

# Article 356 and its Ramifications on Federal Structure of a Working Democracy - A Perspective

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## Abstract

This paper attempts to study how **president's rule via Article 356** has had considerable impact on **federal structure of a working democracy like India**. The Constitution of India is an instrument that provides for a federal set-up in the country and also specifies definite functions for central and state government. The jurisdiction of central and state government with regard to the law-making process has been explicitly mentioned in Schedule 7 of the Constitution. However, there are certain circumstances through which the central government can enter the jurisdiction of states and the Presidential proclamation of emergency is one of them.

The President of India can overtake the legislative and executive power of the state by imposing the emergency in a state in case of "failure of Constitutional machinery". Article 356 states that "If the President, on receipt of report from the 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 be Proclaim emergency in a state". With the proclamation of President rule in a state, the elected government is dismissed and legislative assembly got suspended and the administration of the state is directly controlled by the President through his representative governor. Normally President's Rule in a State should be proclaimed on the basis of Governor's report under Article 356(1 ). The Governor's report should be a 'speaking document,' containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in Article 356. Since its inception, Article 356 has been a matter of debate and discussion because the President's rule has a probability of hampering the federal structure of the nation. The origin of Article 356 can be traced back to Section 93 of the Government of India Act that provided the same provision of imposing emergency by the governor in case the province can't be run in accordance with provisions of the act. This section was incorporated in the Indian Constitution by replacing 'governor' with 'President'. However, various members of the Constitutional assembly had opposed this provision of imposing President rule in a state citing the reason that Article 356 may result in union dominance over the state because of the vague and subjective nature of the word '**otherwise**'.

*Key words: Democracy, politics, General Elections , India, presidential rule, Article 356*

## Introduction

Article 356 in The Constitution Of India states the provisions in case of failure of constitutional machinery in State

(1) If the President, on receipt of report from the 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

(a) 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 any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) 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 any body or authority in the State Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation

(3) Every Proclamation issued under this article 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 it has been approved by resolutions of both Houses of Parliament Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People. In the Constitutional system of India, a particular institution or political wing can't claim superiority over others. The power as the federation is distributed among several organs and institutions for maintaining peace and harmony. The union government has been granted some sort of dominance, but the dominance is required to be met the purpose intended rather than using it for arbitrary reasons.

Article 356 was incorporated in the Indian Constitution so that the Union government can safeguard states from grave conditions such as disturbance of law and order due to failure of Constitutional machinery as in a diverse country like India, there is always a probability of rising of such situation.- Extra-ordinary power given by virtue of Article 356 was meant to protect states not to overthrow their elected government. As it has been stated above, federal set-up is a part of the basic structure of the Indian Constitution and any unreasonable or arbitrary act of throwing state government and suspending legislative assembly would result in hampering the basic structure of the Constitution and the said act should be held null and void.

Now coming to the nature and scope of Article 356, it has been observed that there are two essential components of Article 356. Firstly, the President can impose President rule in a state based on a report sent by the governor of the concerned state or it can be also imposed in other circumstances that deem fit to the President on the aid and advice of the council of ministers to protect the state.- The same can be reflected in the use of the word 'otherwise' in Article 356. Secondly, President rule can be applied in a state when there is a failure of Constitutional machinery. Failure of Constitutional machinery refers to a situation when the state government can't carry out its functions following provisions of the Constitution.

Under article 356, the governor has the power to prepare a report and send it to the President in case there is a condition of failure of Constitutional machinery, or political crisis such as house riding prevailing in a state. However, the President has also the power to impose an emergency in a state based on information gained through sources other than the governor's report. Till now, the scope and nature of the phrase 'failure of Constitutional machinery' and 'otherwise' have not been defined by legislature and it remains a wide and subjective issue i.e., depend on case-to-case basis.- But, the subject matter of the governor's report that can be a probable ground for imposition of President rule has been brought under the ambit of judicial review.

The courts can examine the subject matter of the governor's report that has attracted 'President's satisfaction'. Governor acts under the pleasure of President and President acts on aid and advice of the council of ministers belonging to the ruling party at the center. Therefore, there is a great probability of the governor's report being influenced by the ruling party's interests and agendas at the center and it has also been observed in various times. For example, India Gandhi as PM has a record of imposing President rule the most number of times and in 90% circumstances, it was imposed in states that were ruled by opposition parties or in states that didn't run in accordance with her party interests.- Considering all these things, the apex court of the country in *S.R. Bommai v UOI* -stated that courts have the right to examine the objectivity of the governor's report. There should be a code of conduct for the Speakers of the State Assemblies. The legislature and the judiciary should act within the specific sphere determined by the Constitution and should not interfere with each other's jurisdiction. The Speakers should play impartial role and should not destabilize the State Ministry by giving arbitrary decision under the Anti-Defection Act, 1985, or by securing the ouster of the opposition parties' MLA's from the proceeding of the legislature. The Supreme Court and the High Courts should not interfere with normal proceeding of the State Assembly and they should interfere only in exceptional situations, i.e.,

when the legislators are not allowed to participate in the proceeding of the House, or legislators are not allowed to cast their vote, or the violent activities arise in the House, etc.

The Constitution should be amended in the light of the intention of our founding fathers expressed in Constituent Assembly debates, the recommendations of the Sarkaria Commission (1988), the National Commission to Review the Working of the Constitution (2002) and safeguards on imposing President's Rule enunciated by the Supreme Court in the Bommai Case (1994) that were discussed in the Inter-State Council should be implemented after consultations with the State Governments. The presence of a healthy and strong Opposition, vigilant public opinion, good statesmanship and respect for principles of federalism and healthy conventions of parliamentary democracy are also effective checks upon the misuse of this power. As Balveer Arora observed, To consolidate this gain for federal democracy, it is important to seriously examine the proposals for stringent safeguards, if not outright abolition.

### **Objective:**

This paper intends to explore and analyze **"The President's rule provision"** under **Article 356** of the Indian Constitution is "otherwise" **federal**, the President of India assumes to himself all or any functions of the state with far reaching **ramifications for state's autonomy**

### **Article 356- Its Nature And Scope**

Before analyzing the nature and scope of Article 356, it is necessary to understand the nature of the Indian political structure. Indian democracy works on the concept of 'co-operative federalism' to maintain a balance between union and state government for good governance. In accordance with the Keshavananda Bharti v State of Kerala case, one can state that the federal structure of the Indian sub-continent is a part of the basic structure of the Constitution.

Article 1 of the Indian Constitution states India as "a union of states" but the framers of the Constitution didn't intend to provide union supremacy over states. Indeed, the union government has dominance over state government in various matters but the same was done for the greater good of people and not to surpass the power of state government. This can be reflected through the words of Ambedkar in the constituent Assembly. He stated that "It will be noticed that the committee has used the term 'Union' instead of 'Federation". Nothing much turns on the name, but the committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure".

Article 356 of the Constitution of India is based on Section 93 of the Government of India Act, 1935. According to Article 356, President's Rule can be imposed on any state of India on the grounds of the failure of the constitutional machinery.

**This is of two types:**

1. If the President receives a report from the state's Governor or otherwise is convinced or satisfied that the state's situation is such that the state government cannot carry on the governance according to the provisions of the Constitution.
2. Article 365: As per this Article, President's Rule can be imposed if any state fails to comply with all directions given by the Union on matters it is empowered to.

In simple words, President's Rule is when the state government is suspended and the central government directly administers the state through the office of the governor (centrally appointed). It is also called **State Emergency** or **Constitutional Emergency**.

**President's Rule, political stability**

Parliamentary approval is necessary for the imposition of President's Rule on any state. The proclamation of President's Rule should be approved in both Houses of the Parliament within two months of its issue. The approval is through a simple majority.

The President's Rule is initially for a period of six months. Later, it can be extended for a period of three years with parliamentary approval, every six months.

The 44th Amendment to the Constitution (1978) brought in some constraints on the imposition of the President's Rule beyond a period of one year. It says that President's Rule cannot be extended beyond one year unless:

1. There is a national emergency in India.
2. The Election Commission of India certifies that it is necessary to continue the President's Rule in the state because of difficulties in conducting assembly elections to the state.

**What happens after President's Rule is imposed?**

- The governor carries on with the administration of the state on behalf of the President. He or she takes the help of the state's Chief Secretary and other advisors/administrators whom he or she can appoint.

- The President has the power to declare that the state legislature's powers would be exercised by the Parliament.
- The state legislative assembly would be either suspended or dissolved by the President.
- When the Parliament is not in session, the President can promulgate ordinances with respect to the state's administration.

### **When is President's Rule imposed?**

**It has been seen that the President's Rule has been imposed when any one of the following circumstances have occurred:**

1. The state legislature is not able to elect a leader as the Chief Minister for a time prescribed by the state's governor.
2. Breakdown of a coalition in the state government, that leads to the CM having minority support in the legislature, and the CM is unable to prove his majority within the time prescribed by the governor.
3. A no-confidence vote in the legislative assembly leading to a loss of majority.
4. Postponement of elections owing to unavoidable reasons such as a natural disaster, epidemic or war.

### **Revocation of President's Rule**

President's Rule can be revoked anytime after such a proclamation has been made by a subsequent proclamation by the President. A proclamation of revocation does not require approval by the Parliament. This occurs when the leader of a political party produces letters indicating majority support for him in the assembly and stakes his claim to form the state government

Which is the Indian state where president's rule was imposed for the first time? Article 356 was used for the first time during Vimochana samaram to dismiss the democratically elected Communist state government of Kerala on July 31, 1959.

### **Vimochana samaram:**

On 1 November 1956, the state of Kerala was formed by the States Reorganisation Act merging the Malabar district, Travancore-Cochin and the taluk of Kasargod, South Kanara. In 1957, elections for the new Kerala Legislative Assembly were held, and a reformist, Communist-led government came to power, under E. M. S. Namboodiripad. It was the first time a Communist government was democratically elected to power in India.

It initiated the pioneering land reforms and educational reforms by introducing new bills in the state assembly. The opposition of the Catholic church in Kerala, the Nair Service Society and the Indian Union Muslim League, along with the manoeuvres of the political front led by the Indian National Congress Party, against the land reform and the education policies of the government finally broke out to an open struggle and statewide violence against the government machinery and institutions. These events finally culminated in the dismissal of the state government on 31 July 1959, by the Central Government of India, which was led by the Indian National Congress during that period.

President's rule was imposed in 12 states in 1977 As per the response to a RTI application by Factly, Article 356 has been used 115 times till date. President's rule was imposed in 12 states in 1977 after the Janata alliance came to power. This remains the record for a single year till date. Second in the list is 1980 when the president's rule was imposed in 9 different states after Indira Gandhi came back to power. Other notable years include 1992 when it was used in 6 different states and 1971 when it was used in 7 states including thrice in Orissa

President's rule was imposed 63 times in 20 years between 1971 and 1990 The imposition of President's rule in states has varied across various decades. It was used 20 times between 1950 and 1970. Between 1971 and 1990, it was used 63 times, an average of 3 times a year. In fact, it was used 49 times between 1970 and 1980, highlighting the polarized political atmosphere during those times. Article 356 was used as a political tool during those times

Between 1991 and 2010, it was used 27 times. Only in 1991 and 1992, it was used 9 times. The indiscriminate use of Article 356 came down significantly following the Supreme Court's landmark judgment in the S R Bommai case in 1994. Between 2011 and 2016, it has been used 5 times including 3 times after the BJP came to power in 2014.

## **INTER-STATE COUNCIL**

The NF government led by V.P. Singh at the Centre set up the Inter-State Council under Article 263 in 1990 to discuss the Inter-State problems and to give their suggestion to strengthen the Centre-State relations. Out of the 230 recommendations of the Sarkaria Commission on which Inter-State Council took decision, altogether 108 recommendations have so far been in various stages of implemented, 35 have been rejected and 87 are under implementation.

The remaining 17 recommendations regarding the imposition of President's Rule (Article 356), the deployment of CRPF in the States, compliance with Union's directions under Articles 256 and 257. and effect of the failure to comply therewith, or to give effect to directions given by the Union Government, etc., have been considered by the subcommittee of the Council. The Council has rejected 6 recommendations pertaining to the role of Governor and 18 on All India Services. Although divergence of views still prevail on issues like Article 356, role of Governor, etc.

In the Eighth Inter-State Council meeting held in New Delhi on August 28, 2003 the Union Government and the State Governments agreed that Article 365, which empowers the President to impose sanctions on States for non-compliance with Union's directives made under Articles 256 and 257, should be **sparingly used** in place of Article 356. The then Home Minister, L.K. Advani, said there was **general consensus** on the constitutional recommendations of the Sarkaria Commission (1988).

He said that all parties in the meeting felt Article 356 should be used as a **last resort**. Safeguards against its misuse, as enshrined in the Bommai case Judgement (1994), were accepted. This would now mean incorporation of the safeguards in the Constitution through an amendment.

It may be concluded that above cited Commissions and Committees had gives important suggestions to check upon the misuse of provisions regarding President's Rule. They all stressed that Article 356 should be used as a last resort, in case of actual breakdown of constitutional machinery in the States. This power should not be used by the Union Government for their partisan interests.

But owing to lack of political will power and lack of consensus between the Union Government and the State governments these suggestions have not been implemented so far. Thus, the Union and State governments should evolve a consensus on incorporation of the safeguards against misuse of provisions regarding President's Rule through a Constitutional amendment in light of the Sarkaria Commission's recommendations (1988) and the **Bommai case (1994)** in their judgement on the platform of the InterState Council. However, any safeguard would not be effective without having regard to the democratic conventions by the political parties. As K. Suryaprasad observed: No safeguards, whether constitutional or conventional or even judicial will ensure a cent per cent guarantee against misuse or abuse of the constitutional provisions unless the political parties are committed to democratic ideology, principles and practices.

## Conclusion

One needs to understand the gravity of President rule; it's like an encroachment in the ambit of state government thereby violating the federal structure of the country. Additionally, the researcher observed that there are no sufficient grounds to state that there is a failure of Constitutional machinery in the state as there no prevalence of governor's report and such incidents that surpassed the Constitutional principles. The political crisis was there, but no steps such as floor tests were taken to resolve it before suspending the legislative assembly. What the President should do would be to issue a mere warning to the State that has erred, that things are not happening in the way in which they were intended to happen by the Constitution. If the warning fails, the second thing for him to do will be to order an election allowing the people of the State to settle matters by themselves. It is only when these two remedies fail that he should resort to this Article. These preproclamation steps should be incorporated in the Constitution.

The President's Rule should be imposed in exceptional situations on reasonable grounds, i.e., where after the general elections of the State Legislative Assembly no party gains the absolute majority and no political party or group would be in a position to form the stable and viable government, where a Ministry is defeated on the floor of the Assembly and no political party or group would be in position to form a stable government. where a Chief Minister and his Council of Ministers have resigned and an alternative government formation is not possible, where the Chief Minister advises the Governor to dissolve the Assembly after losing his majority in the Assembly, where the Assembly is dissolved around February/March, without passing the budget, where the Ministry fails to carry out the directives issued by the Union Government under Articles 256 and 257, where a Ministry acts contrary to the provisions of the Constitution, where a complete breakdown of Jaw and order ensues in a State due to secessionist activities or communal violence and the State Government is unable to maintain the security of the people and property in the State.

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