that the executive power of the Union shall also extend to the giving of directions to a state as to the construction and maintenance of means of communication declared in the direction to be of national or military importance. Clause (3) says that the executive power of the Union shall also extend to the giving of directions to a state as to the measures to be taken for the protection of the railways within the state.

Article 353 also authorizes Union Government to give necessary direction to states. It says that while a proclamation of emergency is in operation the executive power of the Union shall extend to the giving of directions to any state in the manner in which executive power of the state is to be

exercised. It further authorizes Parliament to make laws to any state with respect to any matter which is not enumerated in the Union List.

Another provision which is closely related to Article 356 is Article 357 which says that during the operation of President's rule under Article 356 Parliament may confer the legislative power of the state on the President and authorize him to delegate these powers to other authorities.¹⁴

If working of the Article 356 is analysed, it appears to be one of the most criticized and controversial provisions of the constitution. Under this provision more than hundred times state governments have been dismissed by the Union government. Opposition members and critics have argued that this Article has been used more often for political partisan purposes by the ruling party in power at centre. Union Government many a times adopted a very revengeful attitude and dismissed opposition party governments ruling in states without any valid ground.

Many state governments fell victim to arbitrary use of Article 356 always took judicial recourse. But courts refused to scrutinize the Union Government's power to impose President's rule in states. However, large scale misuse of this provision and Sarkaria Commission finally recommendation forced the court to assert and bring the imposition of President Rule within the ambit of judicial review.

It is noted here that Article 356 has been misused also because of the vagueness of the phrase, "the government of the state cannot be carried out in accordance with the provision of the constitution." Some situations of the breakdown of constitutional machinery may be as follows:

1. No party in the Assembly has a majority in the state Legislative Assembly to be able to form the government.¹⁵
2. A government in office loses its majority due to defections and no alternative government can be formed.¹⁶
3. A government may have the majority support in the house, but it may function in a manner subversive of the constitution, as for example, it may promote fissiparous tendencies in the state.¹⁷
4. The state government does not comply with the directions issued by the central government under various constitutional provisions.¹⁸
5. Security of the state may be threatened by a widespread breakdown of law and order in a state.¹⁹
6. It may be debatable whether Article 356 (1) can be invoked when there was a serious allegation of corruption against the chief Minister and ministers in a state.²⁰ However If Article 355 and 356 is read together, it comes out that the constitutional machinery breaks down in the state when the government indulges in corruption. So too much corruption in the administration of the state could be a valid ground for imposition of President rule in a state.

Aim of the study

The aim of the study is to make students and scholars understand the differing views of Constituent Assembly members regarding the inclusion of Article 356 in the Constitution of India. It also makes readers aware of Article 356 and judicial checks imposed to stop the misuse of emergency provision.

Conclusion

To conclude it can be said that founding fathers of Indian constitution debated the pros and cons of article 356 in a great detail. In the constituent assembly, some members opposed it while majority favoured it. But majority wanted it to be included in the constitution and to be used sparingly and as a last resort. But in actual practice it is quite opposite. New Delhi has used it as a tool to take political revenge and dissolve opposition party governments in states. Finally the Supreme Court Judgment in Bommai case put judicial check to its misuse.

Endnotes

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3. *Infra Note 10, at journal 1.*
4. *Ibid*
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