

THE CHANGING POLITICAL DYNAMICS OF ARTICLE 356 OF INDIAN CONSTITUTION

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ABSTRACT

Art 356 not only today but since the enforcement of the constitution has been the subject of hot debate among the Constitutional experts, Political leaders and academicians due to its misuse on numerous occasions. The Central govt. have defied and denied the true spirit of this article and distorted its use in connivance with the Governors of States on unfounded grounds. Originally, this very article was incorporated in the constitution to preserve the unity and integrity of the country. Although Dr. B.R. Ambedkar visualized this article as a dead letter yet he was quite aware of the fact that this article might be used for political purposes in future. And his apprehension regarding its use for political consideration has turned out to be true. Thereby, the article meant to be a protective shield of federal structure has become a sword to unsettle Centre state coordination. Clear cut directions of Sarkaria Commission and S.R Bommai judgement are serving no practical purpose and it is being used on vague and unfounded grounds.

INTRODUCTION

It was incorporated in the Constitution as a provision in case of failure of Constitutional machinery in states- "If the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the govt of the state cannot be carried on in accordance with the provisions of the constitution the president can assume to himself all or any of the functions of the government and all or any of the powers vested in or exercisable by the Governor or of anybody or authority in the state other than the legislature of the state.

In contemporary Indian polity. the sanctity and validity of Art. 356 as originally visualized by our Constitution makers has been seriously eroded by its constant misuse and distortion for petty partisan political purposes. The constituent assembly comprising galaxy of legal luminaries and Statesmen like Pandit Nehru, Dr.B.R. Ambedkar, H.N.Kunzru, K.M. Munshi, K.Santhanam, H.V.Kamath, M.R. Jayakar, K.T. Shaw, Nazairuddin Ahmed etc. discussed the use of ART 356 .

This article was drafted as Art. 278. though the background of this article Art. 356 can be traced back to Section 93 of Govt. of India Act.1935 to empower the Centre was to check the fissiparous tendencies of the states which will act against the unity and integrity of the the country and not allowing this provision to jeopardize the federal structure in normal circumstances

Dr. B. R. Ambedkar explained the federal system and the autonomy of the states within the sphere allotted to them by the Constitution and clarified the incorporation of Art. 356 as exception to that normal system only when there was a likelihood of the failure of a state to maintain that system itself in which case the union would enforce its obligation to maintain that system. As he said, "In view of the fact that we are endorsing the provinces with plenary powers and making them sovereign in their own field, it is necessary to provide that if any invasion of the provincial field is done by the center, it is in virtue of this obligation. "The obligation is to protect the states from external aggression or internal commotion or to maintain the Constitution in the states."

The necessity for a strong union was widely accepted taking into consideration the historical reasons, divided polity, political turmoil such as situation in Kashmir, recalcitrant attitude of some princely states against joining the union, armed insurrection in the Telangana region of Hyderabad which were shaking the very foundation of newly founded union.

REVIEW OF LITERATURE:

Although some members of the constituent assembly staunchly endorsed the idea of Art.356 yet H.V. Kamath, K.T. Shah, Kunzru vehemently opposed its inclusion in the Constitution.

B.R. Dass even said that this act would make the President 'a new Frankenstein' President who could usurp all the powers of the various provinces.

Pandit Haridy Nath Kunzru opposed the article. His contention was that if real responsible govt. was to be established in the states, the electors must be made to feel that the power to apply proper remedy if any mismanagement occurred rested with them. I depended upon them to choose their representatives who would be capable of working in accordance with their best interest. If the central govt. of parliament given the power to interfere there was danger that whenever there was dissatisfaction in a state appeal would be made to the Central Govt. to come to rescue. The state electors would throw their responsibility on the shoulders of the central govt. It was not right to encourage this tendency.

K. Santhanam depreciated the imposition of Presidential rule. He specified that when a ministry is defeated and an alternative ministry cannot be formed, the proper course should be immediate dissolution and reelection so that people of the state would have a chance to decide for themselves. It is only where law and order fails and the legislature cannot function in peace then Presidential rule should be imposed.

What happened in Kerala on July 31 1959, will go deep in history. This was the first time since independence that consideration other than ministerial instability due to internal party conflict or the shifting allegiance of the members of the legislature had led to the drastic action taken by President under the article.

On the other hand Sardar Patel recognized the unpleasant necessity of this provision T.T. Krishnamacharya opined that these emergency provisions have got to be tolerated as a necessary evil.

Nasiruddin Ahmed also supported this article by pointing out, "I submit that there are real dangers threatening the internal peace of the country apart from the fear of external aggression. There are forces of disintegration and disorder already visible everywhere.

In spite of the doubts, fears and scathing criticism by some of the members it was agreed upon to have this provision in the constitution. Even the severe critic H.V. Kamath also agreed to add this article with subtle amendments the word internal disturbance with internal insurrection.

States like Punjab, Bihar, U.P, Rajasthan have own tales to tell. But a sordid drama enacted in U.P in Oct. 1970 may remain unprecedented. Governor action in recommending breakdown of the constitutional machinery in U.P. and imposition of President rule was described as "The rape of democracy."

Even Subha Rao former CJ of Supreme Court expressed pain at the "shameless exhibition of political immortality in the way the U.P crisis was handled."

It is being used not only in individual cases but also for the wholesale dismissal of constitutionally elected Govt on unconvincing and farcical grounds. Among the prominent cases are dismissal of Congress ministries en-masse in different states in 1977 by the then ruling Janata Party and when in 1980 Congress regained power at the Centre and reciprocated in 1980 by dismissing the Janata Party ministry in various states.

Sarkaria Commission was set up to look into the intricacies of Centre-State relations and laid down the relevance of ART 356. Sarkaria Commission did not want to scrap it and recommended its use in the event of political crisis, internal subversion, physical breakdown and noncompliance with the constitutional directives of the union govt. But even the clear-cut direction of Sarkaria Commission and Supreme Court verdict in S.R Bommai case have not put the Indian polity on the right track. Again, in Feb, 1999 on the report of the governor the central govt. - imposed presidents' rule in Bihar. No less a leader than Vajpayee referred to Bihar as an appropriate case for the imposition of this article. The resolution was passed by Lok Sabha but the fear of

inevitable defeat of this resolution in the Rajya Sabha led to the restoration of Rabri Devi Govt. in Bihar. In J & K in March, 2000 after the massacre of certain political leaders demanded the imposition of president rule in the state but Mr. Advani then Home Minister of India rejected the plea by saying that J & K case was not a fit case for invocation of this article.

Thus, the conflicting and contradictory stand taken by different political parties in same political situation vindicated the prevailing confusion regarding the implication of this article. Dr. Ambedkar's plea that it would serve as a 'Dead Letter' turned out to be 'Death Letter' for various unwanted ministries on one or another ground. When Kunzru asked Dr. B.R. Ambedkar to clarify the situation when it can be invoked, Dr. Ambedkar asserted that Good Governance or Desire for good govt is no ground at all for the proclamation of this article.

In fact, Dr. Ambedkar's apprehension of its misuse for political purposes and Dr. Prasad observation of its

being a bad precedent have proved so much prophetic that it is being argued in certain politico legal quarters that ART.356 should be abolished altogether due to its constant misuse for Political purposes. But still some others in the past as well as in the present are in favor of retaining this article despite its wrong use. As

Alladi Krishnaswami Ayyar has said 'Far from being an impediment to state autonomy they were a bulwark in favor of state autonomy because the primary obligation was cast upon the Centre to see that the constitution was maintained.

DR. B R. Ambedkar also recognized the possibility of abuse of this Article for Political purposes but he asserted that this objection applies to every part of the constitution that gives power to the Centre to override the provinces.

H.M. Seervai, an eminent authority on Constitution of India also admits the fact that this ART is subject to 'gross misuse'. But according to him abuse of powers conferred by this article does not mean that the powers themselves must be abolished.

As Arun Jaitley admitted that this is the most abused article of the constitution. He expressed desirability in retaining this Article as he said "Existence of ART was necessary to prevent an armed rebellion or forcible takeover of a state by extremist group."

PMK also favored the continuation of this ART until a major alternative is found. This art serves as a means to check state government. If it is scrapped it would become impossible for the Centre to step in when the State Governments indulged in unconstitutional acts.

Congress Party also wanted to retain this article in the present form only when there would be no attempt of misuse.

This ART was brought in for administering content rule under extraordinary circumstances we want it to remain that way.

Chautala wanted to retain this ART-356 on the statute book so that India does not go to Soviet Union way. The party was against misuse of ART 356 but not against its use to prevent Balkanisation of the country. If it is removed the State Governments would go berserk and CM would feel free to run their States as Fiefdoms.

Sarkaria commission recommended the situations under which it can be imposed and more over associated this article with the role of the Governor.

To check its misuse, it was suggested that Governors should rise above party politics & they should not serve mere stooge of the Centre.

Even Sub-Committee of Interstate council was set up under the leadership of George Fernandes to provide for safeguards against its misuse.

Among the safeguards approved upon were a warning by Centre /governor to the errant States in specific terms except when any delay in taking action under the statute could lead to disastrous consequences. Every state part was bound to reply the show cause notice within seven days from the date of issue. Further the approval of the Parliament was mandatory within fixed period.

The constitution review committee headed by M. N. Venkatchaliah has recommended that in case of Political breakdown necessitating Precedential rule, the state concerned should be given an opportunity to explain its position and redress the situation. Regarding Governor, opined that in selecting a Governor, it should be borne in mind that he should be eminent Politically detached figure.

CONCLUSION:

Various measures and steps were taken to check the abuse of this ART. by setting commissions such as Sarkaria Commission, Venkatchaliah commission, Interstate council and Judicial interpretations but the attitude of the Political parties, emergence of strong dominant regional parties, coalition era, tensions & conflicts in center state relations, stark reality of divided and pluralistic nature of Indian Society, problem of ensuring unity, integrity and solidarity of the country have consolidated the case of ART 356 in the Indian constitution with certain

precautions and safeguards. Understandably, the scrapping of ART 356 may pose a threat to Indian state and it should serve as a deterrent for wrong-doers.

As former president Narayan in Sept. 1998 in case of Bihar said that it would be imprudent to take action under ART 356 in Bihar when preliminary steps such as warning, directions and eliciting explanation from the state have not been taken by the union. These Warnings and directions can be in the form of applying ART 256, 257 & 355 first which were designed for coordination between Centre & states.

Note of caution would go a long way in preventing its misuse of ART 356. According to Soli Sorabjee article 356 is a fatal fascination for every govt. at the Centre to impose president's rule in states.

Jawaharlal Nehru at a Press Conference in Delhi on June 10, 1959 said "I do not propose, intend look forward to or expect governments to fall down except through normal democratic processes."

Perhaps this was the best statement ever made regarding Art 356. In fact President KR Narayanan's stand taken concerning ART 356 in UP and Bihar was indication of restoration of Principled behavior in politics.

Dr B.R Ambedkar while answering Pandit kunnjru regarding Art 356, admitted whether there is good government or not in the provinces, it is not for the Centre to determine.

In S.R Bommaicase, the judgement also emphasized to use Art 356 to preserve the sanctity of the constitution.

But unfortunately, the political use of this article more frequently has brought into instant focus the questions how to ensure against any misuse of this article for ulterior political motives of the parties in power at the Centre. Recently attempt was made to dislodge Uttarakhand Government by using this Article against the constitutional ethos. The purpose of this Article was its rarest use and Sarkaria Commission, S.R Bommai Judgements laid down the guidelines for proclamation of this Article. Even then the mere presence of Judicial

Judgements, Statutes, Commission reports and guidelines of the Architects of the constitution have proved insufficient to check its abuse.

At the same time no proper use of this article does not make it a fit case to scrap it altogether as the article was originally enshrined in the constitution to safeguard Centre state relations and further to make the Centre strong so as to maintain the unity and integrity of the country. In fact the remedy lies in introducing further ethical checks and behavioral balances in different constitutional pillars so as to restore the sacramental nature of this article and make its use as rare as possible and keep it a Dead Letter as envisaged by Dr. B.R. Ambedkar.

REFERENCES

Govt. of India Act 1935

K.M. Munshi Papers

Venkatraman- My Presidential Years Constituent Assembly debates

The Constitution of India Sarkaria Commission Report

S.R Bommai Judgement Rajasthan Case

Uttar Pradesh case Bihar case

Kerala case Uttarakhand case

H.M. Seervai-The Constitutional law of India

D.D. Basu-Commentary on the constitution of India N.A.Palkhivala- "Our constitution defaced and defiled"

Subhash C. Kashyap-Jawahar Lal Nehru Constitution. Granville Austin-The Indian Constitution

Pavate D.C -My days as Governor.

M. Hidaytula-The constitutional Law of India Articles from Newspapers and Journals

Views of different Political Parties and National and State leaders