POLITICAL STABILITY V. FEDERAL AUTONOMY: A STUDY OF PRESIDENT'S RULE AND ANTI-DEFECTION LAW IN INDIA

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I. INTRODUCTION

Given the diversity in our country, the founding fathers of the Constitution thought it best to set up India as a federal nation. Simply put, federalism is set up which envisions governance at two levels – one for the entire country (Centre) and the other at the provincial or regional level (State). There is a clear division of powers between the two; both work as checks & balances for the other. However, it would be wrong to say that India practices absolute federalism, as the Centre enjoys wider powers than the States. For instance, there are residuary powers with the Centre, single citizenship, veto over state bills, emergency provisions, etc.

Time and again, the Supreme Court of India has recognized the federal character of Indian Constitution. In reality, our country is a federal nation with a strong Centre. No account of the Centre-State relation can be successfully made without bringing into the picture the majestic Article 356. This provision allows the Centre to overthrow a democratically chosen provincial government and replace it with the President's rule.

Although this Article was brought in to protect the 'Constitutional Machinery' in the State, but with the passage of time, it has been misused by parties for political gains. Such was the scope of its misuse that it was not allowed to be inserted in the erstwhile Government of India Act, 1935.

II. EVOLUTION OF ARTICLE 356: PRESIDENTS' RULE

A bare reading of Section 93 of the Government of India Act, 1935, makes it clear that it is the inspiration for Article 356 of the Constitution.[1] This Section enabled the Governor to assume all the powers vested in the provincial body, Ministry, or Legislature if he was satisfied that a situation had arisen in which the provincial government could not be carried on in accordance with the provisions of the Act.[2] The Governor could discharge all the functions as per his discretion except the powers of the High Court.[3]Although this Section was made only partly operational, amid widespread criticism from nationalists and the onset of World War II.[4]

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[1] National Commission to Review the Working of the Constitution, "Article 356 of the Constitution" 7 (2001), *available at*: https://legalaffairs.gov.in/sites/default/files/Article%20356%20of%20the%20Constitution.pdf (last visited on May 21, 2024).
[2] The Government of India Act, 1935, s. 93.
[3] *Ibid*.
[4] *Supra* note 1.

It is important to understand that Section 93 was insisted upon by the colonial government, with the objective of enacting a 'controlled democracy' or 'restricted democracy' in India.[5] Therefore, the prospect of continuing this provision in the independent, federal republic was vociferously opposed by the members of the Constituent Assembly.[6] Prof. Shibban Lai Saxena cautioned the members against the misuse of such provision and remarked:

> *"we are decreasing Provincial Autonomy to a joke. These Articles will decrease the State Government to incredible subservience to the Central Government"*[7]

Further, Kazi Syed Karimudin warned against the misuse of this provision in the following words,

> *"Suppose, for example, in West Bengal the party which is in opposition to the Centre is elected, then even though the Government for West Bengal may feel that the internal disturbance in West Bengal is not sufficient for suspending the Constitution, still the will of the Centre will be imposed and the ideologies of the Centre will be imposed on the state."*[8]

Naziruddin Ahmed, criticized the ambiguous nature of the phrase *'failure of constitutional machinery',* in this Article in the following words:

> "*This Article says practically nothing. It says almost everything. It enables the Centre to interfere on the slightest pretext and it may enable the centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the drafting committee for its vagueness and evasions."*[9]

It is important to appreciate the foresight of the founding members of the Constitution, who were able to envision the potential exploitation of this Article, by the Centre. However, Dr. B.R. Ambedkar and T.T. Krishanamachari defended this provision, in view of the problems that the Indian republic was expected to face soon after independence.[10] As the Chairman of the Drafting Committee, Dr. B.R. Ambedkar stated,

> *"I do not altogether deny the possibility of these Articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. (The) proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought*

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[5] *Id.* at 8.
[6] Rakesh Kumar, "Article 356 of the Constitution of India: An Analysis in the Present Scenario" 8(5) *International Journal of Law* 130 (2022), *available at*: https://www.naac.iqaccdlu.in/dt_dir/supportDocument25/1708410683_supportDocument25.pdf (last visited on May 21, 2024).
[7] *Ibid*.
[8] B. D. Dua, "President's Rule In India: A Study In Crisis Politics" *Asian Survey* 613-614 (June, 1979).
[9] Chhyal Singh and Rishi Kumar, "Constitutional Debates on Article 356 of Indian Constitution" 9(12) *International Journal of Multidisciplinary Educational Research* 154, 158 (2020), *available at*: https://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume9/volume9-issue12(5)/23.pdf (last visited on May 19, 2024).
[10] *Ibid*.

into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces… I hope the first thing he will do would be to issue a clear warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution."[11]

It is evident from the above remarks that the erstwhile Articles 277-A and 278 (corresponding to Articles 355 and 356) were aimed to be used sparingly and cautiously.[12] Given the transformation of Indian society from feudal to democratic system and the vast differences among the people (with respect to language, religion, culture, etc), the retention of such a controversial provision was considered important.[13] Though it was emphasised that the 'invasion' by the Centre of the Provincial field "must not be an invasion which is wanton, arbitrary and unauthorised by law".[14]

With time, it was abundantly clear that the Centre resorted to abuse of this provision. Even the Sarkaria Commission Report noted that on several occasions, the State Governments were dismissed even when they enjoyed a majority in the Assembly; they were dismissed without giving them an opportunity to prove their strength on the floor of the House.[15]

III. FREQUENT USE/MISUSE OF ARTICLE 356

Abandoning the concept of 'cooperative federalism', the Centre indulged in the incessant use/misuse of Article 356, to overthrow the duly elected State Government, merely because – it belonged to the opposition. So far, this provision has been invoked more than a hundred times.[16]

Until 1959, this provision was used six times. The first instance of its imposition was in the State of PEPSU (Punjab), wherein the sitting Chief Minister (from Congress), handed over the reins to the opposition, amidst growing factionalism.[17] Thereby, the Nehru government imposed President's rule in Punjab in 1953 [18] , which drew sharp criticism from Dr. Ambedkar, who called it "the most rough sort of assault on the Constitution".[19]

Further, this provision was used to bypass the claim of J.P. Narain to form a coalition government in the State of Andhra Pradesh, when the Congress's T. Prakasam lost majority.[20] Later on, President's Rule was imposed in Kerela in 1959, to dislodge the first ever

[11] *Supra* note 1.
[12] *Ibid*.
[13] *Ibid*.
[14] Report of the Sarkaria Commission, "Chapter VI Emergency Provisions, 1987", *available at*: https://interstatecouncil.gov.in/wp-content/uploads/2015/06/CHAPTERVI.pdf (last visited on May 25, 2024).
[15] *Ibid.*
[16] Express News Service, "PM Modi Says Congress Govts used Article 356 '90 Times': A Breakdown" *The Indian Express*, Feb. 10, 2024, *available at*: https://indianexpress.com/article/political-pulse/pm-says-cong-govts-used-article-356-90-times-breakdown-8435047/ (last visited on May 25, 2024).
[17] Shubhabrata Bhattacharya, "Congress Factionalism Gave Life to Article 356" *The Sunday Guardian*, Apr. 09, 2019, *available at*: https://sundayguardianlive.com/opinion/4067-congress-factionalism-gave-life-article-356-3 (last visited on May 18, 2024).
[18] *Ibid*.
[19] *Supra* note 6.
[20] *Supra* note 17.

democratically elected communist government formed anywhere in the world.[21] [22] Some speculate, that it was done, to placate the rising pressure from the USA, while others blame Congress for tacitly supporting the protestors, against the educational reforms of the ruling government.[23]

In the 1960s, this provision was invoked eleven times. Interestingly, Indira Gandhi used it seven times in the short span of two years (1967-1969).[24] Later, the President's rule was ordained nineteen times between 1970 and 1974.[25]

Eventually, the Janta Party government used Article 356 to dismiss the Congress-led government in nine States. In fact, the President's rule was imposed, in twelve states in 1977, which remains a record till date.[26] Upon return to power in 1980, Indira Gandhi, dismissed the opposition governments in nine States.[27]

Upon examining the historical application of Article 356, it can be concluded that the Union has resorted to the arbitrary use of this provision. In 1992, State Emergency was declared in four states ruled by the Bhartiya Janta Party (BJP), *i.e*., Uttar Pradesh, Madhya Pradesh, Rajasthan, and Himachal Pradesh, by the Congress.[28]

After further investigation, it can be concluded that the principles of 'Cooperative Federalism' were best appreciated by a longer, more secure government.[29] For instance, P.V. Narsimha Rao, Atal Bihari Vajpayee, and Dr. Manmohan Singh were cautious of imposing President's Rule.[30]

The following table showcases the frequency of imposing the President's Rule[31] [32]:

S. No.	Decade	Invocation of President's Rule
1.	1950-1970	20
2.	1971-1990	63
3.	1991-2010	27
4.	2011-2019	06

[21] *Supra* note 16.
[22] *Supra* note 17.
[23] *Ibid*.
[24] *Supra* note 16.
[25] *Ibid*.
[26] *Supra* note 6.
[27] *Ibid*.
[28] *Ibid.*
[29] Amitabh Dubey, "Fact-Check on the Use and Abuse of President's Rule in India" *The Quint*, Apr. 02, 2016, *available at*: https://www.thequint.com/news/infographics/fact-check-on-the-use-and-abuse-of-presidents-rule-in-india#read-more (last visited on May 25, 2024).
[30] *Ibid.*
[31] *Supra* note 6.
[32] Kamal Jeet Singh and Manu Sharma, "Political Defections: The Insight Cause for Abuse of Article 356" 9(2) *India Journal of Gender Studies* 143, 147-148 (2020), *available at*: https://www.researchgate.net/publication/353120979 (last visited on May 22, 2024).

The recent instances of abuse of Article 356, include the bypass of State machinery in Jammu & Kashmir, from 2019 till 2024 (September). In 2016, the Congress-ruled government in Uttarakhand was dismissed by the Centre, citing 'governance breakdown', after nine MLAs withdrew support.[33] The President's Rule was imposed without floor test.[34] This decision was challenged in the High Court, which struck down the said Proclamation on the ground that the Governor's actions were driven by bias.[35] The Supreme Court upheld the decision of the High Court and reiterated the sanctity of the floor test.[36]

Such reckless use of Article 356 clarifies that this provision has remained far from the redundant 'dead letter', as was expected by the framers of the Constitution. It is in this light that there is a need to re-examine the checks upon this provision.

IV. FEDERALISM IN INDIA

India is a Union of States, but citizens retain single citizenship only, unlike the United States of America. Based on the Canadian Model, India is a federal state with a strong centre/union. In India all the basic features of a federal republic can be identified, such as – division of power between Centre and State, a written constitution, supremacy of the constitution, bicameralism, an independent judiciary, etc.[37] But certain non-federal features undermine the authority of the State and give supremacy to the Centre, for instance – emergency provisions, single constitution, single citizenship, the appointment of State Governor by the President, an integrated judiciary, flexibility of the constitution, destructible nature of States, etc.

Interestingly, there are different opinions as to the true nature of the Indian Federal structure. According to K.C. Wheare, Indian Constitution is 'quasi-federal' in nature[38], whereas others called it a federation with strong unitary features.[39] Granville Austin aptly described the Indian brand of federalism as 'co-operative federation', which reserves a strong Centre but does not necessarily result in weak provincial governments.[40] In reality, the Indian Republic is ordinarily federal in nature, with the ability to transform into a Unitary Government, in times of emergency.[41]

The Emergency provisions outlined in Part XVIII of the Indian Constitution have been adopted from Germany. The Article 352 to 356, introduced three kinds of emergency, *i.e.*, National Emergency, State Emergency and Financial Emergency. The proclamation of National Emergency, was justified during the Indo-China War (1962-1968) and Indo-Pakistan War (1971). However, the abuse of this provision was made during the implementation of National Emergency by Indira Gandhi government on superfluous ground of 'internal disturbances'.

The Janta Government upon being elected, deleted 'internal disturbances' from Article 352 and replaced it with 'armed rebellion'. The requirement (introduced by 44th Amendment

[33] *Harish Singh Rawat* v. *Union of India*, 2016 AIR CC 2455 (UTR) (2016) (India).
[34] *Ibid*.
[35] *Supra* note 33.
[36] *Ibid*.
[37] J.N. Sharma, *The Union and The State: A Study in Fiscal Federation* 5 (Sterling Publishers, 1st edn., 1974).
[38] K.C. Wheare, *Federal Government* 27 (Greenwood Press, 4th edn., 1963).
[39] *Supra* note 37.
[40] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 187 (Oxford, Clarendon Press, 1972).
[41] *Ibid*.

Act, 1978) to get written consent of the Cabinet, mandatory approval of Parliament every six months, and provision for revocation by one-tenth of members has been able to restrict the misuse of this provision.

While the Central Government holds some degree of superiority over the State, but it is supposed to upheld the federal character of the Constitution and not to curtail the same. The power vested in Article 356 is an example of such dominance but should be used only under extreme situations.

> *"For the common good of all the members of a federal system, it is necessary for the individual States to sacrifice some of their powers to the Union"*[42]

The provision of State Emergency was thought to be important to meet such exigencies. But over time, it was misused by the Centre to sabotage a sitting government in the province. Therefore, reforms under Article 356 are required to curb the frequent misuse on a superficial ground of 'failure of constitutional machinery' or exploiting the loopholes of Anti-defections laws.

V. SARKARIA COMMISSION REPORT

After the manhandling of Article 356 in the 1970s, the Sarkaria Commission was constituted in 1983, to investigate ways for improving Centre-State relations. Headed by Justice R.S. Sarkaria, the commission elaborates upon the rampant use of President's Rule in India. Briefly put, the commission pointed out the proper use of Article 356 in scenarios include – a hung assembly where no party secures majority, internal subversion, deliberate constitutional violations, resignation of a ministry without the possibility of forming an alternative majority, or physical breakdowns endangering state security.[43]

Thereafter, certain instances of abuse of Article 356 include – imposition of President's rule without conducting floor test, solely on allegations of maladministration, corruption (without proper warning), internal disturbances not amounting to subversion or breakdown, misuse of internal party disputes etc.[44]

The Report elaborated upon the valid grounds for imposing President's Rule[45]:

a) **Political Crisis** – It is a dead-lock or hung assembly where no party gets majority. If any other party, fails to form the government, Governor may impose the President's Rule and hold fresh elections.
b) **Internal Subversion** – It is a corollary to the duty of the Union to preserve democratic Parliamentary form of government in the States, as contemplated by the Constitution under Article 355.
c) **Physical Break-down** – When the Ministry refuses or fails to discharge its responsibilities to deal with a situation of 'internal disturbance' or a natural calamity endangers the security of the State.

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[42] James Madison, "The Alleged Danger from the Powers of the Union to the State Governments Considered" *Independent Journal* (1988), *available at*: https://guides.loc.gov/federalist-papers/text-41-50#s-lg-box-wrapper-25493409 (last visited on May 19, 2024).
[43] *Supra* note 1
[44] *Ibid*.
[45] *Ibid.*

d) **Non-compliance of Directions of Union** – Where a direction is issued by the Union under Article 256 (Obligation of States and the Union), 257 (Control of the Union over States in certain cases), 339 (Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes) or 353 (Effect of Proclamation of Emergency) of the Constitution and the State fails to comply with it, the President's Rule may be invoked.
Further, if public order of any magnitude endangering the security of the State, takes place and the State fails to contain it, the Union may give certain directions to the State. Upon failure to comply with the directions, despite adequate warning, the President may be invoked.

The Commission made the following recommendations in this regard:[46]

1. **Last Resort Measure** – Article 356 must be used sparingly, as a measure of last resort. It must be used in extreme cases when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. The alternatives may be bypassed only when the failure to impose the President's Rule will lead to disastrous consequences.
2. **Prior Notice / Warning** – Before the imposition of Article 356, a warning/notice must be issued to the errant State, for carrying on government as per the Constitution of India. Further, any explanation, in response to such warning/notice must be taken into account by the Union.
3. **Duty under Article 355** – In case the 'external aggression' or 'internal disturbance' has the potential to paralyze the State administration and potential breakdown of Constitutional machinery, the Union must take all the alternative courses to perform its duty under Article 355.
4. **Duty of the Governor to Find Alternative Govt.** – In the situation of a political breakdown, the Governor must explore all the possibilities of forming a government, with majority support. In case of such failure, the Governor must ascertain, if fresh elections can be held without delay. Thereafter, he should ask the outgoing Ministry, to continue as caretaker government (provided there were no allegations of corruption or maladministration). Then the Governor should dissolve the Legislative Assembly, leaving the resolution crisis to the electorate. Ideally, the caretaker government should refrain from making any major policy decisions.
5. **Place the Proclamation before the House of Parliament** – Every Proclamation should be placed before each House of Parliament at the earliest, before the expiry of two months, as contemplated by Article 356.
6. **Amend Article 356** – The State Assembly should not be dissolved prior to the placing of the Proclamation, before the Parliament. This Article should be amended, to ensure this.
7. **Judicial and Parliamentary Review** – The material facts and grounds for implementing Article 356 should be made an integral part of the Proclamation. This will lead to better transparency and effective decision-making by both the Judiciary and Parliament. This report should be a 'speaking document', containing all the material facts and grounds, on which the decision or 'satisfaction' of the President was based.
8. **Report to be made Public** – The report must be placed before the public and be given wide publicity, so as to ensure better transparency and trust.

[46] *Supra* note 1.

9. **Governor's Report for Proclamation** – The general rule should be the implementation of State Emergency, upon the Governor's Report only.
10. This power should not be used to sort out internal differences or intra-party problems of the ruling party.
11. This power should not be exercised solely on the allegations of corruption or stringent financial exigencies of the State.

VI. INTERPRETATION OF ARTICLE 356: *S.R. BOMMAI* CASE

The turbulent circumstances that led to this case are a classic example to understanding how the proclamation of State Emergency, is enabled with the use of horse trading or defection in India. In this case nineteen Members of the Legislative Assembly (MLA) withdrew support from the S.R. Bommai government. By the time, the order of President's Rule was issued, seven MLAs had rejoined the party, which claimed the majority. The then Governor of P. Venkatasubbaiah never gave Bommai the chance to prove his majority. Thereafter, he moved to the Karnataka High Court to challenge the imposition of President's Rule, but his petition was rejected.

Thereafter, a nine-judge constitutional bench considered the matter and laid down certain guidelines to limit the arbitrary use of Article 356. Remarking that this provision is '*An awesome power indeed.*'[47], court interpreted various parts of Article 356. The court primarily deciphered the true meaning of – 'failure of constitutional machinery'. It is important to note, that this phrase is used in the title of Article 356 but isn't used in the main body of the provision.

The court elaborated that the meaning of 'failure of constitutional machinery' shall be read with the corollary under Article 356(1), that 'a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of this Constitution'[48]. The court explained:

> *"It is not every situation arising in the State but a situation which shows that the constitutional Government has become an impossibility, which alone will entitle the President to issue the Proclamation."*[49]

Further, the use of the words 'if the President…is satisfied', is not indicative of subjective/ personal satisfaction of the President. Given that the President is obliged to act upon the aid and advice of the Union Council of Ministers,[50] this phrase refers to the satisfaction of the Union Council of Ministers, with the President as its head.[51] This said 'satisfaction' may be based on the report of the Governor as to the breakdown of constitutional machinery or on the basis of other information received by him or both.[52]

As to the power to dissolve the Legislative Assembly, the court observed that this power is implicit in Article 356, but considering the scheme and spirit of the Constitution, the

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[47] *S.R. Bommai* v. *Union of India* (1994) 3 SCC 1 at 264.
[48] *Id*. at 52.
[49] *Id.* at 60.
[50] The Constitution of India, art. 74.
[51] *Supra* note 47 at 280.
[52] *Id*. at 281.

President should be dissolved only when Parliament approves his satisfaction, that a situation had arisen where the State Government could not be carried on in accordance with the Constitution.[53]

The Supreme Court further clarified that - in case of a Hung Assembly, the Governor shall not jump to send the report for the imposition of the President's Rule. If no party is able to secure the majority, then the Governor shall invite the leader of the single largest party, to form the government. Additionally, the court observed that it would be open for the High Court or Supreme Court to check the validity of the Proclamation before the approval of the Parliament is approved. Additionally, if the court finds the exercise of this power to be unconstitutional, then the said Proclamation may be set aside, despite the approval of the Parliament.[54] The necessity of judicial review in such cases was elaborated in the following words:

> *"If the court cannot grant the relief flowing from the invalidation of the Proclamation, it may as well decline to entertain the challenge to the Proclamation altogether. For, there is no point in the court entertaining the challenge, examining it, calling upon the Union Government to produce the material on the basis of which the requisite satisfaction was formed and yet not give the relief. In our considered opinion, such a course is inconceivable."*

The court further declared that it retains the power to review the decisions made during the President's Rule and may strike down any decision that is unconstitutional. [55] Therefore, this case paved the way, for upholding the federal character of the Indian Constitution and reinstating the provincial government, that got ousted by the abuse of Article 356.

Finally, the Supreme Court upheld the imposition of President's Rule in Uttar Pradesh (1992), Madhya Pradesh (1992), Rajasthan (1992) and Himachal Pradesh (1992) on the grounds that secularism is the 'basic feature' of the Constitution. However, the apex court rejected the validity of such a proclamation in Nagaland in (1988) Karnataka (1989) and Meghalaya (1991). The court observed that no State Assembly shall be dissolved without Parliament's approval and the test of strength could be conducted on the floor of the house.[56] This decision proved path-breaking in terms of limiting the arbitrary use of Article 356. With the requirement of floor-test, it became difficult to destabilise coalition government. But even this judgment could not entirely wipe out the potential misuse of President's Rule. A new mischief can be identified, when this the ruling party in the province has small or precarious majority.

VII. ANTI-DEFECTION LAW IN INDIA

'Political defection' means leaving one's party or leader under whose leadership one contested election.[57] Although the term 'defection' isn't defined under Schedule tenth but it excludes 'splits' or 'mergers'.[58] Defections are undemocratic as it negate the electoral verdict.

[53] *Id.* at 289.
[54] *Id*. at 291.
[55] *Id.* at 292.
[56] *Id.* at 407.
[57] *Supra* note 32.
[58] The Constitution of India, sch. X, rule 4.

The party which won the election may not be able to form a government or retain its power due to the menace of defection.

The relationship between defection and imposition of the President's Rule is closely intertwined in India, as defections may be used by the Centre, to create political instability in the State. India's anti-defection law reflect an effort to maintain political stability in a highly diverse and fluid party system. Despite the safeguards recommended in the Sarakaria Commissions, the guidelines provided by the court in *S.R. Bommai* case[59] and Anti-defection law in India – the abuse of the President's Rule continued in several cases. The dismissal of State Government in Gujarat (1996), U.P. (1996), Goa (1999), Bihar (2005), Arunachal Pradesh (2016), Uttarakhand (2016), is said to have been made, to enable horse-trading or defection amongst the ruling party members and subsequent imposition of Article 356.[60]

According to a study, Article 356 has been invoked 33 times out of 116 (from 1950 to 2019), which amounts to 28 percent of the total cases.[61] This means that almost one-third of the instances are driven by political defection. Post-independence, defections were rampant due to the lack of stringent anti-defection laws. Many state governments collapsed due to the political instability arising from defection. The infamous '*Aya Ram, Gaya Ram*' slogan was coined against the constant horse trading in the 1960s.[62] India enacted anti-defection laws in 1973 to contain the menace of 'floor crossing' or 'horse trading'. Simply put, when different parties ruled in Centre and State, the Centre may try to lure some MLAs, to withdraw support or defect from their affiliated party in exchange of some lucrative portfolio or other benefits. Such *quid pro quo* is essentially a common feature in democracies, like India, Israel, Portugal, Bulgaria, Ukraine, etc.[63] Hence, such countries have laws addressing defection. But the well-established democracies like – USA, UK, France, Germany, etc. do not require such provisions.[64] New Zealand and South Africa recently did away with such laws.

Despite the introduction of the Anti-Defection Law, splits, counter splits, defection, counter defection became common. The amendment in 2003 introduced stricter provisions, where members can be disqualified for voluntarily giving up membership in their party or voting against party directives in the parliament (i.e. the 'whip').[65] This law strengthened party discipline, by penalizing the disobedient members. Although certain reforms are still require, to eliminate this menace.

In hindsight, this law has been able to reduce defections to some extent, but some political manoeuvring still occurs. For instance –

i) In Arunachal Pradesh (2016), defections from the ruling Congress party to BJP, created instability and President's Rule was imposed, following a recommendation

[59] *Supra* note 3.
[60] *Supra* note 9.
[61] *Supra* note 32.
[62] Reference Note, Parliament Library and Reference, Research, Documentation and Information Service (July 2022), *available at*: https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/15072022_111659_1021205175.pdf (last visited on May 28, 2024).
[63] Kenneth Janda, "Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments" Working Paper Series 02/09, 4, 5-11 (Northwestern University, Aug., 2009), *available at*: https://www.partylaw.leidenuniv.nl/uploads/wp0209.pdf (last visited on May 28, 2024).
[64] *Ibid.*
[65] *Ibid*.

by the Governor, citing breakdown of constitutional machinery.[66] Although such usurpation was declared illegal by the Supreme Court and the Congress government was restored.[67]

ii) In Maharashtra (2022), when the majority of the members withdraw support from the ruling party, it is not considered defection. This happened recently in Maharashtra, where the Ek Nath Shinde faction, gained a majority with the support of BJP & broke the Shiv Sena-NCP alliance.[68] This is a classic case of exploitation of rule 4 of the Anti-defection law, which saves the party members upon defection, when two-thirds of members form a group and merge with the other party (usually the party in the Centre).

In view of the aforesaid examination, it can be surmised that the introduction of the Tenth Schedule in the Constitution, has limited the instances of defection to some extent. By introducing the requirement of two-thirds members to avoid disqualification, a bar on defecting members from assuming any remunerative post, and bar on independent candidates from joining a political party (after six months of election), the problem of defection has been somewhat contained. But in the scenario of a strong Centre, exceptions to defection, are exploited for greater benefit.

VIII. Combined Impact on Political Stability in India

India's democratic framework is built on the delicate balance between strong central government and autonomous state units, as well as between legislative independence and party discipline. Two key constitutional mechanisms designed to preserve this balance and ensure political stability are Article 356 (President's Rule) and the Anti-Defection Law (Tenth Schedule). However, both have faced criticism for being used as tools of political expediency rather than as safeguards of constitutional governance.

Despite judicial intervention, the provision remains vulnerable to misuse. The lack of transparent criteria and the partisan role of Governors & Speakers continue to pose threats to federalism and democratic stability. Article 356 is frequently invoked to topple state governments where the opposition rules. Such imposition of President's Rule often follows orchestrated defections within the state legislature – sometimes even encouraged by the ruling party. The merger clause is susceptible to engineered defections, and in the absence of a fixed timeline, the Speaker may act as a party functionary and delay the action against defecting members.

This intersection creates a political environment where stability is manufactured rather than originally achieved. Both provisions have contributed to the centralization of power, weakening the spirit of federalism. Though they were aimed at safeguarding political stability, their misuse has often undermined the very democratic ideals they were meant to protect. It is high time that these provisions are reformed to ensure that political stability does

[66] Express Web Desk, "Arunachal Pradesh Verdict: The Timeline of The Case So Far" *The Indian Express*, Jul. 13, 2016, *available at*: https://indianexpress.com/article/india/india-news-india/supreme-court-verdict-on-arunachal-pradesh-nabam-tuki-congress-kalikho-pul-bjp-jp-rajkhowa-2910600/ (last visited on May 28, 2024).
[67] *Nabam Rebia and Bamang Felix* v. *Deputy Speaker and Ors*, AIR 2016 SC 3209 (India).
[68] HT News Desk, "Eknath Shinde Takes Oath as Maharashtra CM, Devendra Fadnavis as his Deputy" *The Hindustan Times*, June 22, 2022, *available at*: https://www.hindustantimes.com/india-news/eknath-shinde-takes-oath-as-maharashtra-chief-minister-devendra-fadnavis-as-his-deputy-101656597041770.html (last visited on May 26, 2024).

not come at a cost of federalism, democratic dissent, and constitutional morality. The way forward demands not just legal reforms but a renewed political will to uphold the spirit of the Constitution. Transparency and non-partisan governance must replace opportunism and authoritarian tendencies. Reclaiming political stability, therefore, requires not just stronger laws, but a stronger commitment to democratic ethics.

IX. GLOBAL OUTLOOK

Most anti-defection laws in the region (Southeast Asia), particularly in Bangladesh, Bhutan, and Sri Lanka, heavily favour party discipline over individual conscience. The elected members are reduced to mere numbers in Parliament, unable to express divergent views—even if those views reflect the public will or constitutional values. For instance, Article 70 in the Constitution of Bangladesh prohibits MPs from voting against the party on any matter, making it one of the strictest provisions globally. In Sri Lanka, there is an absolute ban on floor-crossing, whereas in Pakistan, both the Party Head and the Election Commission (ECP) are involved in defection matters. The recent political turbulence (e.g., the removal of Imran Khan) showed the law being used for political engineering instead of stabilizing the economy.[69]

Although some criticise India's Anti-defection laws as a violation of individual member's freedom of expression – by forcing them to prioritize party loyalty over public accountability. In older democracies (like the USA, Canada, Australia & the UK), there are no sanctions upon party switching or cross voting. In fact, party switching is seen as a legitimate exercise of political freedom.

However, in newer democracies like India, where political systems are still stabilizing, these laws are considered essential to prevent the chaos caused by frequent defections. Similarly, in South Africa, party switching was allowed during "window periods", without losing seats. This led to gross abuse and instability in the government and was therefore abolished in 2009. Interestingly, in Singapore, there is no anti-defection law, but party switching is an exception, and defectors struggle to survive politically.

So, the countries that have anti-defection laws, tend to follow party-centric systems, treating elected members as agents of the party. It endorses the belief that people voted for the party and not the individual. Although this may silence dissent, but preserves political stability and manipulative power hogging. It is important to prevent the weaponization of such defection laws by ruling via - delaying disqualifications or incentivize mass defections (split/merger). On the other hand, the countries that do not have anti-defection laws, prioritise individual autonomy instead of party loyalty. Defection is not considered a legal offense and the enforcement is left to public opinion and electoral cycles. Thereby, voter backlash acts as a natural deterrent.

[69] India Today Web Desk, "Pakistan PM Imran Khan Ousted In No-Trust Vote: What Has Happened So Far And What's Next?" *India Today*, Apr. 10, 2022, *available at*: https://www.indiatoday.in/world/story/imran-khan-ousted-pakistan-pm-top-developments-what-will-happen-next-1935661-2022-04-10 (last visited on May 26, 2024).

X. Suggestions for Curbing the Arbitrary Use of Article 356

Given that the parties are finding new ways to exploit the President's Rule, there is a need to reinvent the safeguards. Thus, the following measures are suggested to contain against the said manipulation:

1. The maximum time limit for imposing President's Rule, should be reduced to one year (from three years in present) under Article 356(4). In order to meet any exigencies, which may require the extension of this period for more than one year, approval of the Parliament shall be obtained by Special Majority. This would act as a deterrent for the Union to engage in inciting political defection in the State or oust the ruling party.

2. The defecting members shall not be allowed to form an independent alliance, until the declaration of the next elections.

3. An independent member should be covered under Schedule X of the Constitution.[70]

4. Defected members should be blacklisted from contesting elections for the next two terms, *i.e.*, 10 years.[71]

5. An individual member used to defect, due to the lure of a lucrative office or ministry, in the newly formed government, but the same problems remain in the case of a merger. When two-third members of a party, form a group and merge with another party, it is considered an exception to defection and they are exempted from disqualification. But it might be possible, that they are offered the same benefits as an individual member.[72] Therefore, a ban of sorts may be imposed on mergers, during the tenure of the ruling party to avoid horse-trading and widespread corruption.

6. The registration of new political parties should freeze for three years after general elections so that the defecting party members cannot bypass the verdict of the people.

7. There remains ambiguity in defining 'voluntarily giving up membership', in the Anti-defection law. This loophole gets exploited by the legislators, by resigning and recontesting elections with a different party, without facing any penalty.[73]

8. Any reports of defecting members taking bribes, shall be automatically handed over to the Central Bureau of Investigation to deter, the members from changing sides to obtain favours.

9. Given the fact that the Anti-defection law fails to consider valid exceptions, where the legislators may wish to vote against the party's stance (in view of ethical conflicts or representing local conflicts). Some mechanisms should be introduced to allow the legislators to express dissent. For instance, the whip system may be made applicable, for critical votes only (such as those affecting the stability of the government).[74]

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[70] *Supra* note 32.
[71] *Ibid*.
[72] *Supra* note 58.
[73] *Supra* note 63.
[74] *Ibid.*

10. The disqualification of members on the ground of defection, is entirely upon the prerogative of the Speaker[75]. Provided that the Speaker enjoys support & membership of the ruling party, his decisions may be driven by political considerations (and thereby do not remain impartial).

11. When a proclamation under Article 356 is overturned by the Supreme Court on the grounds of abuse, the Centre shall be liable to pay substantial damages to the provincial government.

12. When there is a severe law & order situation in a State, the Centre should not jump to dismissal of the Legislative Assembly but must overtake only the Executive powers of the State, until the situation is contained.

13. Some responsibility must be fastened upon the Governor, for wrongful invocation of Article 356. For instance, he may be ordered to discontinue or resign from his office or may be asked to tender an apology to the public at large, for trying to sabotage the fairly elected government.

14. Given the proposed 'one nation one election' policy, there must be some provisions, in case a person dies, defects, turns insane or is convicted of a serious offense, re-elections must be considered if there remains more than a year's tenure.

15. Since the parties retain the power to exercise whip and even expel any member arbitrarily, there remains no avenue for the wronged member under this law. There is a dire need to introduce, internal party democracy or adherence to principles of natural justice, for all parties, to ensure fairness & transparency in decision-making.

16. Since defections are often caused by systematic planning, time is of the essence in maintaining political stability in the State. Therefore, a time-bound framework may be provided to prevent the chain of allurements/horse trading and ensure quick resolution of disputes.

17. An independent committee may be formed to review the need for the Proclamation after one month of its imposition. The members of this committee may include former Chief Justice of the respective High Court, two former judges of the Supreme Court, the State Election Commissioner, and the State Lok Pal. This committee's report must be widely publicized and considered by the courts, in judicial review.

XI. CONCLUSION

The interplay between President's Rule under Article 356 and the Anti-Defection Law enshrined in the Tenth Schedule, reflects the complex constitutional architecture designed to preserve the federal balance and democratic integrity of India. Both provisions were introduced as corrective mechanisms – President's Rule to address genuine constitutional crises in states, and Anti-Defection Law to curb the menace of political horse-trading and ensure stability in legislatures.

[75] *Supra* note 58, rule 6.

Yet, over the decades, these tools have often been deployed not merely as constitutional safeguards, but as instruments of political strategy. The misuse of Article 356, exposed its vulnerability to executive overreach. Similarly, the Anti-Defection Law while successful in reducing overt defections, has drawn criticism for legitimising mass resignations or orchestrated defections, under the garb of mergers. Thus, there is an urgent need to revisit the merger clause, introduce time-bound decisions on disqualification by an independent authority (possibly the Election Commission), and reinforce the democratic sanctity of the legislature.

Ultimately, both provisions must evolve to meet the twin objectives of democratic resilience and constitutional accountability. Their effectiveness lies not merely in textual safeguards, but in the strength of institutional integrity, judicial vigilance, and the political will to uphold the spirit of the Constitution.