

Emergency Provisions: Article 356 of the Indian Constitution, its effect with special reference to Nagaland

Imti Matsung Pongen

Assistant Professor, Political Science, Private

Abstract

Emergency powers refers to an extraordinary circumstance because of which the state machinery is not able to be carried on accordance with ordinary constitutional setup. In such a circumstances, we adopt an altered constitutional setup where the normal functioning of the government and distribution of powers between Union Government and State Government undergo significant changes. Most of the times when emergency is declared, the individual's rights are curtailed and most of the powers are vested on the union government. This is mainly done to give some extraordinary power to Government to take measures to come out of the crisis and to ensure integrity and stability of the nation. However, the concept of emergency in Indian Constitution has always been much contentious. Especially, state emergency under Article 356 which empowers the Union Government to exercise control over the state government when there is a breakdown of constitutional machinery has been widely criticized because of its tendency to be easily misused. While Article 356 was originally created to use it as last resort to restore constitutional order, it has historically been a source of political controversy, raising concerns about how it should be invoked, how long it should last, and how it affects federalism and democracy. This study aims to clarify the complex nature of Article 356's emergency powers by examining its historical development, legal foundation, and political and constitutional implications. This paper tries to offer a fair and informative analysis of a provision that has important consequences for the Indian federal structure, democratic ideals, and the rule of law by looking at landmark cases, various recommendations by law commissions and actual instances of its invocation. This research article hopes to contribute to the ongoing discourse surrounding the applicability, effectiveness, and constraints of the Article 356 emergency powers in the changing context of Indian governance.

Keywords: Indian constitution, state emergency, federalism, centre state relations

1. Introduction:

Since 1950, Article 356 of the Indian Constitution, which permits presidential rule in states, has been a controversial clause that has been abused politically. The Government of India Act 1935, which established a framework for "controlled democracy" and made it easier to overthrow popular state governments, is where the article's roots lie. India's democratic fabric has been undermined by the partisan use of Article 356 by successive central governments, according to historical analysis. The appointment of politically connected governors is a major worry; 52.3% of them had active political backgrounds

between 1950 and 2015, which could lead to constitutional abuse. When state governments are said to be unable to operate constitutionally, the clause gives the federal government the power to take direct control. Article 356 of the Constitution of India, which deals with presidential discretionary powers of emergency, has long been the favored topic of political debate - and, at times, the cause of much ire - within the legal intellectual community in India. This paper examines the rationale behind the invocation of this Article by almost every Government that came to power in India and its implications for the democratic fabric of India. The historical development of this Article helps us to gauge the rationale behind its inclusion in the original draft of the Constitution. This serves as an estimate of the severity of events that would qualify to trigger this provision and helps us examine the validity of some of the recent applications of this Article. Studying similar and contrasting provisions that deal with executive discretionary powers in two other Constitutions, the American and the Malaysian, helps us to develop an analogy between contemporaneous developments in this area in three different socio-political environments.

2. Research methodology

The doctrinal approach, which entails a thorough examination of legal and constitutional documents, is a popular research methodology for examining state emergency provisions. This entails analyzing secondary sources like academic publications, legal commentaries, and historical documents in addition to primary sources like the constitution and court decisions. Additionally, using a historical and comparative perspective, the study would examine how these clauses have affected federalism, democratic governance, and state autonomy over time.

Sources:

- Primary: The Constitution of India, court judgments (precedents), statutes, and executive orders.
- Secondary: Books, scholarly articles, legal commentaries, reports from committees and commissions, and historical records

3. President's Rule

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

3.1 Article 356(Presidents Rule) :Its effects according to the Indian constitution.

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.

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. As per the Article 356, 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.
3. The article 365 says whenever the state government doesn't follow the directions given by the central government; then it will be mandatory for the president to impose the President rule on that state.

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), which is also as called 'State Emergency' or 'Constitutional Emergency'.

Circumstances in which President's Rule is implemented, it has been observed that the President's Rule has been implemented in the following circumstances also.

1. When a new Chief Minister is not being elected within the specified period prescribed by the members of state legislature.
2. A coalition in the state government collapses, giving the chief minister minority support in the legislature, and the chief minister is unable to prove his majority within the governor's allotted time.
3. A loss of majority caused by a vote of no confidence in the legislative body.
4. Election postponement brought on by unforeseen circumstances like a natural disaster, an epidemic, or a war.
5. For reasons in Article 365.

3.2 What occurs when the President's Rule is put into effect?

- On behalf of the President, the Governor continues to run the state. He or she takes the help of the state's Chief Secretary and other advisors/administrators whom he or she can appoint.
- The President can declare that the Parliament will exercise the authority previously held by the state legislature.
- The president would suspend or dissolve the state legislature.
- When the Parliament is not in session, the President can promulgate ordinances (a temporary law promulgated by the President on the recommendation of the cabinet) with respect to the state's administration

4. Presidents Rule in Nagaland

In its history, President's Rule has been imposed four times in Nagaland, most recently in 2008. An analysis of these instances and the general effects of President's Rule shows both administrative impacts and significant political consequences. These include the centralization of power, administrative shake-ups, and the suspension of the democratic process, which some critics argue can be politically motivated.

4.1 President's rule in Nagaland has been imposed for four times. Details are as given below.

1. First President's rule in Nagaland:

- **From 20-Mar-1975 To 25-Nov-1977 (2 years, 250 days)**
- The **longest President's Rule in Nagaland** so far.
- Cause: Defections and counter defections led to imposition of President's rule
- Governor: L.P. Singh, ICS

2. Second President's rule in Nagaland:

- **From 07-Aug-1988 to 25-Jan-1989 (171 days)**
- Cause: The state was under a brief spell of central rule after the Hokeishema-led Congress government was reduced to a minority.
- Governor: Gen.(Retd.) K. V. Krishna Rao

3. Third President's rule in Nagaland:

- **From 02-Apr-1992 to 22-Feb-1993 (326 days)**
- Cause: Fluid party position and deteriorating law and order situation
- Governor: Dr. M.M. Thomas (9 May 1990 to 12 April 1992), Loknath Mishra 13 April 1992 to 1 October 1993

4. **Fourth President's rule in Nagaland:**

- **From 03-Jan-2008 to 12-Mar-2008 (69 days)**
- The **shortest President's Rule in Nagaland** so far.
- Cause: Government dismissed after controversial confidence vote secured in the Assembly by CM Neiphiu Rio
- Governor: Governor K Shankaranarayanan

Governor K Shankaranarayanan said Friday that the move was necessary due to the potential for political loyalty shifting and horse-trading, one day after President's rule was imposed in Nagaland in January 2008. According to a statement from the governor, "there was no choice but to impose provisions of Article 356 and give the people of the state a chance to elect a government as per their wishes."

The Union cabinet's recommendation to overthrow the Rio government and impose central government was signed by President Pratibha Patil. The state assembly remained in suspended animation.

The governor also justified the imposition of central rule by pointing to the state's unique security requirements.

On December 13, the Democratic Alliance, which is supported by the BJP, prevailed in a contentious no-confidence motion on the assembly floor. After the Speaker disqualified three independents from voting and declared that the votes of nine dissident ruling NPF members were invalid, Rio prevailed in the trial of strength by a vote of 23–19 in the 60-member House.

The governor declared that upholding law and order would be his first priority. He declared, "The watchdog will be SMART -- simple, moral, accountable, responsive, and transparent." In order to make sure that the government apparatus was ready to hold the upcoming assembly elections, the governor also requested that the administration go above and beyond.

5. **Duration and Parliamentary Approval of the President Rule**

The president rules for six months following parliamentary approval. With parliamentary approval every six months, the government can extend it up to twice.

A simple majority in both houses should approve the resolution endorsing the presidential rule.

It indicates that, in most circumstances, the president's rule cannot last longer than a year. However, the government must meet these two requirements in order to extend it beyond a year.

5.1 Effects of president Rule

Similar to the National Emergency President Rule has some consequences in the system. Whenever the president rule is imposed, the President of India gets some unusual powers. When President's Rule is imposed, the central government assumes direct control over a state's governance. The President, through the Governor, manages the state's affairs, and the powers of the state legislature are transferred to the Parliament. Below are the specific effects of the President's Rule:

- a. The President assumes the functions of the state government and executive powers vested in the Governor or other authorities.
- b. The State Legislature's powers are exercised by Parliament, with the Council of Ministers being dissolved.
- c. The Governor, on behalf of the President, administers the state with help from the Chief Secretary or advisors appointed by the President.
- d. The State Legislative Assembly may be suspended or dissolved.
- e. Parliament passes the state's legislative bills and budget during the proclamation.

- f. The President can issue ordinances for the state when Parliament is not in session.
- g. Parliament may delegate the authority to legislate for the state to the President or another authority.
- h. The powers and functioning of the High Court remain unaffected during the President's Rule.

Thus, Given Nagaland's history with insurgency and armed conflicts, President's Rule has sometimes been imposed to address severe law and order issues. Central intervention, with greater resources, can be utilized to manage militancy and restore stability.

The imposition of Central rule can be seen as either beneficial or detrimental to the ongoing Naga peace process, depending on political interpretations. It can either be viewed as a necessary step to stabilize the situation or as a move that complicates relations and local political dynamics.

6. Conclusion

State Emergency under Article 356, was created to ensure the security and integrity of the nation. Overtime, Article 356 was repeatedly misused by Central Government for various political considerations. This research has shed light on various aspects like:

- Grounds on which Article 356 of Indian Constitution can be imposed.
- Procedure for implementation of Article 356.
- Misuse of Article 356 by the Union Government over years.
- Judicial Review of Article 356 by the Supreme Court. The judiciary, which was once reluctant to examine the validity of state emergencies, has evolved into a crucial role and is actively providing guidelines to regulate the declaration of emergency.
- Guideline given by Supreme Court in S.R. Bommai to prevent the misuse of Article 356.
- The various law commission guidelines with regard to State Emergency under Article 356.

This study provides insightful perspectives on the interaction between constitutional mechanisms, the judiciary, and the recommendations made by commission reports in influencing the country's response to crises and the preservation of democratic values as India continues to face complex challenges, including those requiring the use of state emergency provisions. Though the use of Emergency has decreased to a considerable extent, there need to be some changes that could prevent the misuse of state emergency as today there are large scale defection and horse trading.

References.

1. Chandra P, *Indian Government and Politics*: Cosmos Bookhives Private Limited.
2. Fadia B.L, Fadia Kuldeep (2016): *Indian Government and Politics*: Sahitya Bhawan Publishings
3. <https://www.criminallawjournal.org/article/74/4-1-15-798.pdf>
4. <https://www.indiacode.nic.in/bitstream/123456789/1384/1/196227.pdf>
5. <https://www.latestlaws.com/bare-acts/central-acts-rules/>
6. <https://lawbhoomi.com/article-365-of-indian-constitution/>
7. <https://www.morungexpress.com/impose-presidents-rule-in-nagaland-rpp-pleads>.
8. Gupta DC, (1972) *Indian Government and Politics*: Vikas Publishing House Pvt. Ltd.
9. Laxmikanth.M(2024 edition), Indian Polity: Published by McGraw Hill Education
10. Mathav Jojo and Gautam K. Manish (2018), Career Classics, Delhi.
11. Tnn. (2008, January 3). President's rule in Nagaland. *The Times of India*. <https://timesofindia.indiatimes.com/india/presidents-rule-in-nagaland/articleshow/2673269.cms>