
A Review of Operational Aspects of Article-356

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ABSTRACT: The fact is that Article-356 is one of the most controversial issue in Centre-State Relations since 1967. Most of the scholars agree with the fact that there was a sharp rise in the misuse of Article 356 from 1967 onwards. However, it was used rarely during the first two decades after independence, the most celebrated case being the dismissal of an elected Communist Government of Kerala, in 1959 and President's rule was imposed on eight occasions during the Prime Ministerial tenure of Nehru and Shastri from 1950 to 1966. But, it became more common after Fourth General Elections in 1967 which brought a major change in the political map of the country by breaking the monopolistic control of twenty years of uninterrupted Congress rule in India. Moreover, President's rule in this phase of coalitional era (1967-1972) was imposed in as many as 18 times, mostly go get rid to non-Congress Governments by the Congress-led Centre. During the regime of Indira Gandhi, President's rule was imposed 71 times, often with partisan motivations. Rajiv Gandhi's use of Article 356 was minimal only twice, in Jammu and Kashmir in 1986 and the second time in Punjab in 1987 when Akali Dal Government led by Surjit Singh Barnala was dismissed arbitrarily. In the wake of 21st century this article was used several times and at the same was also misused with a number of more than 125 times. The present research paper makes a review of its operational aspects.

KEYWORDS: Constitution, Article-356, Governor, Operational Aspects, President Rule.

INTRODUCTION: Article 356 of the Indian constitution empowers the Union government to impose upon President's rule and the deployment of armed forces for law and order in the state.

It is hoped that it should be proclaimed only on the basis of the Governor's report. The words 'or otherwise' (occurring in clause (1) of Article 356) should be omitted. The Governor's report should be a speaking document containing a precise statement of all material facts and grounds on the basis of which the President/Courts may satisfy himself /themselves as to the existence or otherwise of the situation contemplated in Article 356. Dr. B.R. Ambedkar justified the inclusion of the word 'otherwise' in article 356 on the ground that in emergent situations. The President should come into the picture from the very beginning and not after the Governor has presented his/her report was envisaged under Article 188 of the Draft Constitution. Thus Article 356 empowers the President even to act on his own initiative. In the State of Rajasthan Vs. Union of India, Justice Bhagwati has also conceded that the inclusion of the word 'otherwise' in Article 356 gave the President very drastic powers which, if misused or abused can destroy the constitutional equilibrium between the Union and the States. He says: "Indeed the usual practice is that the president acts under Article 356 (1) of the Constitution only on Governor's report. But use of the words 'or otherwise' in (Article 36) shows that President's satisfaction could be based on other material as well. The feature of our Constitution indicates most strikingly the extent to which inroads have been made by it on the federal principles of government".

Article 356 authorizes the President to suspend a state Constitution, in case of failure of the Constitutional machinery. This Article provides that if, the President finds on the basis of a report from the Governor of state or otherwise that 'a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution,' he may by a proclamation assume to himself all the functions of the State Executive, delegate all the power of the State Legislature of the Parliament, and make incidental and consequential provisions found necessary to fulfill the purposes of the proclamation, 'including provision for suspending in whole or in part the operation of nay provisions of this Constitution relating to anybody or authority in the State' The proclamation must be approved by both Houses of Parliament in the same manner as in the case of National Emergency. A proclamation so approved shall cease to operate on the expiration of six months from the date of the passing of

the second of the resolutions approving the proclamation. The Parliament can successively approve the further continuance in force of the proclamation which can, however, be extended up to maximum period of three years only.

OPERATIONAL ASPECTS OF ARTICLE – 356: However, the Office of the Governor did not attract much attention before 1967 and the people felt that the gubernatorial office was sinecure because the Congress party till then had the fortune of ruling both at the Centre and in most of the States. The issues between the Centre and the States were sorted out by an extra-constitutional agency –the Congress party. The Aya Ram Gya Ram concept in Indian Politics started in 1967. As a result various interest groups especially from Congress broke away to form govt. in the States in alliance with various others heterogeneous opposition groups. A part from Kerela where Communist regime was dismissed and Presidents Rule was imposed as early as in 1959 the Office of Governor was put to vigorous test only after 1967. In general elections, Congress party received a major blow at the centre at the hands of Janata Party. This further sharpened the conflicting situation between the Centre and States and the Office of Governor became more and more controversial.

Here it is also noteworthy that as a matter of fact the role of Governor has been under a cloud ever since the E.M.S. Namboodiripad Ministry in Kerala was dismissed in 1959. In the general elections of 1957, the Communist party emerged not only the biggest party but together with Independents formed government under the leadership of Namboodiripad. After some time, the opposition including the Congress started a movement to overthrow the government by force. The Chief Minister approached the Union government for help. Interestingly, the Centre dismissed the State government on the ground that the State government commuted the sentence of a person condemned to death, into a life imprisonment; interfered in the general administration by transferring some official on flimsy grounds; issued an instruction to the police not to interfere in the dispute between the labour and the management; and the like.

In Haryana, the Congress Ministry fell in March, 1967 as a result of the resignation of

twelve Congressmen. Soon after the formation of new ministry headed by Rao Birender Singh, floor crossing again started on a massive scale. To stall this, Singh to the defectors Singh's strategy, however, paid and he managed to retain his majority in the House politics, the Governor felt that defection at such large and rapid scale made a mockery of the Constitution, and created a situation amounting to failure of the constitutional machinery. The main charge leveled against the Rao ministry was of engineering mass defections. However in the same State of Haryana, with the same Governor in office, when this sordid drama was re-staged a year later, the Governor forgot his earlier stand. . It was alleged by the opposition therefore that so long as defections were in favor of the Congress, it did not matter but if it benefited the opposition it amounted to breakdown of constitutional machinery.

On February 17, 1970, Charan Singh, the leader of Bhartiya Kranti Dal formed the government in Uttar Pradesh by aligning with the Congress. After six months, he advised the Governor to dismiss 26 ministers belonging to the Congress. Strangely, the Governor asked the Chief Minister of the State having full majority to resign. When the latter refused to do so, the Governor dismissed his government and recommended President's rule.

In Orissa, the R.N. Singh Deo ministry resigned in January 1971 and recommended dissolution of the Assembly. Governor Mr. S.S. Ansari accepted the resignation but did not ask the Chief Minister to continue as a caretaker. For two days there was no government in the State. Then, he explored the possibility of alternative government failing which he recommended for the dissolution of the Assembly. Mass dismissal of nine State governments in the year 1977 and in 1980 by the Janata party and the Congress party respectively has been the most controversial example of President's rule. On both these occasions the governments were dismissed on a false premise that the State governments no longer represented the wishes and aspirations of the electorate. Likewise four Bhartiya Janata Party led governments of Uttar Pradesh, Himachal Pradesh, Madhya Pradesh and Rajasthan were dismissed in Dec. 1992 in the aftermath of the demolition of Babri Masjid by the Central govt. headed by Sh. P.V. Narsimha Rao.

On the contrary, Om Prakash Chautala ministry (Janata Dal-S) was reduced to a minority, following the disqualification of three legislators under the Anti-Defection Law. The Chief Minister recommended dissolution of the Assembly. However, the Governor called upon Chautala to prove his majority in the Assembly on or before April 3, 1991. The latter challenged the right of the Governor to ask the Chief Minister to prove majority after he had recommended the dissolution of the Assembly. The seven days stalemate in the State politics ended with the imposition of President's Rule.

Furthermore it is concluded that after the submission of Sarkaria Commission's Report on Centre-State relations, Article 356 has been used or misused 32 times. It was invoked in Assam (November 27, 1990 – deterioration of the law and order situation), Nagaland (April 2, 1992 – fluid party position and deteriorating law and order situation), Nagaland (August 7, 1998), Karnataka (April 21, 1989) and Meghalaya (October 11, 1991). These cases are dealt with by the Supreme Court in S.R. Bommai Case and held to be totally unconstitutional and unsupportable. Bihar (March 28, 1995 – process of election could not be completed, to facilitate passage of vote on account by Parliament) and U.P. (1996 – no clear majority in election); Tamil Nadu (January 30, 1998 – deadlock due to death of Sri M.G. Ramachandran), Mizoram (September 7, 1988 – defections reduced the Government to Minority), Jammu and Kashmir (July 18, 1990 – Chief Minister resigned consequent upon his disqualification by High Court – No other Government found viable), Tamil Nadu (January 30, 1991 – alleged LTTE activities), Haryana (April 6, 1991 – with disqualification of three MLAs, Government lost majority, Ministry refused to face floor-test and recommended dissolution of House), Manipur (January 7, 1992 – Government lost majority as a result of resignation of certain members), Tripura (March 11, 1993 – Government resigned – no alternative viable), Manipur (December 31, 1993-1000 persons died in controlling Naga-Kuki clashes), U.P. (October 18, 1995 – Government lost majority – no viable alternative Government in sight); and Gujarat (1996 – Government reduced to minority due to defections)

The discussion may not be complete without mentioning the imposition of President's

Rule in Bihar on March 7, 2005 based on the 'Report' submitted by the Governor, Sh. Buta Singh. On January 24, 2006, the apex Court adjudged the imposition of President's Rule as invalid. The Governor in his Report had claimed that after the Assembly elections, the erstwhile opposition party/parties were trying to gather the required number of member by horse-trading on the implicit direction of the Union Government.

Furthermore, the Manmohan Singh-led United Progressive Alliance (UPA) government had invoked the president's rule 12 times in different states. Similarly, the Narendra Modi-led National Democratic Alliance government has resorted to the president's rule three times during its 20-month rule. Besides Arunachal Pradesh, president's rule was imposed in Maharashtra after the Congress-Nationalist Congress Party alliance split ahead of the assembly elections in October 2014. It was also imposed in Jammu and Kashmir after latest assembly election when the discussions over the government formation was on.

Likewise, the Union Cabinet had held an emergency meeting on Saturday night presided over by Prime Minister Narendra Modi, who had cut short a visit to Assam to return to the capital for the purpose. The Cabinet considered several reports received from Governor K.K. Paul, who had described the political situation as volatile and expressed apprehensions over possible pandemonium during the scheduled trial of strength in the State Assembly on Monday. The Centre was of the view that continuance of the Rawat government was immoral and unconstitutional after the March 18, 2016. When the matter was brought in high court, the judiciary apprehended that the use of Article-356 was not according to the constitutional provisions and the Rawat Government was reinstated.

CONCLUSION: Thus under the light of the preceding discussion on Article 356 from various operational aspects we can conclude that this article has been used or misused on many occasions. However, the rationale given by the constitutional framers towards the desirability of having such a provision. The intervention of the Hon'ble Supreme Court in S.R. Bommai Case in

1994 made it clear that Article-356 can be reviewed. But in the spate of misused applications of this Article for umpteen times seems to have turned the tide from blatant misuse to judicious use. That is why; Article-356 has always been a major irritant in Federal relations in India.

REFERENCES:

- Bhambhri, C.P., Indian Politics since Independence, (New Delhi: Shipra Publication, 1999).
- Awasthy, S.S., Indian Govt. and Politics, (New Delhi: Har-Anand Publications, 2000).
- Johari, J.C. Indian Political System, (New Delhi: Anmol Publications, 2000).
- Bhatia, K.L., Federation and Frictions in Centre-State Relations, (New Delhi: Deep & Deep Publications, 2001).
- Kashyap, Subash C., “There is Concensus Article 356”, The Tribune, Chandigarh, September 5, 2002.
- Tiwana, S.S, “Article 356 in the Context of Centre-State Relations in India”, Vidhanmala, Vol. 2, July-December 2003.
- Dhirvidamani, K., “Article-356 and Centre-State Relations”, Third Concept, Vol. 25, November 2011.
- Kanwar, Neelu, “Centre-State Relations with Special Reference to Article 356 of the Constitution”, Vidhanmala, Vol. 1, June 2011.
- Jha, Rajesh K., Fundamentals of Indian Political System, (New Delhi: Pearson Edu., 2012).
- Phadia, B.L. & Jain, Pukhraj, Indian Government and Politics, (Agra: Sahitya Bhawan, 2018).
- <https://www.quora.com/What-is-in-article-356-in-the-Indian-constitution>.
- <https://indianexpress.com/article/what-is/what-is-article-356-presidents-rule>.
- <https://www.constitution.org/cons/india/p18356.html>.