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FEDERALISM UNDER FIRE: A CRITICAL ANALYSIS OF ARTICLE 356 AND STATE GOVERNANCE BREAKDOWNS IN INDIA

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Abstract: *This analysis critically examines Article 356 of the Indian Constitution and its profound implications for state governance. It highlights the delicate balance between federalism and centralized authority during crises, revealing that the invocation of Article 356 often results in significant governance breakdowns that undermine democratic principles and erode individual rights. The study emphasizes the role of judicial scrutiny, notably in landmark cases like S.R. Bommai v. Union of India, which have established essential checks and balances. Despite these safeguards, the recurrent use of emergency provisions raises concerns about potential political misuse. Furthermore, a comparative analysis underscores the unique challenges India faces within its federal framework, suggesting that insights from other federal systems could enhance governance strategies. Ultimately, the study advocates for a reevaluation of Article 356 to build a more resilient federal structure that prioritizes accountability and upholds democratic values in times of crisis.*

Keywords: *Article 356, Federalism, State Governance, Judicial Scrutiny, Democratic Principles*.

1. Introduction

The governance of India, a nation characterized by its federal structure, faces unique challenges, especially in times of crisis. Central to this discussion is Article 356 of the Indian Constitution, which empowers the central government to impose President's Rule in states during emergencies. This analysis critically examines Article 356 and its profound implications for state governance, particularly how its invocation disrupts the delicate balance between federalism and centralized authority. The frequent application of this article often leads to governance breakdowns that not only undermine democratic principles but also erode individual rights. Judicial scrutiny plays a pivotal role in mitigating these issues, as evidenced by landmark cases like S.R. Bommai v. Union of India, which have established crucial checks and balances. However, the potential for political misuse remains a significant concern. By comparing India's approach with other federal systems, this study seeks to uncover strategies for enhancing governance. Ultimately, it advocates for a reevaluation of Article 356 to foster a more resilient federal structure that prioritizes accountability and safeguards democratic values during crises.

2. Problem Statement

The invocation of Article 356 often leads to governance breakdowns, undermining democratic principles and individual rights. While judicial scrutiny has introduced checks, the potential for political misuse persists, highlighting the need for reevaluation to enhance accountability and safeguard federalism in India.

3. Methodology

The methodology employed in this critical analysis of Article 356 and state governance breakdowns in India is multifaceted, encompassing a historical, legal, and comparative approach. Initially, a comprehensive review of constitutional provisions and judicial interpretations related to emergencies, particularly Article 356, is conducted. This involves analyzing landmark Supreme Court cases, such as **S.R. Bommai v. Union of India**, which subjected the use of Article 356 to judicial scrutiny, thereby enhancing accountability. Additionally, qualitative analysis of historical instances of state emergencies is performed to assess their socio-political impacts and implications for federalism. Comparative analyses of similar provisions in other federal systems are also included to contextualize India's unique approach. The methodology emphasizes a synthesis of legal texts, case law, and historical data, allowing for a nuanced understanding of how emergency provisions affect state governance and individual rights, ultimately illuminating the delicate balance between federalism and centralized authority during crises.

4. Result & Discussion

Federalism Under Fire: A Critical Analysis of Article 356 and State Governance Breakdowns in India: India's federal structure uniquely shifts to a unitary system during emergencies, a feature highlighted by Dr. B. R. Ambedkar. The emergency provisions, outlined in Part XVIII of the Constitution (Articles 352-360), enable centralized control when the constitutional apparatus fails. Emergencies are unexpected crises requiring immediate government action, often leading to the suspension of certain civil rights, except those under Articles 20 and 21. As defined by Black's Law Dictionary, emergencies pose imminent threats to public safety and liberty, destabilizing the socio-economic structure. These provisions, especially Article 356, were designed to prevent autocratic tendencies during internal or external crises, allowing for President's Rule in states when governance breaks down. This balance between federalism and centralized intervention is a crucial aspect of India's constitutional framework. In certain situations, individual freedoms may be temporarily suspended to address global threats. Democratic governments face the challenge of balancing their duty to maintain governmental integrity with the need to protect citizens' rights. This necessity has led to emergency provisions that allow for the suspension of constitutional rights. In India, these measures are unique to the Constitution, enabling the central government to take extensive actions during emergencies. This has prompted some scholars to question the complete democratic nature of the Constitution due to these emergency clauses.

Types of Emergencies in the Indian Constitution

The Constitution recognizes three types of emergencies:

- National Emergency (Article 352)
- State Emergency (Article 356)
- Financial Emergency (Article 360)

India has declared a state of emergency three times since independence: from October 26, 1962, to January 10, 1968, during the India-China war; from December 3, 1971, to March 21, 1972, during the Indo-Pakistan war; and from June 25, 1975, to March 21, 1977, amid political instability under Indira Gandhi, initially citing "internal disturbance," later amended to "armed rebellion" by the 44th Amendment Act of 1978.

National Emergency: Article 352 of the Indian Constitution allows the President to declare a national emergency when external aggression or armed rebellion threatens India's security. This declaration requires the President to act on the advice of the Council of Ministers and must be approved by Parliament within a month, or it will lapse. A national emergency can

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be declared even if the threats are imminent rather than actual. The conditions for such a declaration include:

- External aggression
- Internal rebellion
- Serious threats to national peace and governance

National Emergencies in India

India has declared a national emergency three times:

- **First Emergency (1962-1968)**: During the India-China War.
- **Second Emergency (1971-1972)**: During the India-Pakistan War.
- **Third Emergency (1975-1977)**: Amid political turmoil under Prime Minister Indira Gandhi, involving allegations of electoral malpractice.

In **Minerva Mills vs. Union of India**, the Supreme Court affirmed that the validity of the President's emergency declaration is subject to judicial review. The court can determine whether the President's satisfaction for declaring the emergency is based on valid grounds. An invalid declaration occurs if it arises from mala fide or irrelevant reasons, emphasizing the need for scrutiny of such measures, which significantly impact citizens' rights and the constitutional framework.

Procedure for Proclaiming National Emergency: The President of India can declare a national emergency with the written approval of the Cabinet. This declaration must be ratified by both Houses of Parliament with a simple majority of total membership and a two-thirds majority of those present and voting; otherwise, it lapses. If the Lok Sabha is dissolved or not in session, the Rajya Sabha can approve the declaration temporarily. Once ratified, the emergency lasts for six months, and any extension must be approved by Parliament. The President can only declare an emergency based on the Cabinet's recommendation, and it must be confirmed by the Lok Sabha once it reconvenes.

Procedure for Revoking National Emergency: The President may revoke the national emergency if conditions improve. According to the 44th Constitutional Amendment, at least 10% of Lok Sabha members can submit a request for a meeting to discuss the emergency. If the Lok Sabha majority votes against the emergency, it will automatically cease to be in effect.

State Emergency: The President of India can revoke a state emergency through a new proclamation if the situation improves. The 44th Amendment allows ten percent or more Lok Sabha members to petition for a meeting, where they can terminate the emergency by a simple majority. Under Article 356, the President may declare a state emergency if the state government cannot function smoothly, based on a report from the Governor. This is commonly referred to as "President's Rule." Consequences of a state emergency include:

- The President may assume functions of the state government, excluding those of the High Court.
- State legislative powers may be exercised by Parliament.
- The President can make necessary provisions to execute the proclamation.

Procedure for Proclaiming State Emergency: The proclamation must be submitted for parliamentary approval within two months; otherwise, it lapses. If the Lok Sabha is dissolved during this period, but the Rajya Sabha has approved it, the emergency will cease to be effective 30 days after the Lok Sabha reconvenes. If not canceled, the emergency can be extended for six months at a time, but no longer than three years in total. The 44th Amendment limits Parliament's power to extend a proclamation under Article 356, requiring ratification by both Houses within two months to remain effective. If the Lok Sabha is dissolved after this period but has received Rajya Sabha approval, the emergency will terminate 30 days after the Lok Sabha reconvenes. An approved proclamation under Article 356 ceases to be effective after six months unless withdrawn but can be extended for another six months, with a maximum duration of three years. After this, the President's Rule must end, and normal legislative operations must resume. The 44th Amendment limits Parliament's authority regarding proclamations made after one year.

Revocation of State Emergency: A proclamation can be revoked through a subsequent proclamation and expires under the following conditions:

1. It lapses two months after issuance if not approved by both Houses of Parliament [Article 356(3)].

2. It expires before two months if either House fails to approve it [Article 356(3)].
3. It ceases six months after the initial resolution if no further resolutions are passed [Article 356(4)].
4. It can last up to three years, but any extension beyond one year requires specific conditions under Article 356(5).

The President can revoke a proclamation by issuing a new declaration [Article 356(2)].

Difference between Article 352 and Article 356

S.N	National Emergency (Article 352)	President's Rule (Article 356)
1	Declared only when the stability of India or a part of it is threatened by invasion, foreign interference, or military revolt.	Declared if the government of a State cannot operate in accordance with the Constitution due to reasons unrelated to war, external attack, or armed insurrection.
2	The State Executive and Legislature continue to function and exercise their legislative powers.	The Centre assumes regulatory and legislative powers in the province. The State Governor is removed, and the State Assembly is dissolved. The President rules, and Parliament creates regulations for administration.
3	Parliament may legislate solely on matters listed in the State List without assigning the same to any other agency or jurisdiction.	Parliament may assign the power to legislate for the State to the President or any other jurisdiction defined by it. The President collaborates with state parliamentarians to legislate for the state.
4	No limit on duration is prescribed; it continues indefinitely every six months with Parliamentary approval.	A period of up to three years is prescribed, after which the normal constitutional mechanism of the State must be reinstated.
5	Transitions the arrangement between the Centre and all the States.	Alters only the interaction of the emergency state with the Centre.
6	Affects people's fundamental rights (FR).	Does not affect people's constitutional rights.
7	A special majority is required for any proposal accepted by Parliament to proclaim or continue the declaration.	Each Parliamentary resolution that accepts or extends the proclamation can be accepted by a simple majority.
8	Lok Sabha can pass a proposal to cancel it.	Such a provision is not in effect; the President can revoke it at their discretion.

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Financial Emergency: Article 360 of the Indian Constitution allows the President to declare a Financial Emergency if India's financial stability or credit is threatened. This transfers executive and legislative powers to the Centre, requiring approval from both Houses of Parliament within two months. The declaration can last as long as necessary and can be revoked by a subsequent proclamation. This Article has never been invoked.

Provisions of Article 360:

- A proclamation can be revoked or modified later.
- It must be presented to each House of Parliament.
- It expires after two months unless approved by both Houses.

Emergency Provisions: Effects and Impact: A.V. Dicey highlights that federalism can be weak due to power-sharing, risking democratic functionality. However, federations may grant extraordinary powers during emergencies. The Indian Constitution recognizes three types of emergencies that disrupt normal legislative processes:

- **National Emergency**: Due to war, invasion, or armed revolt (Article 352).
- **State Emergency**: Due to the failure of state legislative machinery (Article 356).
- **Financial Emergency**: Due to threats to financial stability (Article 360).

Effects of National Emergency: The declaration of a National Emergency impacts individual rights and state autonomy in the following ways:

1. **Constitutional Change**: Federal structure shifts to a unitary system; Parliament can legislate on State List matters.
2. **Presidential Directives**: The President can direct states on executive functions.
3. **Lok Sabha Extension**: Lok Sabha can extend its term by one year during a crisis, not exceeding six months after the emergency ends.
4. **Revenue Allocation**: The President can modify revenue distribution between the Union and states.
5. **Suspension of Rights**: Fundamental Rights under Article 19 are suspended during the emergency, allowed only for war or external aggression.

Effects of State Emergency: The declaration of a State Emergency results in:

1. **Presidential Authority**: The President can assume or delegate any State Government functions.
2. **Dissolution or Suspension**: The President can dissolve or suspend the State Legislative Assembly, allowing Parliament to legislate for the state.
3. **Additional Provisions**: The President can make necessary provisions to fulfill the proclamation's objectives.

Effects of Financial Emergency: A Financial Emergency declaration leads to:

- **Union Directives**: The Union can issue directives to states on financial matters.
- **Salary Reductions**: The President may require states to reduce salaries of government employees.
- **Money Bill Reservation**: Money bills passed by State Legislatures must be reserved for Parliament's consideration.
- **Central Salary Adjustments**: The President can direct salary reductions for Central Government employees and judges.

Emergency Provisions and Their Legal Aspects: Emergency provisions in the Constitution, outlined in Articles 352 to 360, reflect India's quasi-federal structure. During emergencies, the federal features are suspended, allowing the central government to take control of law and order, effectively transforming the federal system into a unitary one. This is a unique characteristic of the Indian Constitution, aimed at protecting national sovereignty, unity, and democratic governance.

Three types of emergencies are defined:

1. **Article 352**: National Emergency, declared during war, external aggression, or armed rebellion.
2. **Article 356**: President's Rule or State Emergency, invoked when a state's constitutional machinery fails.
3. **Article 360**: Financial Emergency, declared when India's financial stability is threatened; this has never been invoked.

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Impact on Centre-State Relations During National Emergency: The proclamation of a National Emergency shifts India's federal structure to a unitary system:

- **Executive**: The Centre can direct states on various matters, while state governments remain under central control.
- **Legislative**: Parliament can legislate on State List matters, superseding state legislative powers.
- **Financial**: The President can alter revenue distribution between the Centre and states until the end of the financial year following the emergency declaration.

Effect on Fundamental Rights: The suspension of Fundamental Rights during a National Emergency is governed by Articles 358 and 359 of the Constitution.

Article 19 Rights: The six freedoms under Article 19 include:

1. Freedom of speech and expression
2. Right to assemble peacefully
3. Right to form associations
4. Right to movement
5. Right to reside anywhere in India
6. Right to practice any profession

Article 358: Under Article 358, rights in Article 19 are automatically suspended during an emergency without the need for a separate order. This allows the state to act in violation of these freedoms without individual contestation. Legislative and executive actions taken during the emergency cannot be challenged after it ends.

Article 359: Article 359 prevents individuals from seeking remedies for fundamental rights violations during an emergency, even if those rights are still technically in effect. It applies to both external and internal emergencies, unlike Article 358, which is limited to external threats.

Legal Aspects

S.R. Bommai v. Union of India ([1994] 2 SCR 644; AIR 1994 SC 1918; (1994) 3 SCC 1) This landmark judgment subjected Article 356 to judicial review, challenging the President's power to impose rule over an elected state government. The Supreme Court established that the President's power to dismiss a state government is not absolute.

Approval of Presidential Powers under Article 356: The President must obtain approval from both houses of Parliament to exercise powers under Article 356. If approval is not granted within two months, the suspended legislative assembly is reactivated, and the dismissed government is revived. This proclamation is subject to judicial review. The S.R. Bommai case limited the arbitrary use of these powers by the central government, which had been exploited for political purposes. The Supreme Court upheld the federal character of state governance through the basic structure doctrine.

ADM Jabalpur v. Shivkant Shukla (1976): This landmark case addressed the right to life under Article 21 during a National Emergency. The court found that Article 226 is broader than Article 32, allowing for the protection of non-fundamental rights. The President's declaration voided all fundamental rights, raising questions about the enforcement of Article 21. Justice H.R. Khanna's dissent emphasized that the right to life is inherent and exists independently of the Constitution. He asserted that Article 359(1) does not eliminate the right to enforce statutory rights and that the state cannot deprive individuals of life without lawful authority. This judgment was later overturned in **Justice K.S. Puttaswamy v. Union of India (2017)**, reinforcing the protection of fundamental rights during emergencies.

Effects of Proclamation of Emergency on Fundamental Rights

- **Federal Supremacy**: Federal laws override state legislation, allowing the Union government to control areas like policing.
- **Financial Control**: The Union manages taxation and budget processes, with final authority on state-approved financial acts during a financial emergency.
- **Suspension of Rights**: The Union can suspend fundamental rights under Part III (Articles 12-35), including:
    - Equality before the law
    - Freedom of speech and expression

- Freedom to assemble peacefully
- Freedom of movement
- Freedom to practice any profession or religion

The right to challenge these suspensions may also be limited, except for Articles 20 and 21, which protect personal liberty. Individuals can seek judicial redress if their rights under these articles are unlawfully suspended.

Legislative Suspension: The Union may dissolve a state legislature for six months, with the option for indefinite renewals until the Election Commission certifies the feasibility of elections. Such orders require parliamentary approval.

Legal Precedent: In Makhan Singh vs. State of Punjab, the court ruled that actions taken during an emergency could not be contested afterward, confirming the complete suspension of Article 19 during that period.

Suspension of Articles 20 and 21: A.D.M. Jabalpur v. Shivkant Shukla: In this case, the President invoked Article 359(1) to suspend individuals' rights to seek enforcement of Articles 14, 19, and 21 during the emergency, leading to widespread arrests under the Maintenance of Internal Security Act, 1971. High courts ruled these detentions could be challenged, but the Supreme Court ultimately favored the government, with Justice H.R. Khanna dissenting on the grounds that the right to life and liberty is a fundamental human right, not solely constitutional.

Suspension of Articles 14 and 16: Arjun Singh v. State of Rajasthan: The Rajasthan High Court held that Article 16 remained operational despite the suspension of Article 14, clarifying that only rights explicitly outlined in Article 359 were affected.

Judgment and Conditions of Article 356: S.R. Bommai v. Union of India: In this landmark case, the Supreme Court emphasized that Article 356 should only be used as a last resort when a state's constitutional machinery has collapsed. The authority granted to the President is conditional and requires evidence that a state cannot function constitutionally. The Governor can declare an emergency only with the approval of both Houses of

Parliament, and until then, the legislative assembly may be suspended solely to achieve the proclamation's objectives.

Article 35 and Emergency Proclamations: Article 35, Clause (3) lapses after two months, allowing the rejected government to revive upon disapproval from both Houses of Parliament. Actions taken during this period remain valid despite the declaration's expiration. If ratified within two months, the terminated government and Legislative Assembly do not restore until the specified period ends. The court asserts that Article 74(2) only bars inquiries into the guidance given to the President, not the information used to base decisions.

Fundamental Rights vs. Emergency:

- **War Emergency**: The President can declare a state of exception under Article 352 during a genuine threat, such as war or insurrection.
- **Constitutional Emergency**: A constitutional emergency can be declared if the Governor informs the President that a state government cannot function constitutionally.
- **Suspension of Fundamental Rights**: During an emergency, the State may suspend Fundamental Rights under Article 19, affecting Parliament, the Union Executive, and subordinate authorities. The President can suspend the right to seek enforcement of these rights.

Such directives require parliamentary approval. While rights may be restricted during emergencies, Articles 20 and 21 remain protected. Kofi Annan emphasized that human rights are fundamental and should not be compromised, as violations undermine individual integrity and signify severe inequality.

Changes Introduced by the 44th Amendment

Origin and Background: Emergency proclamations threaten constitutional integrity and individual freedoms, warranting use only in exceptional circumstances. The 1975 emergency, justified by internal disturbances, led to significant violations of fundamental rights, prompting the 44th Amendment to address these issues and make it harder to revisit the 1975 scenario.

The 44th Amendment: The 44th Amendment revised the Constitution's emergency provisions to prevent abuses similar to those during Indira Gandhi's tenure and reinstated some changes from the 42nd Amendment. Key changes include:

- **Terminology Change:** Replacing "internal disturbance" with "armed rebellion" in Article 352.
- **Cabinet Notification:** Requiring written notice of emergency declarations to the Cabinet.
- **Parliamentary Oversight:** Mandating that emergency declarations be presented to Parliament within one month and re-approved every six months.
- **Annulling Emergencies:** Allowing annulment by a simple majority of voting members in either House.
- **Rights Suspension:** Article 358 restricts suspension of Article 19 rights to war and external aggression, requiring laws that conflict with Article 19 to specify their relationship to Article 358.
- **Court Access:** Article 359 limits the right to approach courts without affecting Articles 20 and 21.
- **Lok Sabha Term:** Reducing the Lok Sabha term from six years to five.

Proclamation Under Article 352: Article 352(1) allows the President to declare an emergency if a threat to national security is perceived. The Supreme Court ruled that the President's satisfaction regarding such a declaration is a political rather than a legal issue. The 38th Amendment stated that the President's "fulfillment" is conclusive and non-reviewable, but the 44th Amendment later repealed this to prevent misuse. Now, the Supreme Court reviews whether the President's actions in declaring an emergency are justified. Justice Bhagwati, in the Minerva Mills case, noted that judicial review should assess if the President acted within jurisdiction or arbitrarily in declaring an emergency.

Proclamation Under Article 356: The declaration under Article 356 is subject to judicial scrutiny, as its powers hinge on Article 356(1). Courts can examine if the requirements of this provision have been met, though the nature of judicial review may vary based on the specific circumstances, as established in *Rajasthan State v. Union of India* and *Bommai*. Concerns arise regarding the President's actions if there is evidence of bad faith or arbitrary grounds for the declaration. The Supreme Court emphasized judicial review's importance in *State of Madhya Pradesh v. Bharat Singh*, asserting that a declaration does not prevent the enactment of contrary laws prior to an emergency. The High Court clarified its authority to assess the validity of the President's emergency declaration in *Minerva Mills and Others v. Union of India*, acknowledging its constitutional obligation despite dealing with political questions.

5. Conclusion

In examining the complexities of Article 356 and its implications for state governance in India, this analysis underscores the precarious balance between federalism and centralized authority during crises. The use of Article 356, while intended to maintain order, often leads to significant state governance breakdowns, undermining democratic principles and eroding individual rights. Judicial scrutiny, as exemplified in landmark cases like **S.R. Bommai v. Union of India**, has introduced essential checks and balances; however, the persistent invocation of emergency provisions raises concerns about their misuse for political ends. Additionally, the comparative analysis highlights the unique challenges faced by India within the broader federal context, suggesting that lessons from other systems could inform more effective governance strategies. Ultimately, a reevaluation of Article 356 is imperative to foster a more resilient federal structure that prioritizes accountability and preserves the integrity of state governance while safeguarding democratic values in times of crisis.

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