

## **Constitutional Issues in the Political Crisis of Uttarakhand**

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Uttarakhand is the 27<sup>th</sup> State of Indian Union came to existence on November 09, 2000. It has unicameral State Legislature i.e. only Legislative Assembly comprising of 71 members fixed for it as per delimitation done in February 2008. Present Legislative Assembly is third in number got elected in 2012. In the end of March 2016, political arena of Uttarakhand received huge uprising and got disturbed when the President by his proclamation on 27 March, 2016, dismissed the State government and suspended State Legislature imposing President's rule upon the State. The episode started from March 18, when Appropriation bill was being placed before the house, a debate and controversy took place in the meeting of Legislative Assembly, some MLAs including 09 MLAs from ruling party demanded division of vote on the Appropriation bill which was rejected by the speaker of the House. After that on 27<sup>th</sup> of March, the speaker of the House took action against 9 rebel MLAs of ruling party and repealed their membership. Subsequently, president on the advice of union cabinet suspended Legislative Assembly and declared president's rule in the state.

### **Reason for the Imposition of President Rule**

Constitutionally, Article 355 states- It shall be the duty of the Union to protect every state against external aggression and internal disturbances and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. Article 356 states the provisions in case of failure of constitutional machinery in state, <sup>(1)</sup> using which, Union government on 27<sup>th</sup> march 2016 imposed president's rule in Uttarakhand on grounds of 'breakdown of governance'. Centre's opinion here was that state government had lost majority on March 18 when 'failed' Appropriation bill was shown as passed. Referring to the matter, central government argued that- In 71- member Assembly, 67 members, excluding the speaker, were present. Out of them 35 member demanded division of vote on the bill also in written in advance. Despite which speaker rejected the demand and declared the legislation as passed.<sup>(2)</sup> Other reason was 4 – Sting Operation showing Chief Minister Mr. Harish Rawat allegedly offering allurements to the MLAs for favour vote in the House.

### **Course of the Crisis**

The Political uprising took birth on March 18 when Opposition party supported by 9 MLAs of ruling party demanded division of vote on Appropriation bill been placed before the house, but chairman of the Legislature rejected demand and declared the bill passed. After that, on March 26, a CD got viral on March 26 showing Chief Minister of the state allegedly offering allurements to the MLAs. Next day on March 27, the speaker repealed the membership of the 9 rebel MLAs and Union government on the same day imposed President's rule in the state suspending state Legislature. The Chief Minister challenged the declaration in the High Court of Uttarakhand on March 28 and High Court in turn set aside President's rule and allowed CM to prove majority in the Assembly by its verdict on March 29. Double Bench stays single bench's decision on March 30, hearing continues. The High Court on April, 21 quashed President's rule by its verdict, orders for floor test by 29<sup>th</sup> April. But the Supreme Court of India put hold on High Court's decision, stays floor test and restores President's rule by its orders of April, 22 and 27, asks central government about the possibility of 'Floor Test' in the State Assembly. On May, 6 Central government gets agree to Supreme Court's suggestion on floor test in the State Assembly. Floor test takes place in the State Assembly on May, 10 under the supervision of Supreme Court and result declared by the court on May, 11 where ruling party Congress won confidence vote with 33 votes and opposition party BJP 28. Then at last the episode ended on May 12 when State Government chaired by Mr. Harish Rawat got restored. <sup>(3)</sup>

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### **Role of the Chairman**

Article 178 of the constitution provides for office of the Speaker and Deputy speaker of the Legislative Assembly who is responsible for the smooth conduction of the House.<sup>(4)</sup> One side, the Chairman (speaker) rejected the demand for division of vote on Appropriation bill citing the Article 204(2) which states as- No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.<sup>(5)</sup> Second, Using the powers conferred by the Constitution, the speaker dismissed the membership of nine rebel MLAs of ruling party who supported demand of division of vote on Appropriation Bill asked by opposition party during the proceedings of the Legislature as Article 191(2) and Tenth Schedule inserted by the Constitution (fifty-second Amendment) Act, 1985 enable the speaker for the decision regarding the matters of disqualification of MLAs under the Anti-defection law, the decision shall be final and deemed to be proceedings in the Legislature of a state within the meaning of Article 212. The Schedule though bars the jurisdiction of courts in the matters but repealed by the Supreme Court in *KihotoHollohon vs. Zachilhu and others* (1992) case and mandated that the decision of the speaker falls under Judicial Review.<sup>(6)</sup>

### **Constitutional Provisions Regarding Emergency**

Article 356 (1) states-If the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the Government of the state cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation- (a) assume to himself all or any of the function of the government of the state or all or any powers vested in or exercisable by the Governor or any body or authority in the state other than the Legislature of the State. (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament, (c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State.<sup>(7)</sup>

India is a Union of States.<sup>(8)</sup> Thus there exists two types of entities- Union government and State governments. Both draw their powers from the constitution, each has its own area of functioning and authority. Still, there are some areas where Centre and States come to confrontation with each other. Moreover, Central government has power and authority to control state governments as Central government is responsible to protect unity and integrity of the Nation. Thus, Union(Central) government is vested with some Emergency powers articulated in part 18 of the constitution. Article 352 to 360 deal with emergency provisions mainly of three types- First, National Emergency under Article 352 be declared at the time of National crisis i.e. war or external aggression or armed rebellion. Second, Financial Emergency, can be declared under Article 360 when financial crisis engulfs the Nation. And third type of emergency provisions are used under Article 356 in the case of 'Failure of Constitutional Machinery' in a particular state or states. Article 356, one of the most controversial provision of the Indian constitution, enables the President (The Centre/ Union Government) to dismiss state government/s even on fabricated conditions.

Substantially, the State government had two weak points- party politics as there ruling two different parties in the Centre and the state. Party ruling in the Center has a trend to never miss any chance of rooting out any government in the state being ruled by the opposition party as history says- in 1957 central government headed by the then Prime Minister Pt. Jawaharlal Nehru dismissed the elected government of Kerala. Second, split in the party and discord among MLA of ruling party. Resulted, Uttarakhand was brought under President's rule in the wake of a political crisis triggered by a rebellion in the ruling party.

Beyond the political tussle and tugging, this recent episode of political storm in Uttarakhand has left behind many issues and question must be debated and clear in the future as<sup>(9)</sup>-

- (a). Whether the Governor can send/ could have sent message in present manner under Article 175(2) to conduct Floor Test in the Assembly
- (b). Whether disqualification of Member of Legislative Assembly by the Chairman or Speaker is a relevant issue for the purpose of imposing President's rule under Article 356.
- (c). Proceeding in the (Uttarakhand) Assembly can be taken note by the President for imposing President's rule.
- (d). What is the state of Appropriation bill and when Presidents rule comes to the picture with regard to Appropriation bill.
- (e). Can a delay in the Floor Test be ground for proclamation of President's rule in the State.
- (f). Convention on Money Bill failed, government goes, but who is to say Money Bill could not passed if Speaker does not say so.
- (g). Whether Governor can ask Chairman/ Speaker for division of votes as both are constitutional authorities.

**References :**

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