

A Review Of Administrative Relations During Emergency

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Abstract: The Constitution of India makes the provision that if a state under government fails to carry out the administration of the State in accordance with the provisions of constitution or is the State fails to run state administration according to constitutional directions of the central government, the President is empowered to declare failure of constitutional machinery in the State. If such declaration is made and emergency declared, the central government takes over the administration of the State. It will appoint an adviser or team of advisers which will help the central government to run State administration in the desired manner. Administratively the federal structure, for that particular State becomes unitary. By far the most widely criticized provisions of the Constitution, from the point of view of federalism, are those relating to emergencies. All the three types of emergencies envisaged respectively under Article 352, 356 and 360 authorise serious inroads into State autonomy. The present research paper makes a review of administrative relations during emergency in India.

Keywords: Administrative Relations, Emergency, Constitution, State Autonomy.

Introduction: The emergency powers in Indian constitution are vested with the office of the president but they are exercised after the recommendation of the council of ministers. In this perspective a Proclamation of Emergency under Article 352 has the potentiality of bringing about a virtual abrogation of the federal division of powers in so far as it extends the Union Government's executive control over the States in all matters and empowers Parliament to make laws on matters normally under the exclusive jurisdiction of the States. Acting under Article 354, the President can also abridge the financial powers of the States by suspending or modifying the operation of Articles 268 to 279 during the currency of a Proclamation of Emergency. Evidently, the net effect of these provisions can be- if the Centre uses to the full its power there under-to so

limit the autonomy of the States that they cease, temporarily, to be the component units of a federal union and become parts of a decentralized unitary State.

It may be noted, however, that in practice the impact Article 352 on India's federal polity is less far-reaching than that of Article 356 under which the Centre can take over the administration of a state on the ground that the government of the State cannot be carried on in accordance with the provisions of the constitution under Article 352 accordance with the provisions of the constitution. Under Article 352, the Centre acquires concurrent authority over matter enumerated in the State List but the Councils of Ministers and the legislatures of the States continue to exist and discharge their normal functions. Under Article 356, the Union Executive has the power, subject to subsequent approval by Parliament, to dismiss the State Council of Ministers and to dissolve or suspend the State Legislature; in other words, the administration of the State concerned is carried on directly from New Delhi. It may be pointed article 352 is concerned, this feature of the Indian constitutional system is by no means unique or unprecedented. Whether or not provisions competent units is curtailed in all federations in the interest of national security when the country faces a war or a grave domestic upheaval.

The exercise of extraordinary powers under Article 360 in the event of a financial emergency can also pose a serious threat to State autonomy in that it empowers the President to limit the fiscal independence of the States. According to Hriday Nath Kunzru, Article 360 opens the possibility of the States being treated as though they were children and the President a village school master.

President's Role under Article -356: Today, it is obvious, is inspired by section 93 of the Government of India Act, 1935 which provided that if a Governor of a Province was satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of the said Act, he could, by proclamation, assume to himself all or any powers vested in or exercisable by a provincial body or authority including the ministry and the legislature and to discharge those functions in his discretion. The only exception was that under this section, the Governor neither could nor encroach upon the powers of the High court. (Section 45 conferred a similar power upon the Governor-General with respect to the Central

Government/Central Legislature). It is alleged that the said two provisions were incorporated in the Government of India Act, 1935 to meet certain purposes and exigencies. The 1935 Act contemplated, for the first time, delegation of certain powers of governance to the ministries formed by Indian political parties and constitution of legislatures elected, no doubt, on a restricted franchise. The colonial powers were not inclined to trust these ministries even with limited powers probably in view of the fact that not only the political parties in India were ambiguous regarding entering the legislatures and ministries created under the said Act but some of them were also proclaiming that even if they entered the ministries they would try to break the governments from within. The said section, therefore, provided that if, at any time, the Governor or Governor-General felt that the ministry in the province or at the Centre was not acting in accordance with the provisions of said Act, he could resume their powers and exercise the same in his discretion.

Even though Article 356 was patterned upon the controversial Section 93 of the Government of India Act, 1935 – with a 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. The socio-political experience of the framers of the Constitution made them acutely aware that security of the nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social, economic and political life, the diversity in languages, race and region were expected to present the nascent Republic with many difficult situations. It is interesting to note that with respect to Union Territories, a provision similar to Article 356 is found enacted in Section 51 of Government of Union Territories Act enacted in 1963 and that it was indeed invoked on as many as 13 occasions. The Constituent Assembly debates disclose these sentiments. They also disclose that several members like H.N. Kunzru, H.V. Kamath and others strongly opposed the incorporation of Article 356 (draft Article 278) precisely for the reason that it purported to reincarnate and imperial legacy. However these objections were overruled by Dr. Ambedkar with the argument that no provision of any Constitution is immune from abuse and that mere possibility of abuse cannot be a ground for not incorporating it in the Constitution.

The emergency provisions were thus introduced in the Constitution without adequate debate in the Constituent Assembly leaving enough scope for abuse of these powers. Moreover, making proclamation of emergency under Article 356 dependent on the subjective satisfaction of the President restricted judicial review. Then again, the main agency through whom power under Article 356 is used is the Governor. However, the Constituent Assembly did not discuss the role of the Governor in the context of this Article.

The Government of India Act, 1935 was not designed to govern any Sovereign Democratic Republic. It was designed and enacted by the British Parliament to pacify the demand for self-rule by the Indians by transferring as little as possible powers to the later. The British Government in face wanted to retain its control through the institution of the Governor and the Governor-General by Section 93 of the Government of India Act, 1935. In independent India, However, the State Governments are elected by the people and these should not be made subordinate to the Central Government.

The Indian Constitution is in the process of adjusting itself to the emerging political requirements of the country. The framework would be characterized as central initiative ad decentralized structure. Under this dispensation, the Central Government is not only located at New Delhi but in State capitals as well through the institution of Governors who are appointed by the Centre and hold office at its pleasure.

Since Centre creates States and appoints Governors, it becomes incumbent on the part of Centre not only to protect any State against external aggression and internal disturbance but also ensure that governance of every State is carried out in accordance with the provisions of the Constitution. So the President is empowered to make proclamation when he is satisfied that the government of the State cannot be carried out in accordance with the provisions of the Constitution, either on the basis of report by the Governor or otherwise. By such proclamation, the President may:

- Assume to himself all or any of the functions of the State or of any other authority except the High Court;
- Declare that the powers of the legislature of the State shall be exercisable by or under the

authority of the Parliament.

President can also act independently of the Governor's report, in the case of a situation in which the Government of the State cannot be carried out in accordance with constitutional provisions. But the Governor's report generally forms the basis for President's action.

Dr. B.R. Ambedkar justified the inclusion of the word 'otherwise' in article 356 on the ground that in emergent situations. The President should come into the picture from the very beginning and not after the Governor has presented his/her report was envisaged under Article 188 of the Draft Constitution. Thus Article 356 empowers the President even to act on his own initiative. In the State of Rajasthan Vs. Union of India, Justice Bhagwati has also conceded that the inclusion of the word 'otherwise' in Article 356 gave the President very drastic powers which, if misused or abused can destroy the constitutional equilibrium between the Union and the States. He says:

“Indeed the usual practice is that the president acts under Article 356 (1) of the Constitution only on Governor's report. But use of the words 'or otherwise' in (Article 36) shows that President's satisfaction could be based on other material as well. The feature of our Constitution indicates most strikingly the extent to which inroads have been made by it on the federal principles of government”.

Article 356 authorizes the President to suspend a state Constitution, in case of failure of the Constitutional machinery. This Article provides that if, the President finds on the basis of a report from the Governor of state or otherwise that 'a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution,' he may by a proclamation assume to himself all the functions of the State Executive, delegate all the power of the State Legislature of the Parliament, and make incidental and consequential provisions found necessary to fulfill the purposes of the proclamation, 'including provision for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority in the State' The proclamation must be approved by both Houses of Parliament in the same manner as in the case of National Emergency. A proclamation so approved shall cease to operate on the expiration of six months from the date of

the passing of the second of the resolutions approving the proclamation. The Parliament can successively approve the further continuance in force of the proclamation which can, however, be extended up to maximum period of three years only.

The Causes for Imposition of President's Rule: On the basis of the provisions of the Indian constitution, the causes for imposition of President's rule may be:

- A political breakdown can happen when no ministry can be formed or the ministry that can be formed is so unstable that the government actually breaks down, or where a ministry having resigned, the Governor finds it impossible to form an alternative government, or where for some reason or the other, the party having a majority in the assembly declines to form a ministry and the Governor's attempts to find a coalition ministry able to command majority in the House fails.
- When the party alignment in the state is such that no stable government can be formed.
- When the breakdown occurs owing to the ministry in the state refusing to follow the directions of the Centre.
- There may be physical breakdown of the government in a state, as for instance when there is a widespread internal disturbance, violence or revolt in the State or external aggression or for some reason or another, law and order cannot be maintained or disturbances and chaos occurs.
- There is another contingency of economic breakdown and when the state's economic plans may be contrary to the economic programmes of the Centre.
- When the ministry is absolutely corrupt and is misusing machinery of the government for dishonest purposes but is firmly saddled in power backed by a comfortable majority.
- There may be mass violence with the sympathy of the party in power in the state.

The other circumstances that may lead to political instability and breakdown of the parliamentary system of government are:

- Defections by the members of the Legislature;

- Passing of no-confidence motion against the council of ministers;
- Resignation of the Chief Minister for various reasons; and public agitations leading to instability in the state.

By exercising emergency provisions of the Constitution, distribution of powers is drastically altered and the Constitution becomes 'unitary' rather than 'federal'. Federalism cannot be sustained unless the Centre as well as the states observe rules. Unfortunately, there is always the danger of negative tendencies in a federal system, creating areas of tension and conflicts. So, amidst various pulls and counter pulls operating within the Indian system, it is but natural that the states are opposed to Article 356 this feeling has grown because the states run by non-Congress parties in the past had come under Central rule under Article 356, on one ground or the other. Regional parties and left parties in particular have been opposed to this Article. Indeed the Article has been used or misused on more than 126 times.

Conclusion: Thus, broadly speaking, we are not clear as to what constitutes a breakdown of the Constitutional machinery. Only an in depth debate, both academic and public can bring about greater clarity and precision on the whole matter. The magnitude of the deterioration in Constitutional observance cannot be quantified. It is a subjective assessment. In Article 356, the expression 'in accordance with the provisions of the Constitution' is ambivalent and vague. Even the framers of the Constitution felt it to be so crucial and debatable that still we need to review these provisions in the changing scenario.

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