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A critical analysis of emergency powers under article 356 of Indian constitution

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Abstract

Emergency powers refers to an extraordinary circumstance because of which the state machinery is not able to be carried on accordance with ordinary constitutional setup. In such a circumstances, we adopt an altered constitutional setup where the normal functioning of the government and distribution of powers between Union Government and State Government undergo significant changes. Most of the times when emergency is declared, the individual's rights are curtailed and most of the powers are vested on the union government. This is mainly done to give some extraordinary power to Government to take measures to come out of the crisis and to ensure integrity and stability of the nation. However, the concept of emergency in Indian Constitution has always been much contentious. Especially, state emergency under Article 356 which empowers the Union Government to exercise control over the state government when there is a breakdown of constitutional machinery has been widely criticized because of its tendency to be easily misused. While Article 356 was originally created to use it as last resort to restore constitutional order, it has historically been a source of political controversy, raising concerns about how it should be invoked, how long it should last, and how it affects federalism and democracy. Federalism and the power granted to the union government by Article 356 interact in a complex way, which highlights the necessity for a thorough and critical analysis of its application, extent, and implications. This study aims to clarify the complex nature of Article 356's emergency powers by examining its historical development, legal foundation, and political and constitutional implications. This paper tries to offer a fair and informative analysis of a provision that has important consequences for the Indian federal structure, democratic ideals, and the rule of law by looking at landmark cases, various recommendations by law commissions and actual instances of its invocation. This study aims to provide a clearer comprehension of the delicate balance between centralized power and state autonomy through a comprehensive analysis of Article 356. This research article hopes to contribute to the ongoing discourse surrounding the applicability, effectiveness, and constraints of the Article 356 emergency powers in the changing context of Indian governance.

Keywords: Indian constitution, state emergency, federalism, centre state relations

Introduction

Emergency powers refers to an extraordinary circumstances because of which the state machinery is not able to be carried on accordance with ordinary constitutional setup. In such a circumstances, we adopt an altered constitutional setup where the normal functioning of the government and distribution of powers between Union Government and State Government undergo significant changes. Most of the times when emergency is declared, the individual's rights are curtailed and most of the powers are vested on the union government. This is mainly done to give some extraordinary power to Government to take measures to come out of the crisis and to ensure integrity and stability of the nation. However, the concept of emergency in Indian Constitution has always been much contentious. Especially, state emergency under Article 356 which empowers the Union Government to exercise control over the state government when there is a breakdown of constitutional machinery has been widely criticized because of its tendency to be easily misused. While Article 356 was originally created to use it as last resort to restore constitutional order, it has historically been a source of political controversy, raising concerns about how it should be invoked, how long it should last, and how it affects federalism and democracy. Federalism and the power granted to the union government by Article 356 interact in a complex way, which highlights the necessity for a thorough and critical analysis of its application, extent, and implications. This study aims to clarify the complex nature of Article 356's emergency powers by examining its historical development, legal foundation, and political and constitutional implications. This paper tries to offer a fair and informative analysis of a provision that has important consequences for the Indian federal structure, democratic ideals, and the rule of law by looking at landmark cases,

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various recommendations by law commissions and actual instances of its invocation. This study aims to provide a clearer comprehension of the delicate balance between centralized power and state autonomy through a comprehensive analysis of Article 356. This research article hopes to contribute to the ongoing discourse surrounding the applicability, effectiveness, and constraints of the Article 356 emergency powers in the changing context of Indian governance.

Research Problem

The application and consequences of emergency powers under Article 356 of the Indian Constitution within the country's federal democratic framework continue to be a source of contention. This constitutional provision, which was created to act as a last resort, under a rare and crucial time to resolve breaks down in state constitutional mechanism, has frequently been the subject of political disputes. The issue at hand includes ongoing discussions about its discretionary use, the possibility that it would be abused as a political tool, and the resulting consequences on the principles of federalism and democracy. Furthermore, the absence of precise guidelines and norms for using Article 356 further increases the probability of it being misused. The overall issue that this research aims to answer is how emergency powers, when used in accordance with Article 356, may be properly balanced to upholding the unity and integrity of the nation while protecting state sovereignty and democratic ideals within the intricate Indian federal framework.

Research Objectives

1. To analyze the frequent invocation of state emergency under Article 356 of the Indian Constitution.
2. To examine the legal framework related to state emergency.
3. To examine and analyze the judicial trends in the judicial review of state emergency declared under Article 356 of the Constitution.
4. To investigate and analyze the judicial guidelines that regulate state emergencies.
5. To analyze various commission reports and recommendation concerning state emergencies declared under Article 356 of Indian Constitution.

Research Questions

1. How the legal framework governing state emergencies does enumerates the procedures for declaring such emergencies?
2. What are the various judicial guidelines that regulate state emergencies under Article 356?
3. What are the various Commission's recommendations related to state emergencies under Article 356?

Hypothesis

Over the years, the state emergency declared under Article 356 of the Indian Constitution, which was initially prone to misuse, has seen a transformation. The judiciary, once hesitant to scrutinize its constitutionality, has now evolved and provided guidelines for declaring emergency. Additionally, recommendations from various commissions have become instrumental in shaping the procedure for state emergency declarations.

Research Methodology: This research involves a doctrinal

approach. For this purpose the researcher will extensively go through various textual sources including Constitution, various acts, case laws, subordinate legislation and various commission reports. The secondary data like books, journals, newspaper articles will also be analyzed.

Cauterization

Introduction

Part XVIII of Indian Constitution (Article 352-360) talks about Emergency. There are three kinds of emergency that are enumerated in our constitution. They are National Emergency, State Emergency and Financial Emergency. Article 352, 353, 354, 358 and 359 talks about National Emergency. Article 355, 356 and 357 talks about State Emergency and Article 360 talks about Financial Emergency. National Emergency can be declared on three grounds namely war, external aggression and internal disturbance. Internal disturbance was later changed to Armed Rebellion by the 44th Constitutional Amendment. State Emergency can be declared when there is a failure of constitutional machinery in a state. Financial Emergency is declared when there is a financial threat in India. In this research paper we would be focusing on the State Emergency under Article 355, 356 and 357 of the Constitution.

Grounds for Imposition of President's Rule

Article 355 of the constitution lays down grounds on which President's Rule can be imposed. It actually imposes to kind of duties that are performed by the Union Government.

Article 355. Duty of the Union to protect States against external aggression and internal disturbance

The two duties imposed on the state are

1. Duty of the Union to protect states against external aggression and internal disturbance and
2. Duty of the Union to ensure that the state is being carried on in accordance with the provisions of the Constitution^[1].

When these two duties cannot be performed in a particular state, emergency can be declared and president's rule can be imposed. In other words, these two conditions are the grounds for declaring emergency. When there is external aggression or internal disturbance and failure of constitutional machinery emergency under Article 356 can be declared. The emergency under Article 356 can also be called as President's Rule, State Emergency and Constitutional Emergency.

Circumstances in which President's Rule is implemented

It has been observed that the President's Rule has been implemented in the following circumstances also.

- When a new Chief Minister is not being elected with the specified period prescribed by the members of state legislature.
- A coalition in the state government collapses, giving the chief minister minority support in the legislature, and the chief minister is unable to prove his majority within the governor's allotted time.
- A loss of majority caused by a vote of no confidence in the legislative body.
- Election postponement brought on by unforeseen circumstances like a natural disaster, an epidemic, or a

¹ Article 355 of Indian Constitution.

war.

- For reasons in Article 365.

Article 365: Effect of failure to comply with, or to give effect to, directions given by the Union

On various issues, where the Central Government has the authority to direct the states, the State Governments are required to follow the directives given by the Central Government. These rules must be followed, and violating them results in the application of Article 365. The President may choose to declare the President's rule in that state pursuant to Article 356 of the Constitution when a state violates Article 365^[2]. As a result, Articles 365 and 356 are frequently read together.

Subjects on which the Centre can issue directions to states

- The center can provide guidance on how to build and maintain important national and military infrastructure, including roads, railroads, and other forms of communication.
- Instructions for railroad maintenance.
- Directions to schools for linguistically distinct groups.
- Plans and guidelines for the scheduled tribes.
- There may also be a situation of reciprocal delegation, in which the state government may grant the union its authority and the union may grant the state government its administrative authority over a certain state.

If any of the directions given by the Centre to the state is not being followed by the State, emergency can be declared in that state.

Procedure for Declaration of State Emergency under Article 356 and 357 of Indian Constitution

Article 356: Provisions in case of failure of constitutional machinery in State

When the above conditions are not satisfied Article 356 comes into picture. If the President receives a report that there is a breakdown of constitutional machinery or that the state is not being carried on in accordance with the provisions of the constitution or otherwise, and the president is satisfied that such a circumstances exist, the president may proclaim

- a) **Executive functions** performed by Government of the State, by the Governor and other bodies be vested on the President.
- b) **Legislative functions** performed by Legislature of the State be vested on the Parliament.
- c) Some **extraordinary powers** such as making incidental and consequential provisions, including provisions for suspending in whole or in part the operation of any provisions of this constitution relating to be vested in anybody or authority in the State^[3].

Thus, when a state emergency is being declared by the President, all the powers of the state government goes to the union government.

Another important thing that needs to be noted is that President can declare emergency when he receives a report from the Governor regarding the breakdown of constitutional machinery in the State or otherwise. Thus even without the report from the Governor regarding the prevailing status of

the state, a state emergency can be declared. In other word, report from the President is not a pre-condition to declare state emergency.

Moreover the satisfaction in Article 356 is not the subjective satisfaction of the President but the satisfaction of the Cabinet members of the Union Government. The Judicial Review on the Satisfaction of the President has always been as a matter of dispute. By the 38th Constitutional Amendment, 1975 before Indira Gandhi's Emergency, the satisfaction of the President in invoking Article 356 was made final and conclusive which could not be challenged in any court. However, after emergency, by 44th Constitutional Amendment, 1978 deleted the provision and hence now, satisfaction of the president is not beyond judicial review. However, the satisfaction of the President can be brought under Judicial Review only under two conditions which has been laid down in State of Rajasthan vs. Union of India^[4].

The Satisfaction of the President can be challenged on two grounds:

1. It has been exercised mala fide.
2. Based on wholly extraneous and irrelevant grounds.

Because in these cases it would be no satisfaction of the President.

Article 356 (2) states that any proclamation issued by the President may be revoked or changed by subsequent proclamation^[5].

Parliamentary Approval and Duration

Every Proclamation made in accordance with Article 356 must be presented to both Houses of Parliament before it takes effect and the emergency expires after two months unless both Houses of Parliament approve of it prior to that time.

If any such proclamation is made at the time the Lok Sabha is dissolved or during the two-month period during which it is dissolved and is approved by the Rajya Sabha but not the Lok Sabha, it will no longer be in effect after 30 days from the date the new Lok Sabha convenes following reconstitution unless it has also been approved by the Lok Sabha before the expiration of 30 days^[6].

The proclamation will be in effect for "six months" if the Parliament approves it. A proclamation may be extended by Parliament for "six months" at a time, but it may never be in effect for longer than three years^[7]. Earlier the period of emergency was for a duration of "six months". Later, before Indira Gandhi's Emergency, by 42nd Constitutional Amendment, 1976 it was made "one year". After Emergency it was later changed to "six months" by 44th Constitutional Amendment, 1978.

Article 356 (5) states that neither house of Parliament may pass a resolution to extend the state of emergency past one year unless

1. At the time this resolution was passed, an emergency declaration was in effect.
2. The election commission certifies that the necessity of extending the emergency's duration during the time period specified in the resolution is due to difficulties in holding general elections to the legislature at the time the

⁴ 1977 AIR 1361

⁵ Article 356(2) of Indian Constitution.

⁶ Article 356(3) of Indian Constitution.

⁷ Article 356(4) of Indian Constitution.

² Article 365 of Indian Constitution.

³ Article 356(1) of Indian Constitution.

resolution is passed ^[8].

Article 357: Exercise of Legislative powers under Proclamation issued under Article 356

Article 357 (1) states that when a proclamation is issued under Article 356 and the exercise of legislative functions of the state is given to the Parliament, the Parliament shall be competent to

1. Parliament may grant such legislative functions to the President or any other authority.
2. Such an authority can enact laws bestowing powers and laying responsibilities, or authorizing the imparting of powers and imposition of duties, on the Union or its officers and authorities;
3. President can authorize to take funds from the Consolidated Fund of the State without the authorization of Parliament when Parliament is not in session ^[9].

Article 357(2) states that any law created during the period of emergency by the authority vested with legislative functions, shall remain in force even after the period of emergency. After emergency, the new legislature should revise, amend or repeal the law so as to make the law ineffective ^[10].

Imposition of State Emergency in Union Territories

Article 356 is not applicable to Union territories. Union Territories without legislative assemblies are under direct control of president. However, there are three Union Territories, which has an Elected Legislative assemblies. Emergencies are declared according to the following provisions.

1. **Jammu and Kashmir:** Section 73 of the Jammu and Kashmir Reorganization Act, 2019.
2. **Delhi:** Article 239AB of the Constitution of India.
3. **Pondicherry:** Article 51 of the Government of Union Territories Act, 1963.

Judicial Review of Article 356 of Indian Constitution

Initially the courts were very much reluctant to look into the constitutionality of emergency because of its political nature and it being exercised in light of constitutional power vested on the President. Now, courts look into the constitutionality of state emergency declared under Article 356.

Misuse of Article 356

There is an inherent necessity to look into the constitutionality of State emergency because one of the most misused provisions in Indian Constitution is Article 356. This article gives more power to Centre as emergency can be declared even without the report from the Governor regarding the failure of constitutional machinery.

Even Dr. B.R. Ambedkar agreed that it could be misused. In the words of Dr. Ambedkar "I share the sentiments that such articles will never be called into operation and they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they

were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article ^[11]". Thus Ambedkar wanted Article 356 to be a dead letter which will come to life only when the President gives warning and is not abided with and when the election in that particular state is not possible because of the prevailing circumstances.

But this belief of Dr. Ambedkar shattered when the first emergency was declared in Punjab in 1951 despite Punjab Government had clear majority. From then on Emergency is being used as a political weapon that can be used by Centre on State Government. According to the Sarkaria Commission's Report, which analyzed 75 cases of President's Rule from June 1951 to May 1987 and found in 52 cases out of 75, Article 356 has been used not meant for. Former Prime Minister Indira Gandhi, used Article 356, 27 times overthrew majority governments on the grounds of political stability, a lack of a clear mandate, or the withdrawal of support, among other things. When the Janata government was first established in 1977, it overthrew nine state Congress governments. Due to the state's internally divided politics and prolonged instances of unrest, Manipur saw the most frequent deployment of Article 356. The politically significant states of Uttar Pradesh and Bihar have been on the center's radar because of their disjointed political systems. Thus Article 356 has been widely misused. *K.K. Aboo v. Union of India* ^[12]

Facts

The Kerala High Court refused to go into the constitutionality of the proclamation under Article 356. By proclamation dated September 10, 1964, which was approved by the Parliament by resolution on September 30, 1964, the President in this case dissolved the legislative assembly and assumed the executive powers of the State to himself following the resignation of the ministry that led to the collapse of the Constitutional Government in the State of Kerala. Following that, a general election was held in the state to elect a new legislative assembly in the months of February and March 1965, but no party was able to win a majority of seats. The Governor gave the President his report on the prospects of the formation of the administration in the state after consulting with leaders of various parties.

Issue

1. Whether the Governor could send a report for the imposition of President's Rule when the state was already under the rule of the President?
2. Whether President's rule can be imposed before the Government was formed?
3. Whether the Governor acted Malafide?

Judgment

The High Court found that the Governor had thorough enquiry on the possibility of forming constitutionally valid government and then only he submitted the report to the Government. The Court found that there is ample material to declare emergency. The court also observed that it was not open to the judiciary to look into the constitutionality of state emergency. The court held that the remedy was with

⁸ Article 356(5) of Indian Constitution.

⁹ Article 357(1) of Indian Constitution.

¹⁰ Article 357(2) of Indian Constitution.

¹¹ Constituent Assembly Debates On 20 August, 1949.

¹² AIR 1965 Ker 229.

Parliament and not with court.

Rao Birender Singh v. Union of India ^[13]

Facts

On November 21, 1967, President's Rule was imposed in the state of Haryana, and the legislative assembly had to dissolve.

Issues

Whether State Emergency can be declared when the State Legislative Assembly has majority?

Judgment

It was decided that the President's use of his or her authority under Article 356 did not fall under the Court's purview since he or she was acting in a constitutional capacity rather than on behalf of the Union's executive. The court that it lacked the authority to require of the information that formed the basis of the President's satisfaction.

In *Gokulananda Roy vs. Tarapada Mukharjee* ^[14], the West Bengal Government was dissolved and the same was challenged. The Governor's report could not be contested since the President acted to his satisfaction, the court ruled, and the Governor's discretion in the appointment and firing of the Chief Minister was unlimited, unconstrained, and unrestrained.

In the Matter Of: *A. Sreeramulu vs. Unknown* ^[15], when the chief Minister resigned in 1974, the presidential proclamation was contested on the grounds that President's Rule was implemented in the State without considering the possibility of creating an alternative ministry. A proclamation was found to be exempt from judicial scrutiny under Article 356 because the Court did not want to address the Presidential satisfaction, which is essentially a political matter.

In *Hanumantha Rao v. State of Andhra Pradesh* ^[16], a proclamation was found to be exempt from judicial scrutiny under Article 356 because the Court did not want to address the Presidential satisfaction, which is essentially a political matter.

In *Bijayananda Patnaik v. President of India* ^[17], the Orissa High Court's division bench ruled that the Presidential proclamation is not justifiable while rejecting the challenge to imposition on the following grounds.

1. The word "otherwise" in Article 356 gives clarity that the President's satisfaction is not justiciable.
2. Both the foundation for the satisfaction and the pleasure itself are purely subjective and not open to judicial review.
3. The Court is unable to examine the grounds of satisfaction in light of the obligations under Articles 74(2) and 361(1).
4. The requirements for parliamentary approval for the proclamation's continuation after two months from the date of the proclamation give a clear indication that it cannot be contested for a period of two months by either Parliament or courts, and the fact that its continuation after two months has been subject to Parliamentary approval gives yet another indication that it cannot be litigated in court.

State of Rajasthan vs. Union of India ^[18]

Facts

In the March 1977 parliamentary elections, the ruling Congress party was severely defeated. Article 356 was invoked for the dissolution of 9 State Assemblies of Rajasthan, Uttar Pradesh, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana and President Rule was imposed on the ground that the Assemblies in this State no longer represented the wishes of the electorate.

Judgment

The argument that judicial review of Presidential proclamations was completely prohibited was rejected by the court. The court ruled that the defeat of the ruling party by itself, without any other evidence, supports the conclusion that the state's governance cannot be carried out in conformity with the Constitution's requirements.

Bhagwati and Gupta J.J. held that, "merely because a question of political complexion, that by itself is no ground why the court should shrink from performing its duty under the constitution if it raises an issue of the Constitutional determination merely because a question has a political color, the court cannot fold its hand in despair and declare "judicial hand off".

The Central Government's satisfaction is based on facts and circumstances that the court cannot review for truth or sufficiency of evidence. However, if the satisfaction is dishonest or is founded entirely on extraneous and irrelevant considerations, the court would have jurisdiction to review it.

In *Sunderlal Patwa vs. Union of India* ^[19], President Rule was implemented in Uttar Pradesh, Madhya Pradesh, Rajasthan, and other states on December 6, 1992, following the destruction of the Babri Masjid in Ayodhya. It was challenged in the court. The court held that The Presidential proclamation is subject to judicial review for irrationality illegality, impropriety, or malafide, or, in other words, for abuse of power. In the current instance, the court made clear that a sudden riot that was brought on by the State government's failure to protect public order could not warrant the President's rule in the state. The power can only be used in a very difficult scenario, such as when there is an actual and impending breakdown of the constitutional machinery, as opposed to failing to adhere to a specific constitutional requirement or worsening of law and order.

S.R. Bommai vs. Union of India ^[20]

Facts

The case challenged the proclamation of State Emergency in Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Rajasthan and Himachal Pradesh.

Karnataka: In Karnataka in 1989, the Janata Dal Ministry under Shri S.R. Bommai was in office. The majority support in the House for the Bommai's Ministry was called into question after a number of members left the party. To show his strength in the assembly, the Chief Minister suggested to the Governor that the Assembly session be called. The Governor, however, disregarded this advice. Additionally, he

¹³ AIR 1968 P H 441

¹⁴ AIR 1973 Cal 233.

¹⁵ AIR 1974 AP 106.

¹⁶ 1992 AIR 1201.

¹⁷ AIR 1974 Ori 52.

¹⁸ 1977 AIR 1361.

¹⁹ AIR 1993 MP 214.

²⁰ AIR 1994 SC 1918.

did not consider the prospect of forming a different administration. Instead, he informed the President that, given that Shri Bommai no longer had the majority of the House's support and that no other party was in a position to do so, action needed to be done in accordance with Article 356(1). Consequently, the President declared State Emergency in Karnataka.

Madhya Pradesh, Himachal Pradesh and Rajasthan: After the controversial Babri Masjid in Ayodhya was demolished in 1992. The B.J.P., which supported the organizations behind the demolition, controlled these States' governments. They argued that the State Government could not be run in accordance with the Constitution or that the constitutional machinery was no longer functioning in the State merely because there had been some deterioration of the law and order situation in the State following the Ayodhya incidents.

Meghalaya and Nagaland: President's rule were declared without any sufficient cause

Judgment

The Court observed that following the Ayodhya event, the governments in Madhya Pradesh, Rajasthan, and Himachal Pradesh were all dismissed, and the imposition of President's Rule in these states was declared to be Constitutional. The Constitution's fundamental tenet is secularism, and the President has the authority to dissolve state governments that violate it. However, the Court decided that the implementation of President's rule in Nagaland, Karnataka, and Meghalaya was unlawful and should be overturned.

The judges unanimously agreed that the President's ability to dissolve a State Government and impose President's Rule under Article 356 was open to review by the judiciary

The Court in this case, came up with detailed guidelines that the Union Government should follow while declaring emergency.

Guidelines

- No state assembly may be dissolved and President's Rule implemented at the same time. Only with support from both houses of Parliament can it be dissolved. It can only be suspended till then.
- If the Presidential Proclamation is not approved by both Houses, it expires after two months and the suspended government is reinstated.
- A political party cannot suggest to the President to dissolve assemblies only because it holds the majority at the union level.
- The material on which the President got the necessary satisfaction can be submitted for inspection by the Court. Such information is not necessarily advice. Court has authority to go through such material as they are not advice per se.

Article 74(2) of Indian Constitution states that, "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court²¹". Thus Article 74(2) bars the court from judicial review of the advice tendered by Ministers to President. However the court

observed the materials on which the decision was made does not come under advice and hence can be examined.

- When there is a prima facie case against the validity of the proclamation, the Central Government must show that the necessary materials based on which such proclamation was issued. The Governor's report or any other documents may be included in this material.
- The President ought to be presented with evidence that the State's government cannot function in conformity with the Constitution. The President should be presented with information that would lead a rational individual to reach the desired conclusion.
- In the event that the current Ministry loses support in the House, the Governor should investigate the option of appointing a substitute Ministry.
- Even if the proclamation was approved by the Parliament, the President's action loses validity if the Court invalidates it. If dismissed, the State Government is reinstated, and the State Assembly is reinstated if it is dissolved.

Rameshwar Prasad vs. Union of India ^[22]

Facts

No party was able to establish a government on its own after the 2005 Bihar Legislative Assembly elections. A notification was issued under Article 356 in this case imposing President's rule and keeping the Assembly suspended. This was supposed to be a temporary nature. Later, in a report from the governor, it was said that there was a chance of power-seeking horse dealing and widespread defections. Furthermore, it was stated that controlling the situation would not be possible without allowing the populace another chance to express their will through a new election. The Assembly was therefore dissolved as a result.

Decision

The Presidential Proclamation that dissolved the State Assembly was illegal and relied on erroneous and unrelated justifications. The Council of Ministers should have done more research before taking the Governor's recommendation to dissolve the State Assembly as gospel truth, the Court said. The court observed that the Governor acted in "undue haste" and the report contained "fanciful assumptions" which could be "destructive to democracy".

In *Harish Chandra Singh Rawat vs. Union of India* ^[23], state emergency was proclaimed in Uttarakhand and it was challenged as being unconstitutional. The Supreme Court quashed the proclamation and order for floor test.

Thus, now there is clearly established principles with regard to State Emergency.

Various Commission's Recommendation on Article 356 Sarkaria Commission on Article 356

The Commission found that Article 356 has been utilized improperly for political ends in 90% of the cases. Therefore, it was advised that:

- The President's proclamation should provide the justifications for why the State cannot be managed in accordance with the regular provisions of the Constitution.

²² AIR 2006 SC 980.

²³ Writ Petition (M/S) No. 795 of 2016.

²¹ Article 74(2) of Indian Constitution.

- Prior to using Article 356 wherever possible, the center should send a warning to the State government.
- It shouldn't be utilized for political ends.
- It is necessary to change Article 356 so that the President can only dissolve the State Legislature with the consent of the Parliament.

Punchhi Commission on Article 356

- It advocated for the constitution's incorporation of the principles outlined in the Supreme Court's landmark decision in *S.R. Bommai V. Union of India* (1994).
- To address problems without dissolving the state legislative assembly, it suggested using a "Localized Emergency," which is authorized by a separate Statute.

“Localized Emergency” refers to emergency in troubled areas only. It recommended that instead of declaring emergency to the whole state, Localized Emergency can be declared. It also recommended that emergency tenure should be for only for three months.

Recent Instances of President's Rule

- **Pondicherry (25th February 2021-7th May 2021):** The Congress government resigned as a result of a loss of the majority and the absence of an alternate candidate to form the next government.
- **Maharashtra (12th November 2019-23rd November 2019):** A mixed election result prevented any party from forming a government, and the Shiv Sena dissolved its pre-election coalition with the BJP.
- **Jammu and Kashmir (19th June 2018 - 30th October 2019):** due to the BJP's withdrawal, the Mehbooba Mufti government lost its majority in the legislature.
- **Uttarakhand (22nd April 2016 - 11th May 2016):** due to the party rift that resulted in the collapse of the Harish Rawat-led Congress government.
- **Arunachal Pradesh (25th January 2016 - 19th February 2016):** due to 21 Congress MLAs leaving party.
- **Jammu and Kashmir (8th January 2016 - 4th April 2016):** due to death of the CM Mufti Mohammad Sayeed.
- **Jammu and Kashmir (9th January 2015 - 1st March 2015):** After the elections, no party won a majority, and the government could not be formed.

The majority of these occurrences were brought on by unavoidable circumstances or by coalition or party splits. As a result, Article 356 has become much less frequently used.

Suggestion

Some of the recommendations with regard to declaration of emergency are as follows:

Reforms relating to Anti-Defection Laws

Though State emergency have been reduced over the years, recently there been an increase in split inside the party and lead to large-scale defection. Lot of no-confidence motion becomes successful because of this defection and horse trading. Thus there is a need to bring amendment in Schedule X to prevent this defection and dissolution of state legislatures. The amendment should make the members lose their membership in the State legislature and should not be allowed to contest in election for more than 5 years. In this way, large-scale defection can be prevented to a large extent.

Reforms in matters relating to Governor

Governor's Role in democracy has been widely debated. It has always been questioned as to whether Governor is a Rubber stamp, puppet or agent of the Union Government. Governor plays an important role when it comes to declaring emergency. His report is the main source of material based on which a recommendation is given to the President to declare state emergency. Thus he should be independent. Even the Punchhi Commission in its report on Centre State Relations has talked about the need for Independent Governor. Thus the following reforms are needed namely.

- Now, Governor is in the post on the pleasure of the President of India. This should be changed. The State Legislature should be given power to impeach the Governor just like how Parliament has power to impeach the President.
- The Governor who is being appointed should be a person who is of an imminent background and should not have been in politics for the past 10 years. Thus is to ensure he does not have political inclination and would do his work impartially.
- Appointment of the Governor should be made in consultation with the State Government. The State Government should be given power in the appointment of Governor.

Follow the recommendation made by Sarkaria Commission and Punchhi Commission

The Sarkaria Commission and Punchhi Commission has made several recommendation like incorporating the *S.R. Bommai Guidelines* in the Constitution, bringing “Localized emergency” etc. These recommendations should be followed so as to ensure that Article 356 is not being misused to dissolve state assembly.

Article 356 should be used as Last Resort

When Article 356 was created B.R. Ambedkar was of the view that this provision would be dead letters and would be used only in the last resort. The Central Government should accept and respect the mandate of the people and it should be used rarely as a last resort.

Need to create strong and independent institutions

To continue emergency beyond the period of 1 year, the election commission should certify that election is not possible in that state. Thus when it comes emergency under Article 356 institutions like election commission have some power. There is a need to make this institutions strong and independent.

Judiciary should balance democracy and security and integrity of the nation

After *S.R. Bommai* case the court has clearly established its power to review the emergency. Thus judiciary is considered as saviour when it comes misuse of Article 356. Judiciary, now has to balance the interest of democratically elected state government on one hand and the security and integrity of the nation on the other hand.

Should ensure transparency and accountability

The reasons as to why state emergency has been declared should be clearly made public. There should be transparency and accountability when it comes declaration of President's Rule under Article 356.

Conclusion

State Emergency under Article 356, was created to ensure the security and integrity of the nation. Overtime, Article 356 was repeatedly misused by Central Government for various political considerations. This research has shed light on various aspects like:

- Grounds on which Article 356 of Indian Constitution can be imposed.
- Procedure for implementation of Article 356.
- Misuse of Article 356 by the Union Government over years.
- Judicial Review of Article 356 by the Supreme Court. The judiciary, which was once reluctant to examine the validity of state emergencies, has evolved into a crucial role and is actively providing guidelines to regulate the declaration of emergency.
- Guideline given by Supreme Court in S.R. Bommai to prevent the misuse of Article 356.
- The various law commission guidelines with regard to State Emergency under Article 356.

This study provide insightful perspectives on the interaction between constitutional mechanisms, the judiciary, and the recommendations made by commission reports in influencing the country's response to crises and the preservation of democratic values as India continues to face complex challenges, including those requiring the use of state emergency provisions. Though the use of Emergency has decreased to a considerable extent, there need to be some changes that could prevent the misuse of state emergency as today there are large scale defection and horse trading.

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