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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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MISUSE OF ARTICLE 356 & PRESIDENT RULE

AUTHORED BY – PRANAV S. JAGTAP

ABSTRACT

The Constitution of India is an instrument that provides for a federal structure in the country and also specifies definite functions for central and state government. The jurisdiction of central and state government with regard to the law-making process has been explicitly mentioned in Schedule 7 of the Constitution. However, there are certain circumstances through which the central government can enter the jurisdiction of states and the Presidential proclamation of emergency is one of the tool.

INTRODUCTION

The incorporation of emergency powers in the Constitution of India were subject to a lot of debate and discussion in the Constituent Assembly with regard to its possibility of endangering the federal polity. What has been an irony of political circumstances that the aspect of emergency was foreseen to have remained as the least used provisions, finally turned out to be amongst the most misused provisions of the Constitution. These provisions were incorporated in the Constitution believing that these would be the dead letters but to the utter dismay they became the death letters of the Constitution.

Polity of the country bears testimony to the fact that these provisions seemed to have paved way for settling personal scores with the states being ruled by other parties. In one way or the other the parties in control by manipulating these constitutional provisions have more or less succeeded in quenching their political animosities.

India has a vast and diverse population, with a large number of people living in abject poverty. Extraordinary situations are not novel to the Indian political scene. Therefore extraordinary powers to deal with these situations become necessary. The power contained in Article 356 is both extraordinary and arbitrary, but it is an uncanny trait of extraordinary power that it tends to corrupt the wielder. A close scrutiny of the history of its application would reveal that Article 356 is no exception.

One of the most significant provisions of the Indian constitution is Article 356. During the finalization of the text of the Constitution this provision had attracted notice and debate but the Chairman of the Drafting Committee, Dr. B.R. Ambedkar, had opined that the provision was

meant to be used only in the “rarest of the rare cases”.

Keywords – Constitution, Jurisdiction, Government, President, Federal, Emergency.

PRESIDENT RULE

Emergency provisions are listed in Part XVIII of the Indian Constitution. President's Rule is dealt with under Article 356 of the Indian Constitution. Article 355, which mentioned that “every state must be protected against external aggression and internal disturbance and it should be ensured that the government of every state is carried on following the provisions of this Constitution” under the Indian Constitution does not explicitly conclude how the Union must perform its duty to protect a State against external aggression and internal disturbance; it is left to the Union's assessment as to how to deal with any such circumstance as it emerges. It has been stated in Article 356 as to how it must carry out its duty to make sure that each State's government is executed in compliance with the Constitution's provisions.

Article 356 of the Indian Constitution gives the President the power to impose the President's Rule on any state in case the constitutional machinery of that state fails. When and if the President gets a report from the Governor of the state or is otherwise convinced or satisfied that the state's condition is such that the state government cannot rule as per the Constitution's provisions, he can then, based on his assessment, impose President's Rule in that State or, if a state fails to adhere to all orders made by the Union on subjects over which it has authority, President's Rule can be enforced.

The establishment of the President's Rule in any state requires parliamentary consent and must be approved by both House of Parliaments within two months of its execution.

Hereafter, a simple majority's approval is required for the establishment of the President's Rule, which can stay in effect for six months. It can be prolonged for three years with legislative permission every six months after its implementation. Article 357 contains some consequential measures relating to the exercise of legislative powers under the proclamation established under Article 356.¹

¹ Dr.J.N.Pandey;Constitutional Law of India;Central law agency 57thEdition2020 ²Maheshwari, S. P. 4

CONSTITUENT ASSEMBLY DEBATES ON ARTICLE 356

The Constitutional draft, prepared by the drafting committee of the Constituent Assembly of India, contained Article 188 which empowered the Governor to proclaim the taking over the state Government such a proclamation was to have the maximum validity of two weeks. The Art 188 read as:

"If at any time the Governor of a state is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the state and that it is not possible to carry on the Government of the state in accordance with the provisions of this Constitution, he may by proclamation declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him or in his discretion and any such proclamation may contain such incidental and consequential provisions as may appear to him 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 the Constitution relating to anybody or authority in the state."²

The draft article 278, which deals with imposition of emergency in a state, brought President into the picture. The Governor was under a Constitutional obligation to transmit his proclamation to the President who, if satisfied that the Government of the state could not be run in accordance with the provision of the Constitution, could take over in his hands the functioning of the state Government and declare that "the powers of the legislature of the state shall be exercise only by Parliament."such was the original provision made in the Constitutional draft. Article 188 was completely deleted, thereby empowering the President alone to assume the functions of the state Government in the event of a breakdown of the constitutional machinery.²

Article 356 of the Constitution, which laid down that the President "may assume to himself all or any of the functions of the state" in the event of the "constitutional failure of state machinery", was thoroughly debated in the Constituent Assembly. While the members of the drafting

² Ibid,P.5

committee headed by Dr. B.R. Ambedkar strongly defended the Article for the sake of preserving national unity, H.V. Kamath, S.L. Saxena and a few others were strongly against it. Kazi Syed Karimudin, a Muslim member from the central province, was very specific in his criticism:

"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."³

Replying to the criticism, Dr. Ambedkar said,

"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. Proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter."⁵

Such assurances notwithstanding, there continued to persist a good deal of confusion as to the exact meaning of the words, "Constitutional failure of state machinery." During the debates. H.N. Kunziu asked Dr. Ambedkar to spell out its meaning but Ambedkar gave a somewhat evasive reply:

"When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means namely that the form of the Constitution must be maintained."⁴

But this does not explain anything and while speaking again on this Article. Dr. Ambedkar instead of making its meaning clear confused them further by saying:

"The expression "failure of the machinery" I find, has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore, with its de facto and de jure meaning.

I do not think any further explanation is necessary."⁵

Naziruddin Ahmed, disenchanted with the vagueness of the Article, had this to say;

"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 interfere on the gravest

³ Dua, B. D. (1979). President's Rule in India: A Study in Crisis Politics. Asian Survey. June Issue. P. 613-614 ⁵Pylee, M. V., P. 643

⁴ Dua, B. D., P. 613

⁵ Siwach, J. R., P. 6

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."⁶

It is also difficult to agree with Dr. B.R. Ambedkar that this phrase has the same meaning in the present Constitution which had in the Government of India Act, 1935, because the present Constitution is not a carbon copy of that Act. Given the fact that the country was in the grip of communal agitation and separatist movements at the time when the Constituent Assembly was debating the issue, the Article was approved in the interest of national security without, any conclusive explanation of "constitutional failure of state machinery."⁹

Since independence, Art 356 has become a powerful weapon in the hands of the Union Government and many State Governments has become the casualty due to unethical invocations of the Article. Precisely, as if to prove the predicaments of the Article 356, all these years of independence has caused so much harm and injury to the federal scheme, which had very carefully been built into the Constitution, that it has come out as not only the most widely debated, discussed and commented upon Article, but also the one demanded by various political parties and other agencies to be deleted from the Constitution. Time and again, this Article, mainly due to the Centre's highly dominating role sometimes results in the dismissal of state Governments on the basis of recommendations made by Governors invoking the power vested in him by under Article 356, more to satisfy the Union Government for political gains. A related aspect widely discussed but not settled for a very long time was the power of the Governor to dismiss the Chief Minister and dissolve the legislature or invite any one of his choice to form the government.⁷

The Article 356 has been used most arbitrary by the Union Government for dismissing state Government of the parties other than the party in power at the Centre. In Kerala after 1957 general election, Chief Minister E.M.S. Nambudripal government was toppled in July 1959, while still enjoying majority in the legislature. The Central government interference was a clear-cut case of political prejudice. Ten years later, West Bengal had a similar story to tell. First in November 1967 and then in March 1970, elected governments were dismissed. While the Janata Party government at the Centre dismissed nine Congress ruled state governments in 1978 and when Congress (I) came to power at the Centre after 1980 election, it repeated the same tone by dissolving nine non-Congress governments in 1980. In 1984, in Andhra Pradesh govt. (NTR

⁶ Dua, B.D., P.613 ⁹Ibid, P.613-614

⁷ Sastry, G. (2007). Role of Government in Indian Federal System: New Dimensions under Article 356. In D. S. Ram (Ed.), Federal System and Coalition Government in India. Kanishk Publisher, New Delhi, P. 107

Govt.) and in 1985, Jammu & Kashmir government (Farukh government) was dismissed on partisan grounds.⁸

In 1983, central Government appointed Sarkaria Commission which was headed by Justice R.S. Sarkaria to examine the relationship between Centre and State Government in the country and also suggest relevant changes within the framework of Constitution. This commission recommended that Article 356 can be used "very sparingly, in extreme cases, as a measure of last resort, when all other alternatives fail to prevent or rectify a breakdown of

Constitutional machinery in the state."⁹In its final report, Sarkaria Commission explored the extensive misuse of Article 356 and made important recommendations to check its misuse. Despite this, misuse of Article 356 continued, In 1988 Nagaland and in 1989, Karnataka state governments were dismissed by the Central Government.¹⁰

In 1992 President's Rule was imposed in four Bharatiya Janata Party (BJP) ruled states (Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh) by the Congress party government on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organizations. In a landmark judgment in S. R. Bommai case in 1994, the Supreme Court upheld the validity of this proclamation on the ground that secularism is a "basic feature" of the Constitution. But the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991. The court also held that in no case should a state assembly be dissolved without Parliament approving the proclamation, and that test of strength could only be conducted on the floor of the house.¹¹

The invocation of President's Rule to facilitate or to recover for political horse-trading continued even after the 1990s. Notable examples are - Gujarat 1996, U.P. 1996, Bihar 1999, Goa 1999, Bihar 2005, Arunachal Pradesh and Uttarakhand 2016.

In the year 2002, the National Commission to review the working of the Constitution, headed by retired Supreme Court judge, Justice Nanappalli Narayana Rao Venkatchaliah submitted a Consultation paper on Union-State relations. The report criticized the Central Government for

⁸ Singh, S. (1989). Tension Areas in Centre-State Relation in India. in A. G. Saini (Ed.), *Confrontational Politics in India*. Commonwealth Publisher, New Delhi, P. 195-196

⁹ Kumar, S.S. (2000). Article 356 and Indian Federalism: A Study. *Third Concept*, April, Issue. P. 15

¹⁰ Nair, S.M. (1991). *Governor and Chief Minister in Indian States: Conflicts and Relation*. Deep & Deep Publication. New Delhi, P. 206

¹¹ Kapoor, B. K. (2016). *Deteriorating Centre-State Relationships: Causes & Concerns*. Global Publication, New Delhi, P. 220

not following the concept of co-operative federalism. Finally the National Commission recommended that Article 356 should not be deleted, but it does need an Amendment.¹² However, this has not been implemented yet. Almost all the ruling parties at the Centre have been blamed of misusing the power of Article 356 for political reasons.

ARTICLE 356 PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY IN STATE

- (1) If the President, on receipt of 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 functions of the Government of the State and all or any of the 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 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:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the

¹² Sharma, R. K. (2016). Live and kicking the "dead letter" of the Indian Constitution. *Journal on Contemporary Issues of Law*, vol. 2 Issue 8, P. 4

expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this cause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation: Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months] from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of [six months] and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless —

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that in the case of the Proclamation issued under clause (1) on the 6th day of October, 1985 with respect to the state of Punjab, the reference in this clause to “any period beyond the expiration of two years.”¹³

AMENDMENTS

Original Provisions of Art. 356.- The Proclamation under Art. 356 may be revoked at any time by the President. Subject to this, it remains in operation for two months. If, however, within that period, it is approved by resolution of both Houses of Parliament the duration of the Proclamation can extend to 6 months. The duration can be extended by similar action on the part of Parliament for successive period of 6 months at a time.

The maximum duration of the Proclamation under Art. 356 is three years and cannot be extended beyond that period by Parliament.

Under 38th Amendment 1975) — The satisfaction of the President as to the break-down of the State Constitutional machinery was made final and non-justiciable (i.e., it cannot be questioned in any court. Sub-Clause (5)].

42nd Amendment. - The 42nd Amendment of 1976 substituted one year for six months. In this way the proclamation could be extended for one year each time by resolutions in Parliament instead of for six months only each time.

44th Amendment 1978.- To prevent the misuse of Art. 356, the following safeguards are devised :-

(i) The Proclamation in the first instance would be in force only for 6 months (instead of for one year under the 42nd Amendment) on approval in this respect by a resolution of Parliament. In this way the modification made by the 42nd Amendment is nullified and the original constitutional position restored :

(ii) State Emergency can be continued only for 6 months more by the approval of Parliament.

Ordinarily it cannot be extended beyond one year.

¹³ P.M Bakshi; The Constitution of India; Universal Publication Edition, 2002

(iii) It can be extended beyond one year only if:

(a) An Emergency under Art. 352 is in force in the whole of India or in the State (or part of the State) concerned;

(b) The Election Commission certifies that there are difficulties in holding a general election to the State Legislative Assembly and that for this reason the Proclamation under Art. 356 has to be extended. This provision is new and is intended to be an effective safeguard against abuse of power under Art.356 by the Central Government. The existing limit of three years is retained. Democratic rule is thus expected to be restored with the minimum of delay .

(iv) The 38th amendment inserted cl.(5) in Art.356 to make the satisfaction of the president as to breakdown of constitutional machinery in the state final and conclusive. This is dropped by the 44th Amendment.¹⁴

48th Amendment Act, 1984.— Amended Cl. (5), Article 356, and inserted a new proviso in clause (5), namely, "provided that in the case of the Proclamation issued under clause (1) on the 6th day of October, 1983 with respect to the State of Punjab, the reference in this clause to "any period beyond the expiration of one year" shall be construed as reference to "any period beyond the expiration of two years".

Under the existing clause (5) the Presidential Proclamation of October 6, 1983, with respect to Punjab could not continue in force for more than one year unless the *special circumstances" mentioned therein were satisfied. This was enacted to meet out the special circumstances prevailing in the State of Punjab due to on going agitation by a group. Though the Legislative Assembly was kept in suspended animation and a popular Government could be installed, having regard to the prevailing situation in the State, yet the continuance of the Proclamation beyond October 6, 1984, was necessary.

The amendment made Art. 356(5) inapplicable in the existing conditions in the State of Punjab.

64th Amendment Act, 1990 — Art. 356 was again amended by the Constitution (64th Amendment) Act, 1990 in order to provide for extension of the President Rule in the State of Punjab for another 6 months as the situation there was not favorable for holding Assembly elections. The amendment added a new proviso after clause (4) in Art. 356 which substituted the words "three years and six months" for the words "three years" and also provided that the conditions laid down in Clause (5) would not apply to the Proclamation issued under clause (1)

¹⁴ Prof.G.C.V.Subba Rao;Indian Constitutional Law;S.Gogia&Company;EighthEdition 2005

on 11th May, 1987 with respect to the State of Punjab. The Constitution (67th Amendment) Act, 1990, extended the period of President Rule in the State of Punjab for a further period of 6 months. Accordingly, it has substituted the words "four years" for the words "three years and six months" in Clause (4) of Art. 356 of the Constitution.¹⁵

S.R Bommai v. Union of India (1994)

S.R Bommai v Union of India¹⁶ is one of the significant judgments passed by the Apex court on President's rule imposed through Article 356. This landmark verdict was pronounced by a special bench of nine judges that has increased the scope of Article 356, which was being widely misused, and it also assisted in preserving the federal structure and balancing it with India's unification. This judgment put an end to the union government's unconstitutional dismissal of State governments. This judgment overruled the decision of the State of Rajasthan v Union of India.

In 1989, S.R Bommai was the Chief Minister of Karnataka. An issue emerged when many MLAs defected from his party, which questioned Bommai's majority in the Assembly. Bommai's proposition to the Governor to conduct a floor test to prove the majority was rejected. The governor sent a report to the President stating that Bommai's party does not have majority and there is no other party that can form a government, and hence President's Rule must be imposed. Accordingly, President issued a proclamation in 1989, which was later approved by Parliament, and Bommai's government was dismissed. S.R Bommai challenged the constitutionality through a writ petition before Karnataka High Court.

The court dismissed the petition, and hence he appealed before Supreme Court. There was a similar situation in the states of Madhya Pradesh, Rajasthan, Meghalaya, Nagaland, and Himachal Pradesh, and hence all cases were collectively heard by Apex Court. The main issues before the court were – the President's rule imposed in these states invalidated the federal structure of India, and it also negated the principle of democracy. Hence, whether the proclamation of the President's rule in six states was constitutionally justified? The second issue was the scope and extent of judicial review. The third issue was the meaning of the phrase "a situation has arisen in the government of a state cannot function under the provisions of this Constitution" in Article 356(1).

With a 5:4 majority, the Supreme Court stated that President Rule enacted in states of Meghalaya, Karnataka, and Nagaland was unconstitutional. With a full majority, the court stated that the dismissal of state governments in Rajasthan, Madhya Pradesh, and Himachal Pradesh was not in

¹⁵ Supra 1

¹⁶ S.R.Bommai v. Union of India,1994 AIR1918,1994 SCC (3) 1,Article 356 of the Indian Constitution

accordance with the secular nature of the Indian Constitution. Although Sarkaria Commission recommendations are not binding, the SC considered them. The bench gave seven opinions, where the judges emphasized the federal nature of the constitution, and it opined that federalism could not be imposed in a strict sense. On the second issue, the bench stated that the proclamation of the President's rule is subject to judicial review. However, the judiciary can only lengthen its jurisdiction to the administrative aspect and restrict itself to the relevant material on the basis of which the President corroborates his subjective satisfaction. However, when it comes to the question of safeguarding constitutionality, the court reserves its right to repeal any verdict that ultra vires with the Constitution. In case the proclamation is proved to be unconstitutional, the court has the power to reinstate status quo ante and thus restore the Legislative Assembly. The bench also stated that State Assembly could not be dismissed without prior approval from Parliament, and the President is allowed only to suspend the Assembly. Article 356 can only be invoked in a scenario where disobedience with the Constitution is of nature that leads to a situation of impasse, and there is no scope of the remedy, and the functioning of the State has become impossible. The bench stated that floor tests must be conducted mandatorily as it helps to determine the legitimacy of government.

This judgment can be perceived as the most significant step taken by the judiciary to limit the misuse of power by the executive. This verdict is the epitome of judicial review. It is a very welcoming change that will have a lasting impact on reducing the Union government's abuse of power on states. Yet, there is still minimal scope for misuse of Article 356 by the Centre on the excuse that States are exploiting their powers and are acting against the Constitution. Hence the actual protection would have been full judicial review encompassing an inquiry into the legitimacy and accuracy of the facts relied on passing the proclamation of President Rule. However, it was a sad state of affairs to see that there was no unanimous majority on the scope of judicial review. The minority judgments show an overcareful perspective and pay no attention to the reality of the political nature of India. Any kind of deviation from this judgment will lead to a lack of implementation of another basic feature of the Constitution, i.e., federalism.

This verdict is considered a watermark in determining and supporting the federal nature of the Indian Constitution. This present case can be paralleled with Baker v Carr, a case that has molded the American political-legal system and had importance in constructing federalism. Both the judgments in these cases were pronounced at a time when the Centre was questioned with a rationale of equality and consistent interpretation of provisions at regional levels. The Bommai ruling is often considered a significant verdict in the sphere of activist role. The judiciary facilitates the execution of principles of democracy. Thus Article 356 got a wider development

in the Bommai case.

RAMESHWAR PRASAD (VI) V. UNION OF INDIA¹⁷

In the case of Rameshwar Prasad (VI) v. Union of India (2006), the Supreme Court of India reaffirmed and reiterated the principles established in the landmark case of S.R. Bommai v. Union of India (1994). This case was significant as it addressed the proper application of Article 356 of the Indian Constitution, which deals with the imposition of President's Rule in states.

The central issue in Rameshwar Prasad (VI) v. Union of India revolved around the dismissal of the Bihar Assembly by the Governor under Article 356. The petitioners challenged this decision, arguing that it was arbitrary and unconstitutional.

In its ruling, the Supreme Court emphasized the importance of the President's satisfaction under Article 356 being based on relevant and objective material. The Court stressed that the President's decision to impose President's Rule should not be influenced by extraneous or irrelevant considerations. Instead, it should be founded on substantial and valid grounds that demonstrate a breakdown of constitutional machinery in the state.

By emphasizing the requirement for the President's satisfaction to be based on relevant material, the Court aimed to prevent the misuse of Article 356. This ruling sought to ensure that the imposition of President's Rule is justified only in cases where there is a genuine constitutional crisis or breakdown of governance in the state.

In essence, Rameshwar Prasad (VI) v. Union of India reinforced the principles laid down in the Bommai case, which established guidelines for the exercise of President's Rule and underscored the importance of judicial review to prevent its arbitrary use.

S.P.ANAND V. H.D. DEVE GOWDA¹⁸

¹⁷ AIR 2006 SC 2637

¹⁸ (1996) 6 SCC 734.

In the case of *S.P. Anand v. H.D. Deve Gowda* (1996), the Supreme Court of India addressed the dismissal of the Uttar Pradesh government under Article 356 of the Constitution.

The background of the case involves the imposition of President's Rule (Article 356) in Uttar Pradesh by the central government. The dismissal of a state government under Article 356 is a significant constitutional issue, as it involves the suspension of democratic governance in a state and the imposition of direct rule by the central government.

In this case, the Supreme Court reiterated that the power conferred upon the President under Article 356 is not absolute and unchecked. Instead, the Court emphasized that the exercise of this power is subject to judicial review. This means that the decisions made by the President or the central government to invoke Article 356 can be examined by the judiciary to ensure that they are not arbitrary or motivated by extraneous considerations.

The Court's ruling reaffirmed the principle established in earlier cases, such as the landmark *S.R. Bommai v. Union of India* (1994) case, which laid down guidelines for the exercise of President's Rule and emphasized the importance of preventing its misuse. In essence, the judgment in *S.P. Anand v. H.D. Deve Gowda* emphasized the role of the judiciary as a check on executive power, particularly in matters concerning the imposition of President's Rule and the dismissal of democratically elected state governments.

By asserting the judiciary's authority to review decisions related to Article 356, the Supreme Court sought to uphold the principles of constitutionalism, federalism, and democratic governance in India. This case highlighted the importance of ensuring that the use of extraordinary powers, such as President's Rule, is consistent with the principles of the Constitution and is not employed for political expediency or undue interference in state affairs.

SARKARIA COMMISSION REPORT

Sarkaria Commission was established, which was headed by Justice Ranjeet Singh Sarkaria. This Commission recommended that Article 356 must be used very cautiously only in the rarest of rare scenarios and only as a last remedy after exhausting all possible alternatives to resolve and

avert any circumstance where the constitutional machinery has collapsed in a state. In a scenario of internal subversion, the Commission stated that if a State government intentionally acts unconstitutionally, it would lead to a situation for invoking Article 356 after giving necessary scope and warnings for rectifying their wrong. It also highlighted that in case a State government does not oblige with instructions given through Article 353 in an emergency after issuing warnings, it will also lead to implementing Article 356. Even in instances where the security of a state is under threat, the State governments must immediately notify the Central government; failing to do so will lead to the implementation of Article 356. The Commission also highlighted that utilizing Article 356 to solve political troubles is a clear example of misuse.

The Commission stated in case of political breakdown, it is the duty of the Governor to investigate all possible alternatives before the government retaining the majority support in the Assembly is dismissed. If such a government is incapable of being reinstated and fresh elections can be conducted swiftly and without much difficulty, then it is the responsibility of the Governor to ask the departing Ministry to remain and function as a caretaker government on the condition that the ministry has no serious accusations of corruption. The Governor must dismiss the Assembly, and the interim government has no power to pass important decisions on policy matters. The Commission stated that each proclamation must be placed before both houses of Parliament as early as possible before the expiry of 2 months duration.

It also stated that the misuse of Article 356 could be reduced by giving it a wide interpretation. The Sarkaria Commission's proposals seemed like a temporary solution and lacked the creative and innovative aspect required to approach the topic of President's Rule. Instead of investigating the Union Government's real misappropriation of constitutional provisions and providing measures to protect them in the future, the Sarkaria Commission endorsed the Center powers as essential and inescapable. Nevertheless, the panel overlooked several flaws in the initial division of powers between the Union and the states.¹⁹

SUGGESTIONS

Therefore, it is advisable to suggest that Art. 356 be amended to provide for the following:

¹⁹ Sarkaria Commission Report 1987

- (a) It should be provided that until both Houses of Parliament approve the proclamation issued under clause (1) of article 356, the Legislative Assembly cannot be dissolved. If necessary it can be kept only under animated suspension.
- (b) Before issuing the proclamation under clause (1), the President/the Central Government should indicate to the State Government the matters wherein the State Government is not acting in accordance with the provisions of the Constitution and give it a reasonable opportunity of redressing the situation - unless the situation is such that following the above course would not be in the interest of security of State or defence of the country.
- (c) Once a proclamation is issued, it should not be permissible to withdraw it and issue another proclamation to the same effect with a view to circumvent the requirement in clause (3). Even if a proclamation is substituted by another proclamation, the period prescribed in clause (3) should be calculated from the date of the first proclamation.

The proclamation must contain (by way of annexure) the circumstances and the grounds upon which the President is satisfied that a situation has arisen where the government of the State cannot be carried on in accordance with the provisions of the Constitution. Further, if the Legislative Assembly is sought to be kept under animated suspension or dissolved, reasons for such course of action should also be stated in the appropriate proclamation.

IJLRA