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## **ARTICLE 356: A TOOL TO SUBVERT FEDERALISM**

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### **ABSTRACT**

Under Article 356 of the Indian Constitution, the Union government is vested with the power to sack state governments and dissolve legislative assemblies if the head of the state determines that the governance of the state is not in alignment with constitutional requirements. While created with an intent to safeguard the constitutional spirit within the states, Article 356 has been repeatedly used as a tool to subvert the federal spirit of the country. The impugned provision was meant to be used as a last resort and otherwise to remain a dead letter but it has been used repeatedly to suspend state governments of opposition-ruled states often on frivolous and fabricated reasons. This paper aims to study the impact of summoning Article 356 on the federal attributes of the nation. The paper delves into the genesis and historical background of Article 356, the constituent assembly debates on the contentious provision, and the glaring misuse of it as a mechanism for political control. The paper also provides insight into the recommendations put forward by Sarkaria Commission for deploying Article 356. Lastly, the paper highlights the active role of the judiciary in limiting the arbitrary use of the provision.

## I. INTRODUCTION

Emergency provisions are embedded in the Constitution of various jurisdictions primarily to operate in those circumstances where the default provisions cannot operate. Under the Indian Constitution, such provisions have been carved out under part XVIII ranging from Article 352 to Article 360. The emergency provisions have remained a debatable subject matter, particularly Article 356 which is a sui generis provision. Article 356 is deployed to tackle constitutional machinery crisis within a state. Under it, the power to impose what is famously termed “President’s Rule” has been conferred upon the Indian President. Dr. Ambedkar had cautioned that “*such articles will never be called into operation and that they would remain a dead letter.*”<sup>1</sup> However, to the sheer consternation, the impugned provision has been used 120 times till now and it is often termed as the most misused article of the Constitution.<sup>2</sup>

## II. HISTORICAL BACKGROUND

The genesis of the article lies in the Government of India Act, 1935 that envisaged a federal polity for the country.<sup>3</sup> According to section 93 of the statute, if the provincial governor found out that a particular situation has emanated that prevented the government of the province from operating as per the act, then in such a scenario, he could usurp any or all the powers conferred upon the provincial body or authority, including those of the Ministry and the Legislature via issuance of a proclamation and then exercise those powers at his discretion. The legislative intent behind drafting such provision was the lack of trust in the provincial ministries which comprised Indian political parties.<sup>4</sup> The colonizers were skeptical that given the delegation of power by the 1935 act, the said ministries may try to destabilize the British government. Therefore, section 93 was a type of safety valve for the Britishers to tackle such problems.<sup>5</sup>

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<sup>1</sup> K. Jayasudha Reddy and Joy V. Joseph, “Executive Discretion and Article 356 of the Indian Constitution: A Comparative Critique”, 8.1 *Electronic Journal of Comparative Law* 5 (2004)

<sup>2</sup> Dr. Vikas Chaudhry, “Misuse of Article 356 by the Governor”, 1 *International Journal of Computing and Business Research* 102 (2010)

<sup>3</sup> Sood, Yoshita and Vikram, Gauri and Kavdia, Tamanna, Preserving Federalism: Examining the Clash between Political and Constitutional Purpose in State of Rajasthan v. Union of India 1977. Available at: SSRN: <https://ssrn.com/abstract=4468020> (last visited on November 5, 2024)

<sup>4</sup> Government of India Act, 1935. (Act No. of 1935), s. 93

<sup>5</sup> Danish Hasnain, “Dynamics of Article 356 of the Constitution of India: A trepidation comes true”, 2 *Uttarakhand Judicial & Legal Review* 108 (2015)

### III. CONSTITUENT ASSEMBLY DEBATES ON ARTICLE 356

The constituent assembly debates are a testament to the fact that the incorporation of Article 356 into the grundnorm of the nation was met with stiff resistance from several members of the assembly. The encapsulation of the impugned provision was seen as an attempt to revive the colonial legacy.<sup>6</sup> During the deliberations on the draft article 278, H.V. Kamath stated:

*"... I am sure this article is not intended for resolving any ministerial crisis that might arise in a particular State. For that the remedy lies elsewhere; the remedy lies in the dissolution of the legislature by the Governor and a reference to the electorate... A mere crisis or, a vote of no-confidence in the Ministry by the legislature, even a repeated vote does not, cannot empower the President of the Union Government to intervene and proclaim an emergency. Nowhere in this world has this been done..."*<sup>7</sup>

Apart from Shri Kamath, Shri P.S. Deshmukh and Pandit H.N. Kunzru also displayed skepticism against the impugned article and voiced their concern over its inclusion.<sup>8</sup>

In response to the above objections, Dr. Ambedkar stated:

*"the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the first thing the president will do would be to issue a clear warning to the province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution."*<sup>9</sup>

This suggests that to some extent, Dr. Ambedkar also acceded to the fact that Article 356 was prone to abuse and could be deployed for political vendetta. Therefore, the bottom line is that Article 356 shall be deployed only in rarest of rare events.<sup>10</sup>

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<sup>6</sup> *Id.*, at 109

<sup>7</sup> Constituent Assembly Debates On 3 August, 1949, available at: <https://indiankanoon.org/doc/1957821/> (last visited on November 2, 2024).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Supra* Note 5 at 109.

<sup>10</sup> *Supra* Note 5 at 110.

#### IV. MISUSE OF ARTICLE 356

Relying upon Dr. Ambedkar's assurance, the constitution framers hoped that the provision would remain dormant and would be invoked sparingly. However, their hopes were shattered when the article became operative in the inaugural year itself in Punjab resulting in the dismissal of incumbent ministry in the state. Since that time, article 356 has been invoked more than 100 times on various occasions. Out of the 75 instances of state emergency perused by the Sarkaria Commission in the span of 36 years (1951-1987), it found out that 52 cases were such where the power under the article should not have been invoked.<sup>11</sup> For better understanding, the instances of misuse of Article 356 can be broadly classified as:

1. Ouster of majority government.
2. Denial of government forming opportunity to the opposition.
3. Large-scale dissolution of state assemblies.<sup>12</sup>

##### ***a) Ouster of majority government***

In approximately 13 instances president's rule has been invoked by the dismissal of government holding majority. The deployment of the Article in Punjab (1951),<sup>13</sup> Kerala (1959),<sup>14</sup> and Andhra Pradesh (1973)<sup>15</sup> are prime examples of such instances.

##### ***b) Denial of government forming opportunity to the claimant***

Prima facie invocation of Article 356 without giving the claimant a fair shot to establish the government also amounts to improper use of the authority bestowed by Article 356. This occurs in 3 ways:

Firstly, there are those instances where it is alleged that the existing government has lost majority in the State assembly and the reigning Chief Minister is denied the opportunity to prove the majority support in the assembly. The invocation of Article 356 in Arunachal

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<sup>11</sup> *Supra* Note 2 at 102.

<sup>12</sup> Dr. Anil Kumar Dubey, "Presidential takeover of State government", *ILI Law Review* 23 (2018).

<sup>13</sup> Lok Sabha Secretariat, "President Rule in State and Union Territories" 56 (2016).

<sup>14</sup> *Id.*, at 30.

<sup>15</sup> *Id.*, at 2.

Pradesh<sup>16</sup> and in Uttarakhand<sup>17</sup> in 2016 are some of the instances in this regard.

Secondly, there are those cases where post elections the party claiming to form the government is denied the chance to do the same and such denial is accompanied by invocation of president's rule. The deployment of Article 356 in Bihar (2005) is a great example of such instances.<sup>18</sup>

Lastly, in certain cases, the opposition party is not given the opportunity to form the government after the resignation or dismissal of incumbent ministry and president's rule is directly called into action. The invocation of president's rule in Odisha (1974) is a fine instance in this context.<sup>19</sup>

### ***c) Large-scale dissolution of state assemblies***

There are instances in our country's political history where a bunch of legislative assemblies have been dissolved simultaneously for political vendetta. The landmark instance in this context is the dismissal of legislative assemblies and the deployment of state emergency in nine congress-ruled states by the incumbent Janta party government in 1977. However, when Congress returned to the helm after 3 years, it returned the favour by doing the same thing to the Janta Party governments in the states.<sup>20</sup>

However, the instances of invocation of Article 356 saw a significant dip during the 90's and beyond on account of 2 reasons:

- (i) The landmark ruling in *S.R. Bommai v. Union of India*, where the Supreme Court clearly stated that the provision was amenable to Judicial Review.
- (ii) The emergence of the concept of coalition government, where parties were required to have each other's back.

## **V. REPORT OF SARKARIA COMMISSION**

In 1983, the then Prime Minister Indra Gandhi appointed a commission headed by Justice

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<sup>16</sup> *Nabam Rebia v. Deputy Speaker and Ors.*, AIR 2016 SC 3209.

<sup>17</sup> *Union of India v. Harish Chandra Singh Rawat and another*, AIR 2016 (NOC) 575 (UTR.).

<sup>18</sup> *Rameshwar Prasad v. Union of India*, AIR 2006 SC 980.

<sup>19</sup> *Bijayananda Patnaik And Ors. v. President of India And Ors.*, AIR 1974 ORI 52.

<sup>20</sup> M.P. Jain, *Indian Constitutional Law* 993-994 (Wadhawa, Nagpur, 2018).

Ranjit Singh Sarkaria to clear the obscurity around Union-state relations. After 5 years of extensive research on the issue, the commission presented its report.<sup>21</sup> In its report, the commission laid down a range of firm measures to tackle the improper invocation of President's Rule. Firstly, it discouraged a broad interpretation of the provision because "*not each and every such breach or infraction of a constitutional provision, irrespective of its significance, extent, and effect, be taken to constitute a "failure of the constitutional machinery" within the contemplation of Article 356.*"<sup>22</sup>

Secondly, it advocated for scarce deployment of the provision and that before its invocation a clear warning must be issued to the concerned state. Furthermore, the commission recommended that it is the responsibility of the governor to seek ways to establish a majority government in the State assembly during political turmoil. Should it not be feasible to form a government by any legitimate means and if elections to the assembly can be conducted, then the governor shall empower the departing government to take the role of caretaker government till the time elections are conducted and a new government is formed.<sup>23</sup>

Lastly, the commission recommended that the governor's report which forms the base for invoking the powers under Article 356 should be infused with reasons and material facts on the bedrock on which the governor's satisfaction rests.<sup>24</sup>

## VI. JUDICIAL REVIEW OF ARTICLE 356

Time and again, attempts have been made to subject the deployment of the impugned provision to judicial appraisal. Initially, the courts were reluctant to tread into the constitutionality of the contentious provision. However, this judicial approach changed in the *State of Rajasthan v. Union of India*.<sup>25</sup>

In this case, a restricted form of judicial review of the power exercised under the impugned provision was permitted for the first time, thereby impregnating the barrier created by Article 356(5). The court held that presidential satisfaction was a condition precedent to the deployment of the provision and the safeguard under clause (5) of the provision applied to such

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<sup>21</sup> *Supra* Note 5 at 114.

<sup>22</sup> Inter State Council Secretariat, "Report of the Sarkaria Commission" 12 (1988).

<sup>23</sup> *Id.*, at 13.

<sup>24</sup> *Id.*, at 24.

<sup>25</sup> (1977) 3 SCC 592.

satisfaction. However, where the challenge is not pertaining to the validity of the satisfaction rather it is based on the contention that there is no satisfaction at all, then in such case the application of power is subject to judicial examination and immunity under clause (5) cannot be claimed.<sup>26</sup>

The position in this regard was further strengthened by *S.R. Bommai v. Union of India*<sup>27</sup>, where the Hon'ble Apex Court perused 6 presidential proclamations issued in 6 different states. In the instant case, the court made the following observations:

Firstly, presidential satisfaction must be founded upon objective material which may be in the form of governor's report or otherwise. Further, such material should be suggestive of the fact that state's governance cannot be carried out as per the constitutional mandate. Judicial immunity under Article 356(5) will apply only when both these conditions are met<sup>28</sup>.

Secondly, the term "satisfaction" as used in clause (1) connotes satisfaction of Council of Ministers as the president is obligated to act based as per its aid and advice.<sup>29</sup>

Thirdly, state assembly shall not be dissolved by virtue of the power under the impugned provision until the proclamation is endorsed by both chambers of the central legislature. Till that time the only recourse available is to suspend the assembly.<sup>30</sup>

Fourthly, the court carved out the rule of floor test which operated as a prerequisite for sending report to the president. As per it, the strength of the incumbent government shall be evaluated only in the state legislature.<sup>31</sup>

Lastly, the court held that since the provision's application is subject to judicial appraisal, it is in a position to establish the previous order. In other words, it could revive the sacked council of ministers and state assembly if the concerned proclamation is ruled invalid.<sup>32</sup>

On the bedrock of the above observations, the court by a 5:4 majority held the proclamations in Karnataka, Meghalaya and Nagaland as invalid and those in Madhya Pradesh, Rajasthan and

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<sup>26</sup> *Supra* Note 20 at 1001.

<sup>27</sup> AIR 1994 SC 1918.

<sup>28</sup> *Supra* Note 20 at 1004.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Id.*, at 1005.

<sup>31</sup> *Id.*, at 1004.

<sup>32</sup> *Id.*, at 1006.

Himachal Pradesh as valid.<sup>33</sup>

## VII. CONCLUSION

Shri H.V. Kamath once said, "*Dr. Ambedkar is dead but Article 356 is very much alive.*"<sup>34</sup> From the above discussion, it can be concluded that Article 356 brought to life the worst nightmare of the constituent assembly by becoming the most misused and abused provision of the Constitution. The article has been used on a variety of occasions for settling political scores thereby subverting the federal attributes of this great nation. A relic of the imperial era that was envisioned to remain as dead letter had turned into death letter for the federal polity. However, credit goes to the Supreme Court and Sarkaria Commission for their efforts to keep the federal fabric intact. The guidelines that emanated from their wisdom and prudence brought the deviated provision back to its original path and spurred a transformation in the worsening Union-State Relations.

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<sup>33</sup> *Id.*, at 1003.

<sup>34</sup> President's Rule in India, available at: <https://www.nextias.com/blog/president-rule/> (last visited on November 5, 2024).