

Role of Governor in Indian Federal System – New Dimensions under Article 356

Lalit Kumar Sharma¹

ABSTRACT

Article 356 of the Indian Constitution provides for imposition of President's rule in states, provided the President is satisfied that the governance in states cannot be carried out in accordance to the constitution. The failure of constitutional machinery is an essential condition for the exercise of power under article 356. The Sarkaria Commission report on center – state relations spelt out some instances of what does and what does not constitute a constitutional failure. After analyzing the circumstances which led to central intervention in various states at different times, it can be deduced that situations resulting in imposition of the President's Rule could be put under following categories – mass dismissal of state governments on the pretext of losing people's trust, hung assemblies, corruption and mal – administration, breakdown of law and order, re-organization of states, failure to honor the assurance nation and the court, to get the interim budget of the state passed the Parliament, and Political instability in state.

KEYWORDS: Governance, Constitution, Sarkaria Commission, President Rule, Court.

I. INTRODUCTION

Our constitution provides for a federal government, having separate systems of administration for the Union and its units i.e. the states. In addition to its federal structure, the constitution provide for establishing the parliamentary form of government both at the union and in state Article 154(1) and 163(1) of the Indian Constitution provides that the executive power of the state shall be vested in the governor and that there shall be a council of ministers with the chief minister as the head to aid and advice the governor in the exercise of his functionary1.

Without tempering with the federal structure, the constitution also facilitates a strong union government. Article 356 is one of those provisions under which the governor – the constitutional head of a state, sends a report to the president that the government of the state cannot be carried on the accordance with the provisions of the Constitution, thus paving the way to impose the President's Rule in the state. As a powerful instrument in the hands of the union government Article 356 has invited more criticism than assumed, sketching the governor a dubious character, pejoratively calling him an agent of the centre2.

II. ROLE OF GOVERNOR

In Chapter IV, the Sarkaria Commission pointed out the main facets of the governor's role:-

- a) As the constitutional head of the state operating normally under a system of Parliamentary democracy;
- b) A vital link between the union government and the state government; and
- c) An agent of the union government in a few specific areas during normal times (e.g. Article 239(2) and in a number of areas during abnormal situations like 356(1).

The Constitution did not envisage the governor as an agent of the center by making reports under Article 356. Such a report has to be made by the governor as required as part of his oath which obliges him to 'preserve' protect and defend the constitution and to devote himself to the well – being of people of that state.

Role mentioned under (a) is performed by the Governor in normal times with the advice of his council of minister. As far as his role under (b) and (c) are concerned, he is free to act on his own discretion and such discretion cannot be questioned. Following are some examples where the governor acts/ can act on his own discretion:

- The Governor of Assam determines the amount payable by the state of Assam to the district councils, as royalty accruing from licenses for minerals. [schedule VI, para 9(2) of the constitution of Indian]
- Working as an administrator of the union territory (UT) under article 239(2)
- Assuming special responsibility from the President under article 379-371(H) with regard to specific areas of certain states.
- Reservation of a Bill (s) for consideration of the President under article 201

¹ Project Officer, Institute of Integrated Himalayan Studies (UGC Centre of Excellence), Himachal Pradesh University, Summer Hill, Shimla-171005, Email: drlalitsharma72@gmail.com

- Working as a chancellor of state university/universities.
- Working as a chief of the State Red Cross unit.
- At the time of sending a report to the President under article 356(1).
- Working as a representative of the president after the proclamation of President's rule.

ARTICLE 356 A LEGACY OF SECTION 93 OF THE GOVERNMENT OF INDIA ACT, 1935

In fact, the constitution – makers never intended the governor to be only a component of the apparatus of the governance at the state level. They meant him to be an important link with the center. Their effort was to provide a cooperative federation biased towards Unitarian, which could balance the fissiparous tendencies prevalent at that time. For this purpose, article 356 has been enacted in the Indian constitution.

This article was inspired by section 93 of the Government of Indian Act 1935. Through the British by the Act of 1935, experimental with the Federal System in India, they were not ready to forgo their central over the provinces under their jurisdiction. They were equally apprehensive of possible collapse of the new system of parliamentary democracy either at the center or in the provinces. As far as the British colonialists were concerned, it was incumbent on them to include a provision of this kind because the British parliament was not prepared to trust the political parties in India.

Even though Article 356 was patterned on the controversial section 93 of the government of Indian Act 1935 with the difference that instead of the governor, the President is vested with the said power yet it was thought necessary to have it in view of the problems that the Indian Republic was expected to face soon after Independence. This fear was expressed during the debate in the constituted assembly.

FREQUENT USE OF ARTICLE 356

The office of the governor did not attract much attention before 1967 and the people felt that the Governor office was a sinecure because the congress party till then had the fortune of ruling both at the center and in the most of the states. The issues between the Centre and the States were sorted out by an extra – constitutional agency – the congress-party. The Aya Ram – Gya Ram concept in Indian Politics stated in 1967. As a result various interested groups especially from congress broke away to form government in states in alliance with various other heterogeneous opposition groups. Apart from Kerala where communist regime was dismissed and President's rule was imposed as early as in 1959, the office of governor was put to vigorous test only after 1967.

In 1977 general elections, congress party received a major blow at the Centre at the heads of Janata Party. This further sharpened the conflicting situation between the Centre and states and the office of governor became more and more controversial.

The President's Rule has been imposed in various states/UTs on as many as times since the Indian Constitution came into effect. The following table illustrates the point clearly:-

Number of times President's Rule was imposed since 1950....

Period	Number of times President's Rule was imposed
1950-1970	20
1971-1990	63
1991-2010	27
2011-2016	6

Source: <https://www.worldastatemtn.org/indianstatementhtml>.

The table reveals that in a short span of 20 years (1971-1990) President's rule was imposed on as many as 63 times. This was the period where unbridled use/misuse of Article 356 was done by the center. When President's rule was imposed in Uttarakhand in March 2016, it became the 115th instance of imposition of President's rule since 1950. While the use of the Article 356 has considerably come down in the last two decades, it still continues to grab headlines.

PRESIDENT'S RULE WAS IMPOSED IN 12 STATES IN 1977

Article 356 was first used in June 1959 in Punjab. Since then, it has been used 155 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 in 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 6 different states and 1971 when it was used in 7 different states including thrice in Orissa.

NEW DIMENSIONS UNDER ARTICLE 356

As stated above since the inception of the constitution in 1950 till 2007, the Article 356 has been used or misused in various states/UTs on many as 115 times.

After analyzing the circumstances which led to central/intervention in various state at different times, it can be deduced that situations resulting in imposition of the President's rule could be put under following broad categories – mass dismissal of state government on the pretext of losing people's trust, hung assemblies, corruption and mal-administration, breakdown of laws and orders. Party wrangling, paralysis of Parliamentary process, violence and pandemonium within the precinct of the Assembly, delay in electoral process, re-organization of states, failure of honor the assurance to nation and the court, to go the interim budget of the state passed in the parliament and political instability in states.

The situation which attracted controversy comes under five broad categories i.e. mass dismissal of state government, hung assemblies, corruption and mal-administration, breakdown of laws and orders, and political instability.

In view of such misuse of the Article 356 by the center the *Sarkaria* Commission Report had issued the following guidelines :-

- The majority support of the Government should be proved only on the floor of the Assembly and not outside the house.
- When assembly is not in session and the Governor receives reliable evidence that the council of ministers has lost majority as a matter of constitutional propriety, he should not dismiss the majority on the contrary should advise the Chief Minister to summon the assembly as early as possible so that the majority could be tested.
- Article 356 should be used sparingly or as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the state.
- The State legislative assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1) has been laid before parliament and it has had an opportunity to consider it and Article 356 should be suitably amended to ensure this.

In no single party is having an absolute majority the *Sarkaria* Commission was of the opinion that, the Governor should select the Chief Minister from amongst:-

- i. An alliance of parties that was formed prior to the elections; or
- ii. The largest single party staking claim to form the government with the support of other's including independent's; or a post – election coalition of parties, with all partners in the coalition joining government; or
- iii. The post – electoral alliance of parties, with some of the party forming the government and the remaining parties, including independents supporting the government from outside. (Para 4.11.05)

Unfortunately when such situation arose in Bihar, Goa, Maharashtra, UP, J&K where no party on its own or in alliance with other parties succeeded in forming government, the Governor allegedly acted on the direction from the Union Government instead of choosing the CM in accordance with the suggestions given by *Sarkaria* Commission. The Governor first kept the assembly in suspended animation and later imposed President's rule which led to a lot of controversy.

III. SUGGESTIONS

Democracy may function well if the government takes the following suggestions in to accounts:-

- Imposition of Article 356 should only be used as a last resort.
- The inter-state council should be strengthened and to play more active role in repairing the center-state relations.
- The President before signing the proclamation under Article 356 should show 'constitutional activism' to verify whether the Governor's report or an advice by the council of ministers is based on extraneous or false premises.
- It has been seen and is being seen that time and again the persons are appointed Governors who have close affiliation with the political party/parties in power. This practice should be stopped.
- Also recommendation given by the reforms commission, the *Sarkaria* Commission, National Commission to Review the working of the constitution should also be seriously considered for implementation.
- Governing party should work for strengthening the democracy not toppling the opposition parties' government.

REFERENCES

- [1]. National Commission to Review the working of the Constitution, the Institution of Governor under the constitution, A consultation paper chapter II, pp.879-890.
- [2]. P.K. Chatterjee, "Retain Article 356 with suitable Amendments", Mainstream: New Delhi, February 21, 1998, pp 17-18.
- [3]. D.D. Basu, Commentary on the constitution of India, Calcutta: Kamal Law House, p.15.
- [4]. S.S. Tiwana, "Article 356 in the context of center – state relations in India", Vidhsabha Vol.10, No.2 July-December 2003, Himachal Pradesh Vidhan Sabha Sachivalaya: Shimla, pp 19-20.
- [5]. Ashwani Kumar, "The President sets a Precedent", The Tribune, Chandigarh, October 7, 1998, editorial page.
- [6]. Report of the *Sarkaria* Commission on Centre-State Relation, Government of India Publication, 1998.

- [7]. B.P. Pandya, "The Role of Governor", Journal of Constitutional and Parliamentary Studies, New Delhi, Vol. XXX, No. 3-4, pp. 125-126.
- [8]. Editor Hindustan Times, New Delhi, January 26, 2007, p.7.
- [9]. J.R. Siwach, "Politics of President's Rule in India, Indian Institution of Advanced study: Shimla, 1979, pp. 171-172.
- [10]. C.P. Bhambhri, Indian Politics since Independence, New Delhi, Shipra Publications, 1994, pp. 125-126.
- [11]. K.Surya Prasad, "Article 356 of the Constitution of India, New Delhi, Kanishka Publications and Distributors, 2001, p. 87.
- [12]. S.A. Pakkar, Indian Polity, Jaipur: ABP Publications, 2006, p. 248.