

President Rule Article 356

Federalism and Issue of National Security

Mandeep Mishra

BBA (LLB) 4th year, JIMS Affiliated to GGSIPU.

ARTICLE INFO

***Correspondence:**

mandeepmishra311@gmail.com

BBA (LLB) 4th year, JIMS
Affiliated to GGSIPU.

Dates:

Received: 22-01-2024

Accepted: 21-03-2024

Published: 10-07-2024

Keywords:

Intelligence, Law
Enforcement, National
security, Legislation,
Federalism, Localism

How to Cite:

Mishra, M. (2024)
President Rule Article 35
Federalism and Issue
of National Security.
DME Journal of Law, 5(1),
18-22.
doi: 10.53361/dmejl.
v5i01.03

Abstract

Federalism is an organisational structure in which authority is shared or split among all of the subordinate governmental institutions rather than being solely vested in the central government. The relationship between the Union and the States is depicted in the Indian system.

Because the constitutional division of powers by levels of government can control the potential hazards that security and intelligence authorities represent for individual and collective freedoms, federalism may be preferable to unitary security regimes. Federalism, however, can also be a security problem since it is believed to obstruct effective decision-making about public safety.

The legal-institutional framework and constitution of the federal system in India exhibit a unique trend. Studies on national security legislation typically centre on striking a balance between security and liberty, with the vast majority of these studies examining this balance along the horizontal axis between federal branches. The vertical axis and the post-9/11 emergence of state and local government in American national security legislation and policy are two additional features that this article adds to question that traditional focus. It promotes a federalist framework that places a strong emphasis on vertical intergovernmental arrangements for the long-term promotion and mediation of a wide variety of policy values. When it comes to national security intelligence and counterterrorism, the federal and local governments collaborate and sometimes clash. This federalism framework clarifies these dynamics and provides insights that can help shape future reforms.

INTRODUCTION

The balance between security and liberty is a common theme in national security law literature, with the majority of the research focusing on this balance at the federal level. That is, research on the institutional architecture of national security almost exclusively concentrates on horizontal allocations, or relationships between the various branches of the federal government, with the ultimate goal of determining how these horizontal arrangements establish and uphold meaningful liberty-security balances. By adding a description of the vertical axis, or “national security federalism,” to the common focus, this article questions it. Since significant, concrete effects of security policies on liberty and many other interests now occur at the

local level as a result of actions taken by local government actors, it demonstrates that the nearly exclusive concentration of contemporary national security law scholarship on horizontal relationships among the federal branches is too limited. Take intelligence collection for the purpose of fighting terrorism, for instance. Over 700,000 local police personnel from over 17,000 state and local law enforcement agencies are qualified to perform pertinent activities, including data collection and sharing, profiling-based investigations, and surveillance.

The extent to which state and local governments continue to play a significant part in the developing national security architecture, nevertheless, means that certain national security intelligence will be codified into legislation.

Nevertheless, it's still unclear to what extent certain functions will be localised. When I refer to a management idea as "decentralised," I mean one in which top-down policy is established but local implementation of it is left to some degree of freedom. Even nations like France and Israel, who have strong national police forces, may assign lower-level command personnel to carry out specific intelligence or investigation tasks related to counterterrorism. By "localised," I mean instead the agenda-setting function of law and policy, which allows state or local institutions to partially reject federal policy.

Constitutional Emergency Provisions

The constitution's Part XVIII discusses emergency provisions. Three categories comprise the emergency provisions found in the document: (a) ¹ Articles 352, 353, 354, 358, and 359, which deal with emergencies proper; (b) Articles 355, 356, and 357, which address the imposition of President's rule in States under specific circumstances; and (c) Article 360, which refers to financial emergencies.

Article 352(1) provides that "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof

is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation" The words "in respect of the whole of India" were added to the proclamation by the 42nd Amendment to the Constitution.

The Union is required by Article 355 "to protect every State against external. The marginal heading "Provisions in case of failure of constitutional machinery" appears on Article 356.

The State's government cannot continue in conformity with this Constitution's requirements." The President may, by proclamation, take any or all of the three actions listed in subclauses (a), (b), and (c), if he is convinced that such a situation has developed, whether based on a report from the State Governor or for other reasons. At this point, it would be reasonable to read article 356's sentence (1) in its entirety

President's Rule may be enforced by the President in the following situations, The Union's directives have not been followed by the state. Parliament's assent, which is required within two months following the proclamation, is the only prerequisite for the imposition of the President's Rule. In both Houses of Parliament, a simple majority is required for approval.

Although the founders of the constitution intended Article 356 to be used judiciously, it has been abused by a number of Union governments in order to overthrow state governments led by the opposition. According to a recent ruling by the Supreme Court, there should be a "reasonable nexus" between the President's subsequent acts and the proclamation of State emergency under Article 356. Additionally, the Court declared that the President's choice would be subject to judicial review.

Objective of the Provisions

- Article 356 gives the centre the authority to correct the state administration and restore its proper order so that it can carry out its constitutional duties. A misuse or abuse of the authority granted to the central government by

ISSRN, India, Available at: file:///C:/Users/hp/Downloads/Article%20356%20of%20the%20Constitution.pdf (Last viewed on April 27, 2024)

Article 356 would amount to a rip in the fabric of federalism.

- The president's rule ought to be applied only infrequently and in dire circumstances. It ought to be used as a last resort once all other options have been exhausted and the state's constitutional machinery is on the verge of collapse.
- When utilising the authority granted by Article 356 of the Constitution, the centre may occasionally be driven more by political than by constitutional concerns. It is important to remember that the president's authority is only supposed to be used in the most dire circumstances where there is clear evidence of a state's violation of the Constitution, not to further political objectives or to remove any unwieldy state government.

Historical Background

Section 93 of the Government of India Act, 1935 is evidently the source of inspiration for Article 356. A provincial governor may, by proclamation, assume all or any of the powers vested in or exercisable by a provincial body or authority, including the Ministry and the Legislature, and perform those functions at his discretion if he was satisfied that a situation had arisen in which the province's government could no longer be carried out in accordance with the provisions of the said Act (Section 93 of the 1935 Act). It is commonly known that the 1935 Act included the aforementioned two sections in order to address specific needs and goals. For the first time, the 1935 Act considered creating legislatures with limited voting rights and assigning specific governing functions to Ministries established by Indian political parties.

The fact that Indian political parties were unclear about joining the Legislatures and Ministries established under the aforementioned Act, and some of them even declared that they would attempt to overthrow the governments from within, may have contributed to the colonial powers' reluctance to trust these Ministries, even with their limited authority.

During the debate of draft articles 277-A and 278 (equivalent to articles 355 and 356) in the Constituent Assembly, Dr. Ambedkar and

Shri Alladi Krishnaswami, Ayyar were present. The purpose of Article 356 was to provide an extraordinary remedy for a serious and dangerous circumstance. Furthermore, keep in mind that a simple majority suffices for clause (3), which does not call for a special majority. The Council of Ministers typically holds a majority in the Lok Sabha. Only when the Council of Ministers is unable to command a majority in the Rajya Sabha does the problem materialise. Nonetheless, the price is obvious if they are able to secure a majority in the Rajya Sabha as well. If the Central Government feels like it, it can just mess with the lives of the States' governments and their legislatures, as is in fact widely reported to have happened on multiple instances in the past. Some may contend that the Centre has supreme authority over the States under our Constitution, and that the implied supremacy of the Centre over the States is demonstrated by a number of provisions, including 356 itself and those in sections 256, 257, 355, and 365. (For a consideration of this point, see S.R. Bommai versus Union of India, (AIR 1994 S.C. 1918), paras. 209 to 211 at pages 2052 to 2055 and paras. 65 and 66 at pages 1976 to 1979. However, as Dr. Ambedkar stated (in his speech to the Constituent Assembly, cited in² S.R. Bommai v. Union of India para. 53, page 1961), it cannot be overlooked, that our Constitution favours the Centre, but that yet, the States are supreme – or, in Dr. Ambedkar's words, "sovereign" – in the domains that have been assigned to them, and that ours is a federation, although a domestic one.

Federalism in US

Attorney General John Ashcroft wrote to all U.S. Attorneys in November 2001, stating that "law enforcement officials at all levels of government – federal, state, and local – must cooperate, pooling the knowledge and assets required to apprehend and prosecute those guilty as well as locate and eliminate terrorist networks before they can launch another attack." This was done in reaction to the fresh danger and to stop such assaults in the future. Many of the informational "dots" that made up the 9/11 plot sequence had been noticed by someone,

²S. R. Bommai v. Union of India, [1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1

somewhere, at some level of US government; others were there to be seen and shared but were overlooked. Better systems and procedures to identify, evaluate, compile, and act upon such “dots” across the nation may have, so the argument went, prevented the attacks and eventually revealed

After 9/11, Federalism, a number of projects were sponsored by the federal government to support state and local intelligence activities and connect them with federal ones, in recognition of the post-9/11 need for improved information gathering and coordination across government agencies at all levels. These comprised intelligence-related projects that gathered, analysed, and disseminated data about terrorism and national security.

State and local law enforcement agencies are assisted by the federal government in developing intelligence units, creating databases, and creating standards for information gathering through the provision of resources and training. Nineteen After 9/11, the majority of states and numerous local law enforcement organisations have increased their intelligence initiatives.

Sarkaria Commission Report

Judge Ranjeet Singh Sarkaria served as the chairman of the newly formed Sarkaria Commission. In order to settle and prevent any situation where a state's constitutional machinery has failed, this Commission advised that Article 356 be applied extremely cautiously, only in the most extreme circumstances, and as a last resort. According to the Commission, the Governor should look into all options in the event of a political breakdown before dismissing the government that still has the backing of the majority of Assembly members. The governor must request that the departing ministry continue to serve as a caretaker government in the event that such a government cannot be restored and new elections can be held quickly and easily. This request will be granted only if the ministry is not facing any significant allegations of corruption. The Assembly must be disbanded by the Governor, and the acting administration lacks the authority to make crucial policy choices. Every proclamation must be presented to both chambers of Parliament as soon as feasible, according to the Commission.

It further said that by interpreting Article 356 broadly, the likelihood of its misuse might be decreased. The Sarkaria Commission's recommendations lacked the originality and creativity needed to address the issue of President's Rule and instead appeared to be a band-aid fix. Rather of looking at the actual misuse of constitutional provisions by the Union Government and offering safeguards against them in the future, the Sarkaria Commission supported the Center's powers as indispensable and unavoidable. Still, the panel failed to see a number of problems with the original separation of powers between the Union and the states.

Judicial Interpretation

Dr. Ambedkar said that “such articles (articles 355 and 356) will never be called into operation and that they would remain a dead letter”³. The article's marginal heading, which refers to “Failure of constitutional machinery,” is yet another clue. The Supreme Court in two of its rulings,³ *State of Rajasthan v. UOI* (AIR 1977 SC 1361) and the previously mentioned ⁴ *S.R. Bommai v. UOI*.

A Constitution Bench consisting of seven judges made the first decision referred to, while a Constitution Bench consisting of nine judges made the second decision. It would be sufficient to refer to the holdings in *S.R. Bommai* alone, given that *S.R. Bommai* differs from the *State of Rajasthan* in certain areas. Since Article 356 gave the government the authority to take preventive or curative measures, it was not possible to rule out the possibility that the State Government had lost the trust of the public in this particular case. Since Article 356 gave the government the authority to take preventive or curative measures, it was not possible to rule out the possibility that the State Government had lost the trust of the public in this particular case.

There are two majority opinions in *S.R. Bommai*. P.B. Sawant J. gave one on behalf of himself and Kuldeep Singh J. The other was provided by B.P. Jeevan Reddy J. on behalf of S.C. Agarwal J. and himself, and S.R. Pandian J. agreed with his logic and conclusions.

³*State of Rajasthan v UOI* 1977 AIR 1361, 1978 SCR (1) 1.

⁴ *Supra* note 2 at 4



President's rule's Aftereffects

The Chief Minister-led State Council of Ministers may be dismissed by the President, who retains the authority to govern the state. The state governor administers the government on behalf of the President.

The President or any other authority designated by the President in this regard may be granted the ability to enact laws for the states when the state legislature is on suspension or dissolves. Laws pertaining to the jurisdiction of the union government may be made by the Parliament, the president, or any other designated authority in circumstances of delegation.

If the parliament is not in session, the president may approve the use of the state consolidated fund. If there are issues on the state list and the parliament is not in session, the president may issue an ordinance on the subject. These laws, whether they were created by the president, the parliament, or another designated authority, remain in effect even after the president's term ends. Although the laws can be changed or repealed by the state legislature, they do not run concurrently with the president's tenure in office.

Legislative Powers in Emergency

Article 357 of the Indian Constitution specifies the exercise of legislative authority pursuant to Article 356's proclamation. According to Article 357, the state legislature's duties must be carried out by the parliament when the president's rule is declared in accordance with Article 356 (1). The parliament has the authority to give the president the power of the state legislature in order to cause a loss. It also gives him permission to transfer that power to any other authority that he creates. But he is free to place restrictions on that selected individual as he sees fit. This legislative power include the authority to impose duties or to sanction the imposition of duties on the union, its officers, and its authorities.

When the House of People is not in session, the President has the authority to approve spending

from the state's consolidated fund, subject to approval by parliament.

According to Article 357(2), any laws passed while the President, the Parliament, or any other authority he designates exercised the state's legislative power in situations in which they were not competent to do so will no longer have any effect to the extent of their incompetence after a year has passed since the proclamation under Article 356 ceased to be effective. Nevertheless, actions taken or inaction taken prior to the end of the specified time frame would be irrelevant.

CONCLUSION

However, in light of the events of 9/11, consideration should be given to the vertical relationships between the levels of government as well as the uneven, complex national security legal landscape created by state and municipal laws and policies. A federalism frame shows how vertical intergovernmental structures could be redesigned to improve rational discussion and supervision of intelligence and, particularly when examining particular counterterrorism intelligence functions, to establish locally and centrally appropriate policy balances. Such an analysis is necessary since state and local governments will continue to play a major, and maybe expanding, role in providing counterterrorism intelligence in the near future.

Analysing the declaration of emergencies in five states has shown that president control has occurred even in the absence of valid reasons, and this has turned Indian politics into a shadowy enterprise. No one can assert that the federal government or any state government is better than the others; they are both preeminent in their own fields. Owing to the ambiguity of Article 356 there is no law that effectively forbids the union government from abusing it. Article 356 must be changed to safeguard India's federal system, following the suggestions made by the Sarkaria Commission and the court in the Bommai case. The president's rule should always be the very last option.