Article 356 of the Indian Constitution - An Analysis of State Emergency in India

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Abstract

Article 356 of the Indian Constitution have been imposed 132 times in India during the past period. If approved by both houses, the President's Rule can continue it for 6 months. It can be extended for a maximum of 3 months with the approval of the Parliament which is done every 6 months. Extra-Ordinary powers have been the matter of great controversies in every society since the establishment of an organized political system. Few see them as the necessary evil and justify preserving the peace and order in the society whereas others criticize them on ground of being a noose to straighten the neck of basic freedoms and idea of democracy. We have a crisis laden country from external as well as internal forces. Article 356 has been incorporated under the Indian constitution to enable the central government to combat from internal crisis occasioned on account of, constitutional deadlock due to lack of majority by any party in state elections, militancy, communal and class conflicts, politico-religious turmoils, strikes, bandhs or other incidents of like nature where state government can't be carried on in accordance with the provisions of the constitution. The emergence of emergency powers was subject to a lot of debate and discussion in the constituent assembly with regard to its possibility of endangering the federal polity. Finally 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. Intending to have remained as the least used provisions these finally turned out to be the most misused provisions of the constitution. Though this Article was incorporated in all good faith for the national integrity, it 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. So the contemplation of Dr. B R Ambedkar towards the rarest application of these provisions has actually gained force in the exactly opposite direction. The scope of this article is to objectively examine the provision in the constitution in relation to imposition of president's rule. With the best possible efforts I have tried to cover the important areas under the present paper. However special attention has been provided towards the recommendations made by the Sarkaria Commission and the landmark judgment delivered in S R Bommai v. Union of India.

Keywords : Article 356, Indian Constitution, President's Rule, Dr. B R Ambedkar, S R Bommai.

1. 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".

Manipur has seen a total of 10 instances of president's rule--the first of which came in 1967, immediately after the first election was held in what was then a Union territory. Since it received full-statehood in 1972, Manipur has seen seven such occasions, the last one in 2001, when the incumbent government lost its majority. Uttar Pradesh and Punjab (includes the erstwhile Punjab and East Punjab States Union or PEPSU) have nine instances of president's rule each. The only states where president's rule is yet to be imposed are Chhattisgarh and Uttarakhand (formed in 2001) and Telangana, which came into existence in 2014.

1.1 When does President's rule get imposed?

Typically, president's rule is imposed when a state government loses its majority or in the case of a split within the ruling party or withdrawal of support by a coalition partner. There have also been instances, most notably in the 1970s and 1980s, where state

governments have been dismissed, in spite of having a majority in the assembly. President's rule also comes into effect in the event of a post-poll scenario, where no party or coalition is in a position to form a new government. There are also situations where a chief minister has tendered his resignation for various reasons like disqualification by the courts or in ArvindKejriwal's case, failing to pass the Jan Lok Pal bill in February 2014.

Besides, the prevailing (often deteriorating) law and order situation within the state is also considered. This includes secessionist insurgencies (Punjab, Jammu & Kashmir, northeastern states), violence due to ethnic clashes (Assam, Tripura) and communal riots (Uttar Pradesh).

India's first prime minister Jawaharlal Nehru, during his 17 years in power, invoked Article 356 eight times. His successor LalBahadurShastri, who was at the helm for two years, imposed President's rule in Kerala (in September 1964).

Indira Gandhi, India's first woman prime minister, however, holds the record for invoking Article 356 the maximum times. During her collective stint of 14 years as prime minister, president's rule was imposed a total of 50 times (35 between 1966 and 1977, and 15 between 1980 and 1984).

More recently, after the landmark Supreme Court verdict on the S.R. Bommai case in 1994, the article has been used sparingly, or in exceptional circumstances. The contention that president's rule was being misused by parties in power was accepted, with the court issuing strict guidelines on its imposition.

The Manmohan Singh-led United Progressive Alliance (UPA) government had invoked the president's rule 12 times in different states. Similarly, the NarendraModi-led National Democratic Alliance government has resorted to the president's rule three times during its 20-month rule.

1.2 Recent instances where Article 356 has been imposed

Since the formation of the Republic, President's Rule under Article 356 has been imposed in states in over 100 occasions. The latest being in Jammu and Kashmir. After completion of six months of Governor's rule, President Ram NathKovind on December 19, 2018, imposed President's rule in the state, which had plunged into a political crisis after the Mehbooba Mufti-led coalition government collapsed.

On June 12 this year, the Union Cabinet approved the extension of President's rule in Jammu and Kashmir for another six months, beginning from July 3. Arunachal Pradesh came under President's Rule from December 16, 2015, to February 19, 2016, after Congress MLAs approached Governor JP Rajkhowa seeking to impeach Speaker NabamRebia. The Governor agreed and called for an emergency session to take up the impeachment motion. Congress protested the Governor's action, but the Centre went ahead and imposed President's Rule in the state invoking Article 356.

President's Rule was also in force in Delhi with the Assembly in suspended animation from February 14, 2014, to February 11, 2015, when ArvindKejriwal resigned as the chief minister after his move to introduce the Jan Lokpal Bill fell through in the Assembly. Follow Karnataka Crisis LIVE Updates here

Article 356 was also imposed in Maharashtra from September 28, 2014, to October 31, 2014, after chief minister PrithvirajChavan resigned following the collapse of the 15-year-old Congress-NCP alliance in the state.

Andhra Pradesh faced the President's Rule from February 28, 2014, to June 8, 2014, due to a political crisis caused by the resignation of CM N Kiran Kumar Reddy and other Congress legislators on February 19, protesting against the Andhra Pradesh Reorganisation Bill that bifurcated the state and created a separate state of Telangana.

President's Rule was declared in Jharkhand from January 18, 2013, to July 12, 2013, as the ArjunMunda-led BJP government was reduced to a minority after the Jharkhand MuktiMorcha (JMM) withdrew support. Munda resigned and sought dissolution of the state Assembly.

2. METHODOLOGY

The methodology used for the research enquiry is basically doctrinal although related factual data are looked at from historical point of view. The Constitution of India, commentaries, reports of various committees and commissions, judicial decisions and other reliable sources of information contributes to the data source. The scope of this paper is to objectively examine the provision in the constitution in relation to imposition of President's rule. The prime purpose of this paper is to critically review the essence of Article 356, its working in practice and the loopholes that needs to be looked into to check the arbitrary application of the same.

3. Historical Background

Emergency rule or crisis government as it is generally called has been in existence for almost as long as organized government itself.[1]During the medieval age, emergency powers were handed down by the ruling princes to the commissioners appointed under royal prerogative, who exercised specific powers on the basis of special instructions. However the background of the evolution of the emergency provisions in the present constitutional set up can be summed up under the following two heads:-

3.1 The Government of India Act, 1935.

The Britishers introduced the Government of India Act 1935 which envisaged a federal system of government with the Governor as the head of each province and underlined with the concept of division of power. Section 93 of the Act of 1935 was basically meant to be an experiment where the British Government entrusted limited powers to the Provinces. The colonial powers were not inclined to trust these Ministries even with limited powers probably in view of the fact that not only the political parties in India were ambiguous regarding entering the Legislatures and Ministries created under the said Act but some of them were also proclaiming that even if they entered the Ministries they would try to break the governments from within. These precautions were manifested in the form of emergency powers under Sections 93 and 45 of this Act, where the Governor General and the Governor, under extraordinary circumstances, exercised near absolute control over the Provinces.[2]

3.2 DRAFTING COMMITTEE OF THE CONSTITUENT ASSEMBLY

On August 29, 1947, a Drafting Committee was set up by the Constituent Assembly. Under the chairmanship of Dr. B.R. Ambedkar, it was to prepare a draft Constitution for India. In the course of about two years, the Assembly discussed 2,473 amendments out of a total of 7,635 amendments tabled. Even though article 356 was patterned upon the controversial section 93 of the 1935 Act - with this difference that instead of the Governor, the President is vested with the said power -it was yet thought necessary to have it in view of the problems that the Indian republic was expected to face soon after independence. When it was suggested in the Drafting Committee to confer similar powers of emergency as had been held by the Governor-General under the Government of India Act, 1935, upon the President, many members of that eminent committee vociferously opposed that idea. The Constituent Assembly debates disclose these sentiments. They also disclose that several members strongly opposed the incorporation of article 356 (draft article 278) precisely for the reason that it purported to reincarnate an imperial legacy. However, these objections were overridden by Dr. Ambedkar with the argument that no provision of any Constitution is immune from abuse as such and that mere possibility of abuse cannot be a ground for not incorporating it. He stated:

"In fact I share the sentiments expressed by my Hon'ble friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain as dead letters. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces.[3]"

By virtue of this earnest advice given by the prime architect of the Indian Constitution, we can safely conclude that this is the very last resort to be used only in the rarest of rare events. A good Constitution must provide for all conceivable exigencies. Therefore this Article is like a safety valve to counter disruption of political machinery in a State.

4. CONSTITUTIONAL FRAMEWORK

The concept of emergency provisions has been accepted in India in its constitution, whereby the government by constitutional sanction can take special measures to govern the citizens during the emergency. Three types of emergency have been recognized and they have been reduced to words in articles 352-360 of the Indian constitution. They are

1. Emergency caused by war, external aggression or internal disturbances (article 352), otherwise known as national emergency.
2. Breakdown of the constitutional machinery in the state (article 356), otherwise called as President's Rule.
3. Financial emergency (article 360).

Since the present research work that I have undertaken relates to the second kind of emergency of the above listed ones the following articles deserve a mention as follows:-

355 :DUTY OF THE UNION TO PROTECT STATES AGAINST EXTERNAL AGGRESSION AND INTERNAL DISTURBANCE -

It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

[1]article 356 of the constitution of India
[2] National Commission to Review the Working of the Constitution
[3] Constituent Assembly Debates, Vol. IX, p. 177)

356 :PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY IN STATE –

(1) If the President, on receipt of report from the Governor of the State or otherwise[4], is satisfied[5] 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 be 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 anybody 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 issued under this article except where it is a Proclamation revoking a previous Proclamation, cease to operate at the 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 clause, 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 operating, 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 a 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".

This provision seeks to find applicability in situation concerning or involving exercise of state executive power and state legislative power only. However the power vested in and exercisable by the High Court shall not be assumed by the president nor he can suspend in whole or in part any provision of the constitution in relation to the high court.[6] The judicial control over administrative

[4] It is to be noted that under Article 356 the President acts on a report of the Governor or otherwise.
This means that the President can act even without the Governor's report. This is justified in view of the obligation of the Centre imposed by Art.355 to ensure that the Government of the State is carried on in accordance with the provisions of the Constitution. In view of it the Centre's ultimate responsibility to protect the constitutional machinery of the States, the framers thought it proper not to restrict and confine the action of the Centre merely on the Governor's report. The Governor might not sometimes make a report. The President can, therefore, act even without the Governor's report, if
he is satisfied that such events occurred in a State, which involve the special responsibility placed upon the Centre to maintain the State under the Constitution. V.N. Shukla , Constitution of India, revised by M.P. Singh, xth edition, Eastern book co. New Delhi, p.863

[5] It is to be noted that the word 'satisfaction' in Art. 356(1) does not mean the personal satisfaction of the Governor but it is the satisfaction of the cabinet. The satisfaction of the President can, however, be challenged on two grounds that (1) it has been exercised mala fide (2) based on wholly extraneous and irrelevant grounds, because in that case it would be no satisfaction of the President. State of Rajasthan v. Union of India, AIR 1977 SC 1361

[6]Article 356(1) (c) of the constitution of India.

action is devised by the constitution as necessary for authoritative correction of the errors of administration. The appreciation of these provisions to justify its retention or to canvass its repeal or modification would involve a critical analysis of the power structuring that is required by article 356.

Necessarily this would involve the look into when the provision can be invoked, where it can be invoked, the consequences of its application and the merits and demerits of the provision with a view to forming an opinion about it.

5. PRESIDENTIAL RULE AND INDIAN FEDERAL CHARACTER

It needs to be remembered that only the spirit of "co-operative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority.

Dr. Ambedkar, who chaired the Drafting Committee of the Constituent Assembly, stressed the importance of describing India as a 'Union of States' rather than a 'Federation of States.' He said: '. . . what is important is that the use of the word "Union" is deliberate . . . Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.[7] This is in essence how one would describe Centre-State relations in India; excepting provisions for certain emergency situations in the Constitution of India, where the Union would exercise absolute control within the State.

On the basis of a study of similar systems in ancient times, like the Achaean League or the Lycian Confederacy, it is revealed that the danger of usurpation of authority by the Federal power would be smaller than the danger of degeneration of the federation into smaller factions that would not be able to defend themselves against external aggression.[8] This is precisely the rationale behind the distribution of power between the Union and the States in India. In fact, specific powers are divided into three lists - the Union List, the State List, and the Concurrent List (powers shared by both the Union and the States). The power of governance is distributed in several organs and institutions - *a sine qua non* for good governance.

It can be considered federal because of the distribution of powers between the Centre and States and it may be considered unitary because of the retention of Union control over certain State matters, and also because of the constitutional provisions relating to emergencies when all powers of a State would revert to the Center. 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. The Centre has not always kept in mind the concept of co-operative federalism or the spirit and object with which the article was enacted while dealing with the States and has indeed grossly abused the power under article 356 on many occasions. The facts and figures contained in Chapter Six of the Sarkaria Commission Report read with Annexure VI (1 to 4) appended to the said chapter and the decision of the Supreme Court in S.R. Bommai v. Union of India (reported in AIR 1994 SC 1918) amply bear out the truth of our assertion.

6. PROPOSALS MADE BY THE SARKARIA COMMISIION REPORT- 1987

6.1. BACKGROUND

The Article was invoked on several occasions by the Center, without any regards to the preventive steps laid down in Article356, due to ambiguities in its wording. It was only in 1987 when the Sarkaria Commission headed by Justice R.S. Sarkaria, was appointed in 1983 and spent four years researching reforms to improve Centre-State relations and it submitted its report that part of the obscurity surrounding Article 356 was cleared.

6.2 INTERPRETATIONS MADE BY THE COMMISSION AS TO THE SCOPE OF ART 356

The Sarkaria Commission recommended extreme rare use of Article 356. The Commission observed that, although the passage, ". . . the government of the State cannot be carried on in accordance with the provisions of this Constitution . . ." is vague, each and every breach and infraction of constitutional provisions, irrespective of their significance, extent, and effect, cannot be treated as constituting a failure of the constitutional machinery. According to the Commission, Article 356 provides remedies for a situation in which there has been an actual breakdown of the constitutional machinery in a State. Any abuse or misuse of this drastic power would damage the democratic fabric of the Constitution. The report discourages a literal construction of Article 356(1).[9] The Commission, after reviewing suggestions placed before it by several parties, individuals and organizations, decided that Article 356 should be used sparingly, as a last measure, when all available alternatives had failed to prevent or rectify a breakdown of constitutional machinery in a State. The report further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the

[7] National Commission to Review the Working of the Constitution, *Report*, I, ¶ 8.1.2 (2002),
[8] James Madison, *The Alleged Danger from the Powers of the Union to the State Governments Considered*, Independent Journal, Jan. 1788
[9]The Sarkaria Commission Report, (1987).

government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.

6.3 AVOIDING DISASTROUS CONSEQUENCES

According to the Commission's report, these alternatives may be dispensed with only in cases of extreme emergency, where failure on the part of the Union to take immediate action under Article 356 would lead to disastrous consequences. The report further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation in which not taking immediate action would lead to disastrous consequences.

6.4 THE GOVERNOR'S OBLIGATION TO EXPLORE ALTERNATIVES

In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without delay, the report recommends that the Governor request the outgoing Ministry to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and agrees to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should merely carry on the day-to-day government and should desist from taking any major policy decision.

Every Proclamation of Emergency is to be laid before each House of Parliament at the earliest, in any case before the expiry of the two-month period stated in Article 356(3)[10].

6.5. THE PROCLAMATION OF EMERGENCY AND THE GOVERNOR'S REPORT

The report recommends appropriately amending Article 356 to include in a Proclamation material facts and grounds on which Article 356(1) is invoked. This, it is observed in the report, would make the remedy of judicial review on the grounds of mala fides more meaningful and the check of Parliament over the exercise of this power by the Union Executive more effective.[11]

It will be seen from this peremptory examination of the important passages of the Sarkaria Commission Report that its recommendations are extensive and define the applicability and justification of Article 356 in full. The views of Sri P.V. Rajamannar, former Chief Justice of the Madras (Chennai) High Court, who headed the Inquiry Commission by the State of Tamil Nadu to report on Center-State relations, concur broadly with the views of the Sarkaria Commission. But it is unfortunate that the principles and recommendations given by them are disregarded in the present day and that actions have been taken that are prima facie against the letter and spirit of the Constitution of India.

7. S.R. BOMMAI V UNION OF INDIA- REDIFINING THE INTERPRETATIONS OF ARTICLE 356

S. R. Bommai v. Union of India is the most vital milestone in the history of the Indian Constitution when comes to the application of Article 356. It was in this case that the Supreme Court boldly marked out the paradigm and limitations within which Article 356 was to function. In the words of Soli Sorabjee, eminent jurist and former Solicitor-General of India, "After the Supreme Court's judgment in the *S. R. Bommai*case, it is well settled that Article 356 is an extreme power and is to be used as a last resort in cases where it is manifest that there is an impasse and the constitutional machinery in a State has collapsed."[12]

The views expressed by the various judges of the Supreme Court in this case concur mostly with the recommendations of the Sarkaria Commission and hence need not be set out in extenso. However, the summary of the conclusions of the illustrious judges deciding the case, given in paragraph 434 of the lengthy judgment deserves mention:

(1) Article 356 of the Constitution confers a power upon the President to be exercised only where he is satisfied that a situation has arisen where the Government of a State cannot be carried on in accordance with the provisions of the Constitution. Under our Constitution, the power is really that of the Union Council of Ministers with the Prime Minister at its head. The satisfaction contemplated by the article is subjective in nature.

[10] The State Legislative Assembly should not be dissolved either by the Governor or the President before a Proclamation issued under Article 356(1) has been laid before Parliament and the latter has had an opportunity to consider it. The Commission's report recommends amending Article 356 suitably to ensure this. The report also recommends using safeguards that would enable the Parliament to review continuance in force of a Proclamation.

[11] The Governor's Report, which moves the President to action under Article 356, should be a 'speaking document, containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.'

[12] Soli Sorabjee, *Constitutional Morality Violated in Gujarat*, Indian Express, Pune, India, Sept. 21, 1996

(2) The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. The existence of material - which may comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on relevant material.

(3) Though the power of dissolving of the Legislative Assembly can be said to be implicit in clause (1) of Article 356, it must be held, having regard to the overall constitutional scheme that the President shall exercise it only after the Proclamation is approved by both Houses of Parliament under clause (3) and not before. Until such approval, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly under sub-clause (c) of clause (1). The dissolution of Legislative Assembly is not a matter of course. It should be resorted to only where it is found necessary for achieving the purposes of the Proclamation.

(4) The Proclamation under clause (1) can be issued only where the situation contemplated by the clause arises. In such a situation, the Government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State Government in office. There cannot be two Governments in one sphere.

(5) a. Clause (3) of Article 356 is conceived as a check on the power of the President and also as a safeguard against abuse. In case both Houses of Parliament disapprove or do not approve the Proclamation, the Proclamation lapses at the end of the twomonth period. In such a case, Government which was dismissed revives. The Legislative Assembly, which may have been kept in suspended animation gets reactivated. Since the Proclamation lapses — and is not retrospectively invalidated- the acts done, orders made and laws passed during the period of two months do not become illegal or void. They are, however, subject to review, repeal or modification by the Government/Legislative Assembly or other competent authority.

b. However, if the Proclamation is approved by both the Houses within two months, the Government (which was dismissed) does not revive on the expiry of period of the proclamation or on its revocation. Similarly, if the Legislative Assembly has been dissolved after the approval under clause (3), the Legislative Assembly does not revive on the expiry of the period of Proclamation or on its revocation.

(6) Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the Court from calling upon the Union Council of Ministers (Union of India) to disclose to the Court the material upon which the President had formed the requisite satisfaction. However it may happen that while defending the Proclamation, the Minister or the official concerned may claim the privilege under Section 123. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of Section123.

(7) The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action.

(8) If the Court strikes down the proclamation, it has the power to restore the dismissed Government to office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension. In such a case, the Court has the power to declare that acts done, orders passed and laws made during the period the Proclamation was in force shall remain unaffected and be treated as valid. Such declaration, however, shall not preclude the Government/Legislative Assembly or other competent authority to review, repeal or modify such acts, orders and laws.[13]

Thus it can be seen from the conclusions of this Bench of the Supreme Court that the President's power under Article 356 is not absolute or arbitrary. The President cannot impose Central rule on a State at his whim, without reasonable cause

7.1 PROPER GROUNDS FOR INVOCATION OF ARTICLE 356

The supreme court after analysing the scope and dimension of article 356, gave few illustrations as to where application of Article 356 would be proper, few of them are mentioned below:-

1. Hung assembly scenario, having no possibility of forming the government.
2. Large scale law and order problem.
3. Damage to national integrity or security of state and calling for an application of Art 352.
4. Gross mismanagement of administration or abuse of power.
5. State involve in creating disunity and disstaisfaction among people.
6. Acting contrary to the constitution or union directivesi.e subversion of the constitution by state government.
7. Failure to meet an extra ordinary situation e.g.an outbreak of unprecedented violence, a great natural calamity etc.

[13] S.R. Bommai v. Union of India, (1994) 3 SCC 1, 296-297

However application of this article merely to secure good governance, preventing bribing to MLA's or determination of lack of majority by state government in governor chamber not on floor of assembly ,dissolving the assembly without probing the possibility of an alternative government through floor test are examples of improper exercise of Article 356.

8. IMPOSITION OF ARTICLE 356 IN PRACTICE

In Chapter Six of its Report, the Sarkaria Commission has set out in detail the number of times the power under article 356 was used. It has classified them into four categories. The following statement from the said Report is apposite:

8.1 WHEN MINISTRY ENJOYED MAJORITY

President's Rule was imposed in 13 cases even though the Ministry enjoyed a majority support in the Legislative Assembly. These cover instances where provisions of article 356 were invoked to deal with intra-party problems or for considerations not relevant for the purpose of that article. The proclamations of President's Rule in Punjab in June 1951 and in Andhra Pradesh in January 1973 are instances of the use of article 356 for sorting out intra-party disputes. The impositions of President's rule in Tamil Nadu in 1976 and in Manipur in 1979 were also on the consideration that there was maladministration in these States.

8.2 CHANCE NOT GIVEN TO FORM ALTERNATIVE GOVERNMENT

In as many as 15 cases, where the Ministry resigned, other claimants were not given a chance to form an alternative government and have their majority support tested in the Legislative Assembly. Proclamations of President's rule in Kerala in March 1965 and in Uttar Pradesh in October 1970 are examples of denial of an opportunity to other claimants to form a Government.

8.3 NO CARETAKER GOVERNMENT FORMED

In 3 cases, where it was found not possible to form a viable government and fresh elections were necessary, no caretaker Ministry was formed.

8.4 PRESIDENT'S RULE INEVITABLE

In as many as 26 cases (including 3 arising out of States Reorganisation) it would appear that President's rule was inevitable. Situations arising out of non-compliance with directions of the type contemplated in article 365 have not occurred so far."

To the above four categories must be added another category of wholesale dismissal of State governments and State Legislative Assemblies. Soon after a new LokSabha came into existence following the general election held in March 1977, bringing into office the Janta Party government, State governments and Legislative Assemblies of nine States, Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Bihar, Orissa, West Bengal, Madhya Pradesh and Rajasthan, were dismissed/dissolved. Again after the Congress Party returned to power in 1980, State governments and Legislative Assemblies in nine States were dismissed/dissolved. The ground on which they were dismissed is identical in both cases, namely, that the elections to LokSabha have disclosed that people have lost faith in the parties which were holding office in those States. To wit, the argument in 1977 was that in the aforesaid nine States, the Congress Party has almost been totally rejected by the electorate in the elections to LokSabha which showed the disenchantment of the people with the Congress governments in those States. An identical argument was employed in 1980 against the non-Congress parties.

The most recent event in this spate of needless and unconstitutional impositions of President's rule is the chapter of the dissolution of the Bihar assembly. In this reported case, Rameswar Prasad v. Union of India 2005 SCC vol Dec the Governor didn't provide any opportunity to any political party to form the Government and send 3 reports to the president urging for dissolution of the state assembly. The grounds on which he placed his report were based on the hung assembly and the horse trading going on within the state which tampers the constitutional provisions.

The Supreme Court held that it was mere *ipse dixit* (mere opinion) of the governor and declared it as unconstitutional.
Article 356 was invoked in the following instances after the Sarkaria Commission Report was submitted:

(a) Assam (27.11.1990 - deterioration of the law and order situation),

(b) Nagaland (2.4.1992 - fluid party position and deteriorating law and order situation),
(c) Nagaland (7.8.1988), (Karnataka - 21.4.1989) and Meghalaya (11.10.1991)
these three cases are dealt with by the Supreme Court in S.R. Bommai and held to be totally unconstitutional and unsupportable,

(d) Bihar (28.3.1995 - process of election could not be completed; to facilitate passage of vote on account by Parliament) and U.P. (1996 - No clear majority in election); and

(e) Tamil Nadu (30.1.88 - Deadlock due to death of Sri M.G. Ramachandran), Mizoram (7.9.1988 - Defections reduced the Government to minority), Jammu and Kashmir (18.7.1990 – Militancy), Karnataka (10.10.1990 - dissensions in the ruling party - floor-

crossing), Goa (14.12.1990 - C.M. resigned consequent upon his disqualification by High Court - No other Government found viable), Tamil Nadu (30.1.1991 - alleged LTTE activities), Haryana (6.4.1991 - with the disqualification of three MLAs, Government lost majority, Ministry refused to face floor-test and recommended dissolution of House), Manipur (7-1-1992 - Government lost majority as a result of resignation of certain members), Tripura (11.3.1993 - Government resigned - no alternative viable), Manipur (31.12.1993 - 1000 persons died in controlling Naga-Kuki clashes - continuing violence), U.P. (18.10.1995 - Government lost majority - no viable alternative Government in sight); and Gujarat (1996 - Government reduced to minority due to defections).

It follows from the facts stated above that more than often the constitutional power under article 356 was exercised wrongly. The Supreme Court proceeded to precisely check this abuse through its decision in S.R. Bommai. Though in the said decision no effective relief could be given to the State governments and the Legislative Assemblies which were wrongly dismissed/dissolved in view of the fact that pending the proceedings in the courts, fresh elections were held in those States, yet the court put the Central Government on notice that in case of a wrong dismissal of the State government and/or a wrong dissolution of the Legislative Assembly, the court does have the power, and that it will not hesitate, to restore such Government/Assembly back to life. Indeed it was indicated that would be the normal and natural consequence on the finding that Art. 356 was wrongly invoked in the case.

The result has been that since the said decision, the use of article 356 has drastically come down. Indeed in the year 1999 when the Central Government recommended to the President to dismiss the State government in Bihar, the President called upon the Central Government to reconsider the matter in the light of the principles enunciated in the said decision. On a reconsideration of the matter, the government withdrew the proposal. We may also refer to yet another decision where the Governor of U.P. chose to dismiss arbitrarily the State government without allowing the governmentto test its majority on the floor of the House. Following the principles enunciated in S.R. Bommai, the Allahabad High Court restored the dismissed government to its office (W.P. 7151 of 1998 disposed of on 23 February, 1998). This decision was not disturbed by the Supreme Court in appeal though it purported to evolve a peculiar kind of floor-test, namely, both the contenders for the office of chief minister were asked to test their strength on the floor of the House. The Chief Minister who was dismissed wrongly by the Governor established his majority and continued in office (A.I.R. 1998 Supreme Court 998).

8.5 President's rule was imposed in 12 states in 1977

As per the response to a RTI application by Factly, Article 356 (imposition of President's rule) was first used in June 1951 in Punjab. Since then, it has been used 115 times till date. President's rule was imposed in 12 states in 1977 after the Janata alliance came to power. This remains the record for a single year till date. Second in the list is 1980 when the president's rule was imposed in 9 different states after Indira Gandhi came back to power. Other notable years include 1992 when it was used in 6 different states and 1971 when it was used in 7 states including thrice in Orissa.

8.6 President's rule was imposed 63 times in 20 years between 1971 and 1990

The imposition of President's rule in states has varied across various decades. It was used 20 times between 1950 and 1970. Between 1971 and 1990, it was used 63 times, an average of 3 times a year. In fact, it was used 49 times between 1970 and 1980, highlighting the polarized political atmosphere during those times. Article 356 was used as a political tool during those times.

8.7 Between 1991 to 2016 President's rule was impose 32 times

Between 1991 and 2010, it was used 27 times. Only in 1991 and 1992, it was used 9 times. The indiscriminate use of Article 356 came down significantly following the Supreme Court's landmark judgment in the S R Bommai case in 1994. Between 2011 and 2016, it has been used 5 times including 3 times after the BJP came to power in 2014.

9. Need for Amendment of Article 356

In the light of the entire preceding discussion, the question arises whether article 356 needs to be amended. In fact there has been a strident demand for deletion of article 356 but if article 356 is removed while retaining articles 355 and 365, the situation may be worse from the point of view of the States. In other words, the checks which are created by article 356 and in particular by clause (3) thereof, would not be there and the Central Government would be free to act in the name of redressing a situation where the government of a State cannot be carried on in accordance with the provisions of the Constitution. We are therefore not in favour of deleting article 356.

If, however, Art. 356 (and the consequential article 357) is to be deleted then certain other provisions too require to be deleted viz.

(a) The words "and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution" in Art. 355; and

(b) Art. 365, in its entirety.

But then what would one say regarding Art. 256 and 257[14], which, no doubt, state the obvious, yet if they are deleted, the Courts may construe such deletion as bringing about a drastic change in Centre-State Relations. In any event, we feel that the stage has not yet arrived in our constitutional development, where we can recommend the deletion of Art. 356. What is required is its proper use and that has to be ensured by appropriate amendments to the article.

Cabinet approves extension of President's Rule in Jammu and Kashmir

Based on the prevailing situation in the state as stated in the report of Governor of Jammu and Kashmir, the Union Cabinet, chaired by the Prime Minister NarendraModi has approved the extension of President's Rule in Jammu and Kashmir for a further period of six months with effect from 03-07-2019, under Article 356(4) of the Constitution of India.

The decision implies that the President's rule in Jammu and Kashmir will be extended for a further period of six months with effect from 03-07-2019.

The present term of President's Rule is expiring on 02-07-2019 and the Governor has recommended that President Rule in the State may be extended for a further period of six months with effect from 03-07-2019.

A resolution seeking approval of parliament for the same will be moved in both the houses of parliament during the forthcoming session.

Background:

The Governor of Jammu & Kashmir issued a proclamation on 20-6-2018 under Section 92 of the Constitution of Jammu and Kashmir with the concurrence of the President of India, thereby assuming to himself the functions of the Government and Legislature of the State and making some incidental and consequential provisions. The State Assembly, initially kept in suspended animation was dissolved by the Governor on 21-11-2018.

The proclamation issued by the Governor on 20-6-2018 ceased on 19-12-2018 after six months. Under Section 92 of the Constitution of Jammu and Kashmir, there is no provision for further continuation of such Proclamation after six months. Hence, on the recommendation of Governor and having regard to the prevailing situation in the State, President issued a proclamation promulgating President's Rule in J&K under article 356 of the Constitution of India. Subsequently, a Resolution approving the subject Proclamation by President was passed in the LokSabha on 28-12-2018 and in the RajyaSabha on 03-01-2019.

The lynchpin of the government's legal measures to declare Article 370 inoperative and reorganise Jammu and Kashmir (J&K) into two Union Territories is the Constitution (Application to Jammu and Kashmir) Order of August 5, 2019. However, the task was not accomplished by that Order alone. The Centre and Parliament also used the fact that the State was under President's Rule to act on behalf of the State government and the State Assembly. This means that another principal source of the government's power was the President's proclamation issued on December 18, 2018, imposing Central rule.

Much has been written about the constitutionality or otherwise of the two principal moves of the Centre: hollowing out Article 370 using the two-pronged mechanism referred to above, and downgrading the State into two Union Territories. One clear way to question and challenge the legality of the measures is to find out whether there are any limitations on the Centre or Parliament using the prevalence of President's Rule to do anything that is not realistically possible to be done if there were a popularly elected legislature in a State.

Proviso suspension

While assuming to himself the functions of the State government and Assembly under Article 356 of the Constitution, the President also suspends portions of the Constitution. One such suspended part is the proviso to Article 3 (this Article empowers Parliament to create or divide States and alter their boundaries). The proviso says the President must refer any proposal to alter a State's name or boundaries to the State legislature for its views. It is an acknowledged fact that under the constitutional scheme, Parliament has overriding powers over the States in this matter. However, in respect of J&K, there is an additional proviso, one found only in the State's own Constitution. This says J&K's legislature has to give its consent to any altering of its boundaries or size or name. Significantly, the Presidential proclamation suspends the second proviso too.

Consider the following: (a) the issuance, "with the State government's concurrence", of the Order of 2019, by which the Order of 1954 was superseded and the reference to 'Constituent Assembly of Jammu and Kashmir' was to be read as the 'Legislative Assembly' (b) the passage of a statutory resolution in Parliament recommending the declaration of Article 370 as inoperative (c) the adoption of a resolution accepting the Jammu and Kashmir Reorganisation Bill, 2019 and, finally, (d) the issuance of a notification by

[14] There has been consistent demands from certain State Governments to delete Articles 256 and 257 along with Article 365 – a fact that is also referred to in the Report of Sarkaria Commission, Chapter III. We are, however, not going into this question in this paper. We proceed on the assumption, for the purposes of this paper, that these articles are very much a part of our Constitution

the President on August 6 midnight, declaring Article 370 inoperative. All these were made legally and constitutionally possible only because the State was under President's Rule and the President's Proclamation under Article 356 provided for it.

The legal fiction is that whatever Parliament or the President does in respect of J&K, it is the State Assembly or the State government that is actually doing it. How far should this legal fiction be allowed to prevail? Are there any legal limitations on this substitution of the State's powers and functions with the Centre's own, even if one concedes the wide amplitude of executive power under Article 356?

Extent of judicial intervention

A presidential proclamation under Article 356 is subject to judicial review, going by the verdict of the nine-judge Bench of the Supreme Court in S.R. Bommai vs. Union of India (1994). However, the scope for judicial intervention is limited to the adequacy and relevance of the material on the basis of which the President comes to the subjective satisfaction that the governance of a State cannot be carried on in accordance with the Constitution. At the same time, the court read another limitation into the same Article. It said the initial exercise of the power is limited to taking over the executive and legislative functions without dissolving the Assembly. Once Parliament approves the proclamation, the Assembly may be dissolved.

India's quasi-federal Constitution is admittedly weighted in favour of the Centre, but the courts have always emphasised that, in their limited domain, States remain 'supreme'. They are not "mere appendages of the Centre". Notwithstanding the Centre taking over all the State government's functions under Article 356, there are certain functions that the States alone can do. If these functions are allowed to be performed by the Centre in lieu of the State government or Assembly in the garb of President's Rule, the concept of States being supreme in their own domain is completely destroyed.

In the realm of law and policy, the Centre may issue orders or enact laws that fundamentally alter the State's policies and programmes. This appears to be permissible under the Constitutional scheme of Article 356, which says the President may assume to himself all or any of the functions of the State government; and Parliament may perform the functions of the State legislature, but the President shall not assume any power vested in the respective High Courts. This schema poses a real danger to the will of the people of a State, as decisions that a popular regime would never make may become possible under President's rule.

Conclusion

Some of the possibilities of the kind of anti-federal damage that may be done while a State is under Central rule can be listed: (a) suits instituted by the State against other States or the Centre under Article 131 may be withdrawn or claims against it conceded (b) the power of a State Assembly to ratify Constitution amendments may be exercised by Parliament, and (c) the Assembly may be denied the opportunity to give its views on a proposal to alter the boundaries of the State. In the case of J&K, the consent of its legislature was mandatory, but the State Assembly's consent was given by Parliament itself. The resolution adopted in Parliament stated that since the State legislature's powers are vested in Parliament, "This House resolves to express the view to accept the Jammu and Kashmir Reorganisation Bill, 2019."

To this list of State responsibilities that ought not to be discharged by the Centre while a State is under President's Rule, one may add two more aspects in respect of J&K. One is the power of the J&K government to concur with proposals to modify the way in which provisions of the Constitution apply to the State; and two, the recommendation of the State 'Constituent Assembly' to the President to declare Article 370 inoperative. These two measures have been adopted by the Centre in the name of the Governor and by reading the term 'Constituent Assembly' as 'Legislative Assembly', and using the factum of the State being under President's Rule to make Parliament itself perform the duty of recommending the step.

It may be argued that Article 356 empowers the Centre to assume and perform these two functions. However, these are clearly powers exercisable by elected regimes, and not by the Centre discharging its emergency powers. The implicit limitation on the Centre performing nothing more than routine governance functions on behalf of the State will have to be traced to the overall scheme of Article 356 itself. First, the power is invoked only with the objective of restoring constitutional governance in the State, and not to exercise absolute powers to change policies, laws and programmes of the State in the limited period during which a State is under President's rule. Parliament may pass the State Budget, or essential legislation so that existing programmes and statutory measures survive, but Article 356 does not give a blanket power to the President or Parliament to alter any matter in which the political leaders and the electorate of the State have a legitimate stake. Unless these implied limitations on the way the President or Parliament performs the functions of a State under Central rule, no State law or policy is safe.

Another example may drive home the point. Let us suppose the Centre finds that it does not have the requisite number of State Assembly resolutions ratifying a Constitution amendment it has managed to pass with a two-thirds majority in both Houses of Parliament. Can a few State governments be dismissed, and Parliament used to adopt resolutions ratifying the amendments on behalf of those States?

This may happen in other ways too. A State law may be amended by Parliament during President's Rule, and thereafter, the subject it falls under may be shifted to the Union or Concurrent List through a Constitution amendment; and the latter may be ratified

on behalf of several State governments by placing them under President's Rule for a limited period. This route may be used to abrogate any State law, and thereafter future elected regimes in the State may be prevented from restoring its old law, by stripping it of its legislative competence.

Therefore, anyone challenging the constitutionality of the President's Constitutional Order, or the resolutions adopted by Parliament preparatory to the declaration of Article 370 as inoperative, will also have to seek a verdict that imposes judicial limitations on the extent to which Article 356 can be used to subvert the will of the States.[15]

On ground of above observations it is evident that Article 356 has been deliberately incorporated to provide a platform to the amphibian central government to change its federal plane into unitary to avoid the political and social contingencies in a state, where its constitutional machinery can't be run according to the mandate of the constitution. Every power is purposive; it depends upon the nature of its application which brings it into repute and disrepute. Despite of its wide utility, Article 356, the dead letter of Dr, Abedkar has become the death letter to the popularly elected governments at states due to its indiscriminate and politically motivated application by union government. A careful observation of constitutional provisions in the light of judicial decisions makes it clear that central government's power under Article 356 is a canalized power bound by the constitutional, judicial and conventional norms and has not been given the blanket immunity. Being extra-ordinary power it is to be exercised sparingly with great caution as a weapon of last resort to dislodge the elected government in a state following breakdown of constitutional machinery therein when all the possible avenues of federal dynamics have been explored and resources of federal solutions to set up an alternative administration exhausted. After going through the intricate dimensions of this constitutional provisions and analyzing the imposition of the president's rule in practice for umpteen times the writer would consider the following suggestions worth a mention:-

1. Firstly the appropriate provision should be incorporated whereby it provides 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.

2. Arbitrary transfer, posting and removal of governors must be prevented through necessary constitutional amendments so as to prevent them from being the agent of political party in rule at centre. Further in appointment of the governor at least advice of the concerned chief minister must be taken. **3.** The single safeguard in the name of parliamentary approval in Article 356(3) is not sufficient because ordinarily the ruling party at Center generally 25 dominates Parliament by a majority. Hence a concise Act incorporating the provisions of constitutional, judicial and conventional norms be passed to regulate the imposition of Article 356(1)

4. 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.

5. Next it should be made a mandate that 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.

6. The proclamation must contain 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.

7. Whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and not in the chamber of governor or else other. If necessary, the Central Government should take necessary steps to enable the Legislative Assembly to meet and freely transact its business. The Governors should not be allowed to dismiss the Ministry so long as it enjoys the confidence of the House. Only where a Chief Minister of the Ministry refuses to resign after his Ministry is defeated on a motion of no-confidence, should the Governor dismiss the State Government.

Under the light of the preceding discussion on Article 356 from various dimensions I tend to incline myself towards the rationale given by the constitutional framers towards the desirability of having such a provision. The intervention of the Supreme Court in the spate of misused applications of this Article for umpteen times seems to have turned the tide from blatant misuse to judicious use. With the reformative role played by the judiciary being laudable, it's now time for the executive to fasten its loose ends and thereby not give any room for criticism.

References

1. National Commission to Review the Working of the Constitution
2. Constituent Assembly Debates, Vol. IX, p. 177)

[15]https://www.thehindu.com/opinion/lead/under-the-cover-of-presidents-rule/article29254040.ece

3. It is to be noted that under Article 356 the President acts on a report of the Governor or otherwise. This means that the President can act even without the Governor's report. This is justified in view of the obligation of the Centre imposed by Art.355 to ensure that the Government of the State is carried on in accordance with the provisions of the Constitution. In view of it the Centre's ultimate responsibility to protect the constitutional machinery of the States, the framers thought it proper not to restrict and confine the action of the Centre merely on the Governor's report. The Governor might not sometimes make a report. The President can, therefore, act even without the Governor's report, if he is satisfied that such events occurred in a State, which involve the special responsibility placed upon the Centre to maintain the State under the Constitution. V.N. Shukla , Constitution of India, revised by M.P. Singh, xth edition, Eastern book co. New Delhi, p.863
4. It is to be noted that the word 'satisfaction' in Art. 356(1) does not mean the personal satisfaction of the Governor but it is the satisfaction of the cabinet. The satisfaction of the President can, however, be challenged on two grounds that (1) it has been exercised mala fide (2) based on wholly extraneous and irrelevant grounds, because in that case it would be no satisfaction of the President. State of Rajasthan v. Union of India, AIR 1977 SC 1361
5. Article 356(1) (c) of the constitution of India.
6. National Commission to Review the Working of the Constitution, *Report*, I, ¶ 8.1.2 (2002),
7. James Madison, *The Alleged Danger from the Powers of the Union to the State Governments Considered*, Independent Journal, Jan. 1788
8. The Sarkaria Commission Report, (1987).
9. The State Legislative Assembly should not be dissolved either by the Governor or the President before a Proclamation issued under Article 356(1) has been laid before Parliament and the latter has had an opportunity to consider it. The Commission's report recommends amending Article 356 suitably to ensure this. The report also recommends using safeguards that would enable the Parliament to review continuance in force of a Proclamation.
10. The Governor's Report, which moves the President to action under Article 356, should be a 'speaking document, containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.'
11. Soli Sorabjee, *Constitutional Morality Violated in Gujarat*, Indian Express, Pune, India, Sept. 21, 1996
12. S.R. Bommai v. Union of India, (1994) 3 SCC 1, 296-297
13. There has been consistent demands from certain State Governments to delete Articles 256 and 257 along with Article 365 – a fact that is also referred to in the Report of Sarkaria Commission, Chapter III. We are, however, not going into this question in this paper. We proceed on the assumption, for the purposes of this paper, that these articles are very much a part of our Constitution
14. https://www.thehindu.com/opinion/lead/under-the-cover-of-presidents-rule/article29254040.ece