

# Failures of State Machinery and its Impact on Governance

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## Abstract

Article 356 of the Indian Constitution providing imposition of President Rule in the state was once again in the news in last few months. First was Arunachal Pradesh and now it is Uttarakhand. In both the case the imposition of President Rule emanated from the political crises that arose due to defection of ruling party law makers. At present the legal battle is going in Supreme Court in the case of Arunachal Pradesh and in the high court in the case of Uttarakhand.

In this light, let us understand what Article 356 is. How its uses are and how it has often been misused by the party at the Centre.

The frequency of using Article 356 has been greatly reduced since mid-1990's, despite and increasingly higher number of states being ruled by parties other than that in the central government. This happen due to two factors emboldening of regional parties and intervention by the Supreme Court. The mid 1990's, witnessed fundamental changed in the nature of union government. Before this period, even when coalition government took power in Delhi, only a few national parties came to dominate the government. The mid 1990's was marked by the rise of regional parties that lent and increasingly opportunistic and volatile character to Indian Polity. This meant that the national parties were always on the lookout for new regional allies, and hence were wary of using Article 356 against their governments.

Besides having had direct political impact, the rise of regional parties also rejuvenated other institutional safeguards the courts and the President against arbitrary imposition of Article 356.

**Keywords:** Cyber Security, NCRB, Cyber Laws, Cyber attacks, Online Banking, Financial Fraud, Cyber Space, Global Economic Survey, E-Banking, Cyber Threats, Information technology Act.

## Introduction :

The definition of emergency<sup>1</sup> is left to the President but it is clear that apart from external aggression and internal commotion, it also includes economic depression and financial crisis.

The emergency provisions contained in the constitution of India are its main characteristics. The proclamation of emergency shall be laid before both the houses of parliament. If bothe houses of parliament do not approve such proclamation it shall not operate after expiration of two months. If Loksabha was dissolve at the time of proclamation of emergency, the approval of Rajya-Sabha is necessary. After approval of proclamation of emergency of Rajya-Sabha, it shall be put before Lok Sabha within 30 days of the first sitting of Lok-Sabha. Thus representatives of the people must approve action of the President under Article 352. The house of parliament approves proclamation of Emergency by resolutions.

Proclamation of emergency enhance of Union executives as well as legislature. Union may give directions to state in the manner in which the executive power to the state is to be exercised. During such emergency parliament can make laws upon subjects mentioned in state list also. The

<sup>1</sup> Sudden unexpected or impending situation that may cause injury, loss of life, damage to the property and interference with the normal activities of a person or firm remedial action

President of India may by order change financial arrangements between Union and State. Proclamation of emergency also affects citizens<sup>2</sup> while it is in operation the constitution of India becomes unitary. It is noteworthy as well as praise worthy aspect of the constitution of India. Emergency provisions enabled Centre to meet the challenge. Since it is the duty of the union to protect states from external challenges, the Centre must have enough powers to face it. In short we can say that Proclamation of emergency gives to Centre to more powers<sup>3</sup>. Now emergency may be proclaimed for any part of the country also.

We know that Constitution of India is federal in nature having a unitary bias. In one side it has all the characteristics features of federation while on the other side the central is more powerful than the states. In legislative relations also for certain extent the Centre Acts prevail over the state acts.

### Centre's Duty to protect the states:-

Article 355 imposes duty on Centre's to protect a state in the following 3 situations"-

1. External Aggression<sup>4</sup>.
2. Internal disturbance<sup>5</sup>.
3. When the State Government cannot be carried on in accordance with the constitution<sup>6</sup>.

### Judicial Trends in the domain of Art 356 of the Constitution of India:-

State emergency is declared due to the failure of constitutional machinery in a state almost all states have undergone this type of emergency. This emergency is also known as President's Rule.

Considering the misuse of Article 356 of the Constitution it was held to be most controversial Article under the constitution, always resulting into the friction between Union and States. Hence a commission was appointed under the chairmanship of Justice Sarkaria of Supreme Court.<sup>7</sup>

The power of President under Article 356 is a constitutional power and is not absolute power<sup>8</sup>

### Instance of Presidents Rule in Various states in India

The President's Rule has been imposed under Article 356 on more than hundred occasions. In most of the cases, it has been imposed in the circumstances in which stable ministry could not be formed because of failure of coalition ministry, due to defection of member's mal-administration and corruption etc.

1. Nine Assemblies, Dissolution in 1977
2. Dismissal of BJP Government in Madhya Pradesh, Himachal Pradesh and Rajasthan. i.e. the dispute relating to demolition of Babri Masjid
3. President's Rule in Uttar Pradesh in 1995
4. President's Rule in Goa, 1998
5. President's Rule in Bihar, 1999
6. President's Rule in Goa in, 2005<sup>9</sup>

### CRITICAL ANALYSIS

Emergency provisions are criticized for many reasons. Emergency is darkest hour in India's judicial and democratic history. Justice Krishna Iyer quoted that, "*there should be equal protection of laws that are you ever so high, the law is above you.*" By this he is criticizing the act of Prime Minister Indira Gandhi. As the declared emergency under Article 352 and usurp all the power in her hand like a dictator".

<sup>2</sup> Gulan Sarwar V Union of India AIR 1967 SC 1335

<sup>3</sup> D.K.Singh, emergency and constitution of India, Indian Constitution Trends and issues p. 288

<sup>4</sup> Sarbananda Sonowal v Union of India AIR 2005 SC 2920

<sup>5</sup> Naga People Movement for H.R. v Union of India AIR 1998 SC 431

<sup>6</sup> M.P. Jain, Indian Constitutional Law P. 681

<sup>7</sup> Dr. J.N.Pandey's Constitutional Law of India P. 696-697

<sup>8</sup> S.R.Bomma v Union of India AIR 1994 SC 1918

<sup>9</sup> Dr. J. N. Pandey's., " Constitutional Law of India, p.698-712

Emergency situations are the stab on the independence of judiciary, suspended Fundamental Right's<sup>10</sup> and deprived the judges even of highest court the power to protect the citizen against the violence and violation.<sup>11</sup>

As we have experience the emergency situation in India which were seriously endanger to the security and lives of the citizen's<sup>12</sup> it affects individual liberties and also the Human Rights.<sup>13</sup>

Dr. Babasaheb Ambedkar on Article 356 observed that this Article never be called into operation and that had tamed out to be “**dead letter**” for a number of state governments and legislative assemblies, since from commencement of constitution, the court noted, that President Rule had been imposed on more than 100 occasions<sup>14</sup>.

Article 356 was designed to preserve this integrity, but what remains to be seen is whether it is being used at the cost of sacrificing the interest of democratic freedom. India has a vast and diverse population, with large number of people living below poverty. Therefore, extra-ordinary in Article 356 is both extra-ordinary and arbitrary<sup>15</sup> as we learn from history.

In this emergency situation, the worst damage may possibly have been done through the office of the Governor, because of Governor; cannot be held responsible for his or her actions. H.M. Seervai pointed out that the Governor can be removed only be the President and that the president's acts on the Governor are in office pretty much at the pleasure of Union Executive.<sup>16</sup>

### Recent Important Incidences Of Article 356

President's Rule was in force In Delhi with the Assembly in suspended animation from Feb.14, 2014 to Feb. 11, 2015. This was after Arvind Kejriwal resigned as Chief Minister after his move to introduce the Jan Lokpal Bill. Fell through in the assembly

Imposed in Maharashtra from Sept. 28, 2014 to Oct. 31, 2014, after Prithviraj Chavan resigned following the break-up of the 15 year old Congress NCP alliance in the state.

In Jharkhand from Jan. 18, 2013 to July 12, 2013, as the Arjun Munda led BJP government was reduced to a minority after the Jharkhand Mukti Morcha withdrew support Munda resigned and sought dissolution of the State Assembly<sup>17</sup>.

The Supreme Court has ordered the restoration of former Chief Minister NabamTukis Congress Government in Arunachal Pradesh. Verdict in this regard was given by a 5 judge constitutional bench headed by Justice JS Kehar on a bunch of petitions.<sup>18</sup> These petition were dealing with discretionary powers of Governor Jyoti Prasad Rajkhowa to summon of advance the assembly session<sup>19</sup>

<sup>10</sup> 44<sup>th</sup> Amendment of 1978 except Article 20 and 21 of the Constitution of India, 1950

<sup>11</sup> A.D.M. Jabalpur v. Shivkant Shukla AIR 1976 SC 1207

<sup>12</sup> Article by Soli Sorabjee, “Human Right's during emergency”.

<sup>13</sup> Makhan Singh v. State of Punjab AIR 1964 SC381

<sup>14</sup> C.A.D. Vol. IX p.1970

<sup>15</sup> Indira Gandhi v. Raj Narian

<sup>16</sup> H.M.Seervai, “Constitutional Law of India”, Volume 3.,P 3103 , 4<sup>th</sup> Edition 1996

<sup>17</sup> Indian Express. Com, “What is Article 356?,” written by Seema Chishti., last seen 7.38 pm.

<sup>18</sup> “Supreme Court orders restoration of Congress Government in Arunachal Pradesh” last seen on 17/10/2016 , 9.00pm

<sup>19</sup> Google weblight. Com last seen 7.53pm.

## Suggestion and Conclusion

It is need those permanent values in the constitution & changing requirements of the society must be so balanced.

- 1) Emergency in a democratic state is to enable it to preserve values of democracy. The Rule of law is an indispensable feature of democracy. In the absence of Rule of law there is lawlessness, no authority to question governments actions, no **“However grave the emergency it should always be remembered that there exists an inseparable bond between legality, democratic institutions & the Rule of law.”** Once that bond is served, all ties with decent, civilized life have been severed & human beings become devoid of humanity.
- 2) The emergency provisions provide the President with sweeping powers to deal with abnormal & extraordinary situations. Any misuse of these powers can easily lead to subversion of democracy. But actual working of the constitution for over-70 years there are some instances where emergency imposed due to political considerations. There is broad consensus that emergency provisions prevailing in India.
- 3) If this power is used with great care & caution then there should not be any conflict between union — state relations in India.
- 4) Most practically , the public opinion in India, the history clears it that, they will awaken to the fact that Article 356 have become slowly tightening around the neck of democracy in India, but in meantime After 44<sup>th</sup> Amendment Act & judicial review of Supreme Court of proclamation of emergency, it is great impact on emergency powers in India.
- 5) Though there is incidence of Abuse of Article 356 but it does not mean that ot repeal this Article. Because it creates hurdles in Centre — state relations in upholding constitutional governance throughout India.
- 6) Therefore, it is up to the 3 pillars of the Government i.e. legislative, Executive & Judiciary that to use this weapon or this emergency provisions with care that it should not affect the fundamental rights of the people very harshly & negligently.
- 7) Emergency situations place democratic governments in real dilemma by bringing about a conflict between its primary obligation to protect the integrity to protect the human rights of its citizens & other persons within its jurisdiction. The state is forced into a choice between competing values & the sacrifice of one to other. That is the rationale of emergency provisions, which find place in many national constitutions permitting suspension of guaranteed, fundamental rights.

"The constitution of India is unique in respect that that it contains a complete scheme for speedy re-adjustment of the peace-time governmental machinery in movements of national peril. These provisions may appear to be particularly in a constitution which professes to be built upon an fundamental rights & democracy. But the provisions must be studied in the light of past history of India. It is far well that the constitution guards against the forces of disintegration. Events may take place threatening very existence of state & if there are no safeguards against such eventualities the state together with all that is desired to remain basic & immutable will be swept away."

It is concluded that our constitution is federal in nature though we have prefer strong Centre. It is rather merit of constitution. That it visualizes the contingencies, when the strict application of federal principle might destroy the basic assumption on which constitution is built. The constitution by adopting itself to a in its endeavor to overcome crisis. In an emergency the behavior of each federal constitution is very much different from that in peace time.

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