CHAPTER VIII

ARTICLE 356 : A TENSION AREA BETWEEN THE CENTRE AND THE STATES.

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Very deliberately and quite consciously, the architects of the Constitution adopted a system of federalism with strong central tendencies. They wanted a strong and stable Centre and that they were so particular about it that they have not used the word 'Federation' in the Constitution. In order to ensure a strong and stable Centre, they provided certain instruments within the Constitutional framework. Article 356 which provides for imposition of President's rule at the State level is one of the instruments of this kind.

8.1 Historical Background of Article 356

Article 356, was inspired by sections 93 of the Government of India Act, 1935. Section 93 of the 1935 Act provided that if a Governor of a province was satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of the said Act, he could, by proclamation, assume to himself all or any of the powers vested in or exercisable by a provincial body or authority including the Ministry and the Legislature and to discharge those functions in his discretion. The only exception was that under this section the Governor could not encroach upon the powers of the High Court. These two provisions were incorporated in the 1935 Act to meet certain purposes and exigencies.

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 still thought necessary to have it in view of the problems that the Indian Republic was expected to face soon after Independence. The socio-political experience of the framers of the Constitution made them acutely aware that security of the Nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social and economic condition of people, the diversity in their languages, scripts culture, race and region were expected to present the nascent Republic with many a difficult problem.

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.

"The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the Provinces."

The adult franchise and a full-fledged democratic rule was being introduced for the first time in India, parts of which comprised Princely States where elections or democratic rule were unknown. Even in what was known as British-India, the democratic experiment was a brief and limited one. The founding fathers envisaged that the transition from a feudal rule to a democratic rule would not be easy and that several situations may arise in the States which may call for intervention of the Central Government as a helping and guiding hand. Even so, the enormity of the power conferred by the Article 356 has to be appreciated and envisioned.

It would be evident from the speeches of Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar while the draft Articles 277-A and 278 (corresponding to Articles 355 and 356) were being debated in the Constituent Assembly that Article 356 was supposed to be an exceptional measure to be invoked to meet a grave and dangerous situation. It should also be remembered that clause (3) does not require a special majority; a simple majority is enough. Ordinarily, the Council of Ministers does command a majority in the Lok Sabha. The difficulty only arises when the Council of Ministers cannot command a majority in the Rajya Sabha. If, however, they command a majority in Rajaya Sabha also, then the cost is clear. The Central Government can, if it is so inclined, simply play with the lives of the State

Governments and the State Legislative Assemblies and this has happened on several occasions in the past.

8.2. EMERGENCY PROVISIONS UNDER THE CONSTITUTION OF INDIA.

1. Emergency Provisions of the Constitution.

Part XVIII of the Constitution of India speaks of emergency provisions. The emergency provisions therein can be classified into three categories:

1. Articles 352, 353, 354, 358 and 359 which relate to emergency
2. Articles 355, 356 and 357 which deal with imposition of the President's rule in States in a certain situation and
3. Article 360 which speaks of financial emergency.

Here it is not proposed to deal with the emergency of the kind contemplated by Article 352. No such emergency has been proclaimed after 1977. Suspension of Fundamental right like Article 21 in 1975 emergency eliminates any room for abuse as amended by the 44th Amendment Act and needs no further change. Similarly, we need not deal with Article 360, financial emergency as the said Article has not been invoked any time it is useful do discuss the necessary constitutional provision in regard to emergency situations in the States.

Article 355 imposes an obligation upon 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". The Constitution does not expressly provide as to how the duty of the Union to protect a State against external aggression and internal disturbance is to be carried

out; it is left to the judgment of the Union how to meet any such situation, as and when it arises, but it does provide, in Article 356, the manner in which it has to perform its duty to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

Article 256 carries the marginal heading "Provisions in case of failure of Constitutional machinery in States". But neither clause (1) nor any other clause in the Article employs the expression "failure of Constitutional machinery". On the other hand, the words used are similar to those occurring in Article 355, namely, "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". If the President is satisfied that such a situation has arisen, whether on the basis of a report received from the Governor of the State or otherwise, he may, by proclamation, take any or all of the three steps mentioned in sub-clauses (a), (b) and (c) . It would be appropriate to read the entire clause (1) of Article 356 at this stage:

"(1) If the president, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

1. 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;
2. Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
3. 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 authorize 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."

Clause (2) says that such a Proclamation may be revoked or varied by a subsequent Proclamation.

Clause (3) provides a check upon the power contained in clause (1). It says that "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 expiration of two months unless before the expiration of that period it has been approved by resoulutions of both Houses of Parliament".

Clause (4) provides that "a Proclamation approved by both the Houses of Parliament shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation (The 44th Amendment Act reduced the period in this clause from one year to six months.

Clause (5) has been substituted altogether by the 44th Amendment Act. The said clause was in fact inserted by the Constitution (38th) Amendment Act, 1975 with retrospective effect. The clause inserted by 38th Amendment Act barred judicial review of the Proclamation issued under clause (1). The present clause (5) provides certain details concerning the approval contemplated by clause (3) and is in fact a continuation of clause (4).

Article 365 which occurs in Part XIX – Miscellaneous – provides that "where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". In the light of the language employed in Article 365, namely, non-compliance with "directions given in the exercise of executive power of the Union under any of the provisions of this Constitution", it is necessary to refer to Articles 256 and 257 which provide for giving of such directions.
The Articles 256 and 257 occur in Chapter II – 'Administrative Relations-General' in part XI which deals with relations between the union and the States.

Article 256 which carries which carries the heading "Obligation of States and the Union" provides that " the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

Article 257 which carries the heading "Control of the Union over States in certain cases "provides in clause (1) that "the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose". Clause (2) of Article 257 provides that "the executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or

military importance". The proviso to clause (2) says that nothing in the said clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or to give appropriate directions to the States for their maintenance. Clause (3) says that the executive power of the Union to give directions extends to the measures to be taken for the protection of the Railways within the State. Clause (4) provides for reimbursement of the cost incurred by the State in complying with or carrying out the directions given under clauses (2) and (3)

Article 258 empowers the president to entrust certain executive functions of the Union to the States with their consent. And, Article 258A provides for the States entrusting their executive functions to the Union with its consent.

It is evident that Article 355 insofar as it speaks of the obligation of the Union to protect the States from external aggression and internal disturbance appears to be influenced by Article IV Section 4 of the United States Constitution which provides:

"The United States shall guarantee to every State in this Union a republican form of Government and shall protect each of them against invasion, and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence."

That part of Article 355 which speaks of the obligation of the Union to ensure that the Government of the States is carried on in accordance with the provisions of the Constitution appears to have inspired both by Article IV(4) of the U.S Constitution and by section 61 of the Australian Constitution Act, which empowers the federal Government to "maintain" the Constitution but our Constitution does not set out the manner in which the Union shall perform its obligation to protect

the States against external aggression and internal disturbance. The American Constitution too does not prescribe the manner in which the federal Government shall perform its three obligations contained in Article IV (4).

The causes for imposition of President's rule:

(i) *Political breakdown and political deadlock:* "This is a point which requires careful analysis. A political breakdown can happen when no Ministry can be formed or the Ministry that can be formed is so unstable that the Government actually breaks down, or where a Ministry having resigned, the Governor finds it impossible to form an alternative Government, or where for some reason or the other the party having a majority in the Assembly declines to form a Ministry able to command a majority failed.

(ii) When the party alignment in the State is such that no stable Government can be formed.

(iii) When the breakdown occurs owing to the Ministry in the State refusing to follow the directions of the Centre.

(iv) There may be physical breakdown of the Government in a State, as for instance, when there is a widespread internal disturbance, violence or revolt in the State, or external aggression or for some reason or the other, law and order cannot be maintained or disturbance and chaos occurs in the State.

(v) There is another contingency of economic breakdown.

(vi) When "The State's economic plans may be contrary to the economic programmes of the Centre."

(vii) "When the Ministry is absolutely corrupt and is misusing the machinery of the Government for dishonest purposes but is firmly saddled in power backed by a comfortable majority."

(viii) "There may be mass violence with sympathy of the Party in power of the State.

The other circumstances that may lead to political instability and breakdown of the Parliamentary system of Government are:

(ix) (a) Defections by the members of the legislature.

(b) Passing of no-confidence motions against the Council of Ministers.

(c) Resignation of the Chief Minister for various reasons.

(d) Absence of legislatures in the newly-formed States.

(e) Public agitations in State leading to instability in the administration.

EXERCISE OF POWER UNDER ARTICLE 356

Duration of the President's rule in different States:

The following table indicates the duration of the President's rule in different States in chronological order:

Table 1: President's Rule in States[3]

Frequency

President's rule was brought into operation for the first time in the Punjab in 1951. In the initial years, there were not many instances of its use. But, with the passing of years, these provisions have been invoked with increasing frequency.

Please refer ANNEXURE G.

Period	frequency
1950-1954	3
1955-1959	3
1960-1964	2

1965-1969	9(7 cases in 1976-69)
1970-1974	19
1975-1979	21(9 cases in 1977)
1980-1990	23(9 cases in 1980)

The figures reveal a sharp rise in the incidence of such cases from 1967 onwards. The Fourth General Elections (held in 1967) saw the emergence of a multi-part7y polity, fragmentation of political parties, and the rise of regional parties. There was a sea change in the political scene. Coalition ministries were formed in a number of States for the first time. Many of them were unstable, being coalitions based on convenience rather than on principle. The General Elections to Lok Sabha held in Marth 1977, led to a landslide victory of the Janata Party, which thereupon formed the Government at the Centre. The then Union Home Minister, wrote to the Chief Ministers of the nine Congress Party States that they should seek fresh mandate. Some of them approached the supreme Court for a declaration that the Union Home Minister's letter, asking for dissolution of their Legislative Assemblies, was unConstitutional, illegal and ultra vires, but were not successful. President's rule was imposed immediately after the pronouncement of the Court's verdict and simultaneously, the Assemblies of these nine States were dissolved. A similar situation arose in 1980, when in nine Janata-ruled States on similar grounds, President's rule was imposed following the victory of the congress (I) Party in the General Elections to Lok Sabha. The Propriety of this wholesale use of Article 356, in 1977 and again in 1980, has been widely questioned, the judgement of the Supreme Court nothwithstanding.

In such cases political expediency itself requires that the shift of power be somewhat slow and smooth, and President's rule acts as a stop-gag arrangement for the smooth shift of power from one person

to another person or from one group to another or from one political party to another.

To sum up, since 1950, when the Indian Constitution came into being, till October 1990, the President's rule has been imposed 80 times in 23 States. Punjab was the first State in the Union to come under the spell of the President's rule. Kerala suffered the President rule for as many as 9 times, followed by Punjab 8 times. Unfortunately, President's rule has been too often used as an instrument of the Central Control over the States, though it was meant to be a sort of inbuilt" safety valve" in the political system. Causes which have led to President's rule in States have been varied in nature:

Such as "internal feud" in the ruling party was responsible for the imposition President's rule in Punjab (1951), Kerala (1956), Uttar Pradesh (1968), Bihar(1969), Punjab(1971), West Bengal (1971), Orissa(1973), Uttar Pradesh (1973), and Karnataka(1990).

The formation of new States- Kerala(1956), Punjab(1966), Manipur(1972), and Tripura(1972) created situations in which the administration had to be taken over by the Centre till the new Assemblies could be duly elected and the popular ministries ushered in.

The withdrawal of support by the coalition partners along with factional feud, in Orissa(1961), Punjab(1968), Uttar Pradesh(1970), Orissa(1971), Kerala(1979), 1981 and 1982), and Tripura (1979) led to the downfall of the respective ministries calling for Centre's take over throught he device of President's rule.

Public agitations, among other causes, led to President's rule in Andhra Pradesh(1973), Assam (1979), Gujarat(1974), Kerala(1959)

Proclamations issued in respect of nine States on 1977 constituted a distinct class like "unprecedented political situation" when in as many as nine Sttes – Bihar, Haryana, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal-there was a total or near total rejection of the candidates belonging to eh party which was then ruling in these States.

Following the mid-term Lok Sabha elections held in January 1980, like April 1977, Proclamations promulgating President's rule were issued in respect of nine States viz., Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Yamil Nadu and Uttarpradesh. The Union Government felt that having suffered an overwhelming defeat in Lok Sabha elections, the ruling party in these States, no longer represented the people.

One of the most important recommendations of the Sarkaria Commission on Centre-State relations was with regard to prevent the Governor from misusing his authority to recommend imposition of the President's rule. It was not against the retention the provision for imposition of president's rule but it wanted only certain constraints to eliminate the scope for misChief.

Despite the recommendations of the commission, on 10 October, 1990 Karnataka Governor trampled on democratic traditions and recommended imposition of President's rule on flimsy, untenable ground in Karnataka. In October 1990, the National Front Government did not act differently from its predecessor, the Congress-I regime. It was used as many as 15 times afterwards.

VII Article 356 in action

In Chapter Six of the Report, of 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:

"Use of Article 356"

A-When Ministry Commanded 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 fro the purpose of that Article. The proclamation of President's Rule in Tamil Nadu in 1976 and in Manipur in 1979 were on the consideration that there was mal-administration in these States.

B-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. Proclamation 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.

C-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.

D-president's rule inevitable

In as many as 26 cases (including 3 arising out of States Reorgtanisation) 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."

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 Lok Sabha 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, as mentioned above, 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 Lok Sabha have disclosed that the people have lost faith in the parties which were holding office in nine States, the Congress party has almost been totally rejected by the electorate in the elections to lok sabha 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.

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),

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,

(c) Bihar (28-3-1995 – process of election could not be completed; to facilitate passage of vote on account by Parliament). U.P (1996) no clear majority in election) and

(d) Tamil Nadu (30-1-88 – Deadloack due to death of Sri M.G. Ramachandran)

(e) Mizoram (7-9-1988 – Defections reduced the Government to minority),

(f) Jammu and Kashmir (18-7-1990 – Militancy),

(g) Karnataka (10-10-1990 – dissensions in the ruling party floor crossing),

(h) 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).

(i) Haryana (6.4.1991 – with the disqualification of three MLAs, Government lost majority, ministry refused to face floor-test and recommended dissolution of house),

(j) Manipur (7-1-1992-Government lost majority as a result of resignation of certain members),

(k) Tripura (11.3.1993 – Government resigned – no alternative viable),

(l) Manipur (31.12.1993 – 1000 persons died in controlling Naga-Kuki clashes –continuing violence),

(m) U.P. (18.10.1995 – Government lost majority – no viable alternative Government in sight); and

(n) Gujarat (1996 – Government reduced to minority due to defections).

It follows from the facts Stated above that more often than not power under Article 356 was exercised wrongly. The Supreme court proceeded to precisely check this abuse through its decision in S.R. Bommai case (AIR 1994 SC 1918). Though in the said decision no effective relief could be given to the State Governments and the Legislative Assemblies which were wrongfully 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, toe restore such Government/Assembly back to life. Indeed it would be indicative of the fact that the power under Article 356 was misused. 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 Government to test its majority on the follow 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 these their strength on the floor of the House. The Chief Minister who was dismissed wrongfully by the Governor established his majority and continued in office (A.I.R. 1998 Supreme court 998).

8.4. Judicial Interpretation of Article 356

In regard to Article 356, the past experience of judicial pronouncements made the impression that courts cannot be of much help but Sunderlal Patawa's case was a turning point in the history of our country. It reversed the narrow approach taken by the court in earlier cases e.g. In Re A. Sreeramulu, (AIR, 1974, A.P., 106), State of Rajasthan V. UOI, (AIR 19777, SC1361), Rao Birender Singh V. UOI, (AIR 1965, Punjab 441), SC1361), Rao Birender Singh V. UOI, (AIR 1965, Apunjab 441), Bijayananda V. President, (AIR 1974 Orrisa 52),

K.K. Aboo V. UIO (AIR 1965, KER 229). Article 356 had been invoked over 90 times since the enactment of the Constitution, often for ulterior political purposes. Before Surnder Lal Patwa's case there had been "reluctance" on the part of the judiciary to intervene in cases of abuse of power under Article 356. The verdict was appreciated as consistent with the sprit of the constitution.

Now the views expressed in the constituent assembly and reiterated by the Sarkaria Commission get support from the Supreme Court in relation to the cases about the interpretation of the provisions of the Constitution. The following observations of the Supreme Court can very well be cited in support of the proposition that the provisions of Article 356 should be interpreted literally and in a narrow sense.

An argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion, but a court of law has to gather the spirit of the Constitution from the language of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view" [S.R.Das J. in Keshavan V. State of Bombay AIR 1951 S.C. 128).

Clause (1) of Article 356 indeed the whole Article has been the subject matter of elaborate consideration at the hands of the supreme court in two of its decisions, namely, **State of Rajasthan V. UOI (AIR 1977 SC 1361) and S.R. Bommai V. UOI.** The first mentioned decision is by a Constitution bench of seven judges while the latter is by a Constitution bench of seven judges. In view of the fact that in certain respects, S.R. Bommai departs from State of Rajsathan, it would be sufficient to refer to the holdings in S.R. Bommai alone. In S.R. Bommai, the majority opinions are two one was rendered by P.B.

Sawant J. on behalf of himself and Kuldeep Singh J. The other was rendered by B.P. Jeevan Reddy J. and S.C. Agrawal J and with whose reasoning and conclusions S.R.Pandian J. Agreed fully. (The principle of Article 356 has been set out in the said decision in the following words:

"The crucial expressions in art. 356 (1) are if the president "on the receipt of report from the Governor of a State or otherwise" "is satisfied" that "the situation has arisen in which the Government of the State cannot be carried on" "in accordance with the provisions of the Constitution". The conditions precedent to the issuance of the proclamation, therefore, are :

(a) That the President should be satisfied either on the basis of a report from the Governor of the State or otherwise.

(b) That in fact a situation has arisen in which the Government of the State cannot be carried on the accordance with the provisions of the Constitution. In other words the provisions require that the material before the President must be sufficient to indicate that unless a proclamation is issued, it is not possible to carry on the affairs of the State as per the provisions of the Constitution. It is not every situation arising in the State but a situation which shows that the Constitutional Government has become an impossibility, which alone will entitle the president to issue the proclamation. These parameters of the condition precedent to the issuance of the proclamation indicate both the extent of and the limitations on the power of the judicial review of the proclamation issued". (P.B.Sawant j.)

(c) The power conferred by Article 356 is a conditioned power, it is not an absolute power to be exercised in the discretion of the president. The condition is the formation of satisfaction – subjective, no doubt that a situation of the type contemplated

by the clause has arisen. It also involves an obligation to consider which of the several steps specified in sub clauses (a), (b) and (c) should be taken and to what extent? The dissolution of the Legislative Assembly – assuming that it is permissible – is not a matter of course, it should be resorted to only when it is necessary for achieving the purposes of the proclamation. The exercise of the power is made subject to approval of the both house of parliament. Clause (3) is both a check on the power and a safeguard against abuse of power.

It is evident that the satisfaction has to be formed by the President fairly, on a consideration of the report of the Governor and/or other material, if any, placed before him. Of course, the satisfaction referred to in Art. 356 (1) really means the satisfaction of the Union Council of Ministers with the Prime Minister at its head it must, be remembered that it is not each and every non compliance with a particular provision of the Constitution that calls for the exercise of the power under Art 356(1). The non compliance or violation of the Constitution should be such as to lead to or give rise to a situation where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is not indeed difficult nor is it advisable to catalogue the various situations which may arise and which would be comprised within clause (1). It would be more appropriate to deal with concrete cases as and when they arise. The satisfaction of the President referred to in clause (1) may be formed either on the receipt of the report(s) of the Governor or otherwise... He takes the oath, prescribed by Art. 159, to preserve, protect and defend the Constitution and the laws to the best of his ability since he (Governor) cannot himself take any action of the nature contemplated by Art. 356 (1), he reports the matter to the President and it is for the President to be satisfied – whether on the basis of the said report or on the basis of any other information which he may receive otherwise that situation of the nature contemplated by art 356(1) has arisen. It

is then and only then that he can issue the proclamation. Once the proclamation under Art 356(1) is issued or simultaneously with it, the President can take any or all the actions specified in clauses (a), (b) and (c)". (B.P.Jeevan Reddy J.)

Dissolution of Legislative Assembly of a State under Article 356

Notwithstanding the fact that Article 356 does not expressly speak of dissolution of the Legislative Assembly, the majority opinions held, keeping in view the scheme and intendment of the relevant Constitutional provisions and the pracatice obtaining since 1950, that in exercise of the power under Article 356 it is open to the President to dissolve a Legislative Assembly but that such a power can be exercised only after both Houses of Parliament approve the proclamation as contemplated by clause (3). Until then it is held, he can only keep the Legislative Assembly in suspended animation. It is further pointed out that in case the Houses of Parliament disapprove or do not approve the proclamation as contemplated by class (3), the Legislative Assembly springs back to life. (Of course there can be no question of dissolve the Legislative Council wherever it exists in any State).

It will be appropriate here to set out the conclusions contained in the aforesaid two opinions in S.R.Bommai:

I. The validity of the proclamation issued by the President under Art.356 (1) is judicially reviewable to the extent of examining whether it was issued on the basis of any material at all or whether the material was relevant or whether the proclamation was issued in the mala fide exercise of the power. When a prima facie case is made out in the challenge to the proclamation, the burden is one the union Government to prove that the relevant

material did in fact exist. Such material may be either the report of the Governor or other than the report.

II. Art 74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.

III. When the President issues proclamation under Article 356(1), he may exercise all or any of the powers under sub clauses (a), (b) and (c) thereof. It is for him to decide which of the said powers he will exercise and at what stage, taking into consideration the exigencies of the situation.

IV. Since the provisions contaminated in clause (3) of Article 356 are intended to be a check on the powers of the President under clause (1) thereof, it will not be permissible for the President to exercise powers under sub clauses (a), (b) and (c) of the latter clause, to take irreversible actions till at least both the Houses of Parliament have approved of the proclamation. It is for this reason that the President will not be justified in dissolving the Legislative Assembly by using the powers of the Governor under Article 174(2) (b) read with Article 356(1) (a) till at least both the Houses of Parliament approve of the proclamation.

V. If the proclamation issued is held invalid, then notwithstanding the fact that it is approved by both Houses of the Parliament, it will be open to the court to restore the status quo ante to the issuance of the proclamation and hence to restore the Legislative Assembly and the Ministry.

VI. In the appropriate cases, the court will have power by an interim injunction, to restrain the holding of fresh elections to the Legislative Assembly pending the final disposal of the challenge to the validity of the proclamation to avoid the fait accompli and the remedy of judicial review being rendered fruitless. However, the court will not interdict the issuance of the proclamation or the exercise of any other power under the proclamation.

VII. While restoring the status quo ante, it will be open for the court to mould the relief suitably and declare as valid actions taken by

the president till that date. It will also be open for the Parliament and the Legislature of the State to validate the said actions of the President.

VIII. Secularism is a part of the basic structure of the Constitution. The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deeded to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution."

(P.B. Sawant J.)

"(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.

(2) The power conferred by Art.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 Governor – is a pre-condition.t he satisfaction must be formed on relevant material. The recommendations of the Sarkaria Commission with respect to eh exercise of power under Art. 356 do merit serious consideration at the hands of all concerned.

(3) Though the power of dissolving of the Legislative Assembly can be said to be implict in clause (1) of Art.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 control 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 two-month period. In such a case, Government which was dismissed revives. The legislative Assembly, which may have been kept in suspended animation gets re-activated. 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 proclamation or on its revocation. Similarly, if 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. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of Advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice. Article 74 (2) and section 123 of the evidence act cover different fields. It may happen that while defending the proclamation, the Minister or the concerned official 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 section 123.

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. The deletion of clause (5) [which was introduced by the Constitution (38th amendment) act, 1978 removes the cloud on the reviewabilty of the action. When called upon. The union of India has to produce the material on the basis of which action was taken. Ti 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. Even if part of the material is irrelevant, the court cannot interfere as long as there is some material which is relevant to the action taken.

8. If the court strikes down the proclamation, it has the power toe 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.

9. The Constitution of India has created a federation but with a bias in favour of the center. Within the sphere allotted to the States, they are supreme.

10 Secularism is one of the basic features of the Constitution. While freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State Government which pursues unsecular policies or unsecular course of action acts contrary to the Constitutional mandate and renders itself amenable to action under Art. 356".

(Opinion of B.P. Jeevan Reddy J.)

8.5. Recommendation of the Sarkaria Commission on Article 356.

The Sarkaria Commission examined this issue in Chapter Six of its Report. It pointed out in the first instance that the use of Article 356 has been rising with the passage of time. Whereas between 1950 and 1954, it was involved only on 03 occasions, it was invoked on 09 occasions between 1965 and 1969, it rose to 21 instances during the period 1975-1979 and to 18 during the period 1980 – 1987. The commission examined the historical background to Articles 355 and explained that the said provisions are not unprecedented. It referred to similar provisions in the U.S. Constitution and in the Government of India Act, 1935. The Commission observed.

The Constitution Makers expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last report when all alternative corrective fail. Despite the hopes and expectations so emphatically expressed by the farmers in the last 37 years, Article 356 has been brought into action no less than 75 times". While examining Article 355, it referred to similar provisions in the Swiss and West German Constitutions as well. It then opined that where a State is confronted with external aggression or internal disturbance (the expression occurring before the 44th amendment Act) it is open to the Union to adopt all alternative courses available to it to perform its duty of protecting the State. So far as the last mentioned duty in Article 355 is concerned, the commission opined that it has to be discharged in accordance with Article 356. It then examined the scope and effect of Article 356 and pointed out that it is necessary in the first instance to understand the true import and ambit of this provision. The Sarkaria Commission noted that it is not each and every departure from the provisions of the Constitution that attracts the said Article but only a situation where it can be said that there has been a "failure of the Constitutional machinery". A liberal interpretation of Article 356, the commission pointed out, will reduce the States to mere dependencies and would cut at the root of the democratic parliamentary, federal form of Government.

The commission then pointed out that failure of Constitutional machinery can be examined under the four heads, namely,

(a) Political crisis,
(b) Internal subversion
(c) Physical breakdown and
(d) Non compliance with Constitutional directions of the Union Executive.

It examined each of the said situations and opined that in case of political crisis, it would be the duty of the Governor to explore all possibilities for installing a viable Government and if he finds that it is not possible to do so, and if fresh elections can be held without avoidable delay, he should ask the outgoing ministry to continue as a caretaker Government provided it was not defeated on the grounds of mal administration and corruption, he should then dissolve the Assembly.

The commission also warned that involving Article 356 for solving the political crises in the ruling party was an instance of misuse. Regarding internal subversion, it said that if any State Government deliberately pursues an unconstitutional policy it would be a case calling for the invocation of this power but after giving due warnings and opportunity for corrective measures. It then gave instances of physical breakdown such as internal disturbance leading to the paralysis of the State administration, and natural calamities. Coming to non compliance with Constitutional directions of the Union Government, the Commission pointed out that if the State Government does not comply with any directions issued under Article 256, 257 or 339 (2) or under Article 353 during an emergency in spite of due warnings, it may invite the power under Article 356. similarly, the commission pointed out, if a public disorder of a significant magnitude endangering the security of the State takes place, it is the duty of the State Government to inform the centre of such development and if it fails to do so, it may again invite Article 356, subject of course to prior warnings. The commission set out again invites Article 356, subject of course to prior warnings. The commission set out certain illustrations where it can be said that it is a case of improper invoking of Article 356. it then dealt with the wholesale dismissal of Assemblies in 1977 and 1980 and also analyzed the decision of the Supreme Court in State of Rajasthan.

1. The views of the Sarkaria Commission that the extraordinary provisions contained in Article 356 would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail find echo in the views expressed by the founding fathers. The abuse of this Articles can be prevented only by way of reverting to the narrow sense in which it had been explained and understood by them.

Article 365 expressly provides that "where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". It is pointed out hereinbefore that the "directions given in the exercise of executive power of the Union under any of the provisions of this Constitution" would naturally refer to Articles 256 and 257 among other Article 256 casts an obligation upon the States to so exercise their executive power as to ensure compliance with the laws made by Parliament and the existing laws. It further provides that it is open to the Union to issue directions in exercise of its executive power to ensure that the States exercise their executive power in the aforesaid manner. Article 257 goes further and States that the executive power of the State shall be so exercised as not to impede or prejudice the exercise of the executive power of the union and that the executive power of the Union shall extend to give any appropriate directions to ensure the same. Clauses (2) and (3) of Article 257 empower the Union Government to issue executive directions to States with respect to construction and maintenance of means of communication declared in the direction to be of national importance and with respect to railways. It is debatable whether the Union Government can issue executive directions under any other provision of the Constitution

however one thing is beyond doubt – the Union Government cannot issue any executive directions to States to comply with any State laws.

In the above situation, when it may be possible to say that a substiantial non compliance with the directions issued under articiels 256 and 257 would attract Article 365 and may furnish a ground for taking action under Article 356, it cannot be said at the same time that a situation .... In which the Government of the State cannot be carried on in accordance with the provisions of this Constitution" cannot arise in any other way. To put it differently, the non compliance with the provisions of the Constitution means what it says: non compliance i.e., substantial to the governance of the State. Violation of the provisions of the Constitution may occur otherwise than by non compliance with the laws made by parliament and without trenching upon the executive power of the Union. Indeed it may be difficult – may be, inadvisable to catalogue the situation wherein it can be said that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The matter be best left to the wisdom and judgment of the appropriate authority subject, of course, to the provisions of the Constitution and their interpretation by the Supreme Court.

1. Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of Constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the Constitutional crisis, its causes and exigencies of the situation.

2. A warning should be issued to the errant State, in specific terms, which 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 when not taking immediate action lead to disastrous consequences.

3. When an external aggression or internal disturbance paralyses the State administration creating a situation drifting towards a potential breakdown of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

4. (a) 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 avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker Government, provided the Ministry was defeated sole on a major policy issue, unconnected with any allegations of mal administration or corruption and is agreeable 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 be allowed to function. As a matter of convention, the caretaker Government should merely carry on the day to day Government and desist from taking any major policy decision.

(b) If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker Government. The Governor should recommend proclamation of Presidents rule without dissolving the Assembly.

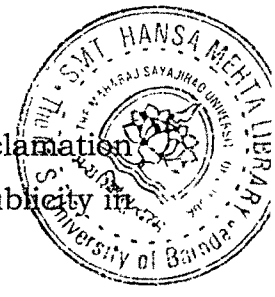
5. Every proclamation should be placed before each house of parliament at the earliest, in any case before the expiry of the two months period contemplated in clause (3) of Article 356.

6. The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

7. Safeguards corresponding, in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable parliament to review continuance in force of a proclamation.

8. To make the remedy of judicial review on the ground of malafides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of Article 74 of the Constitution the material facts and grounds on which Article 356 (1) is invoked should be made an integral part of the proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive more effective.

9. Normally, the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report 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 on Article 356.



10. The Governor's report, on the basis of which a proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.

11. Normally, President's rule in a State should be proclaimed on the basis of the Governors report under Article 356(1).

12. In clause (5) of Article 356, the word 'and' occurring between sub clauses (a) and (b) should be substituted by 'or'

8.6. RECOMMENDATION OF NCRWC[6]

It is advisable to suggest that Art 356 be amended to provide for the following:

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 where in 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 the 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.

d) 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.

e) 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 nowhere else. 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.

8.7. CRITICAL APPRAISAL

The central Government like the State Governments is a party Government. It has often used Article 356, not for the purpose envisaged in the Constitution only but also to meet their political ends. At times President's rule has only been an instrument to bring in the shift of power at the State Level from one political party to another, but more often than not it has been an attempt to change the leadership of the Government at the State level from the non ruling party to the ruling party at the centre. It has also been used by the party in power at the centre to change leadership at the State level from one political faction to another and even in order to provide for shift of power form one individual to another.

Article 356 provides for imposition of President's rule in the States to combat a situation in which the Governance of the State cannot be carried on in accordance with the provisions of the Constitution.' The expression "in accordance with the provisions of the Constitution" is ambivalent and vague. Even the farmers of the Constitution felt it to be so and questioned Dr. Ambedkar about its meaning. Dr. Ambedkar, however, evaded answering the question by resorting to legal sophistry. This evasion was to cost India dear.

Now the question arises: what is the Constitutional machinery, the failure of which the president can deal with under Article 356. Is it enough if a situation has arisen in which one or more provisions of the Constitution cannot be observed?

The power to dismiss the duly elected Government of a State, even while it is enjoying the confidence of the Legislative Assembly, and the very dissolution of a duly elected Legislative assembly (which not only includes the party of the Government but the opposition and independents as well who may themselves be responsible for bringing to light the misgovernance of the Government) by the executive of the union, is a concept which no believer in democracy can easily accept.

Justice V.R. Krishna Iyer termed Article 356 of the Constitution a "live poison" that has been used by the party at the centre to dismiss State Governments that are not to its liking. Soli Sorabjee, an eminent advocate and a former Solicitor General, critically opined that Article 356 has been constantly used for partisan political ends and has subverted democracy in the States as well as the federal character of the Constitution.

[1]In the light of the above facts, the question arises whether Article 356 needs to be amended. In fact there has been a stident demand for deletion of Article 356 but if Article 356 is deleted 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. Therefore deletion of Article 356 is not desirable or necessary. If however, Art. 356 (and the consequential Article 357) is to be deleted then certain other provisions too require to be deleted viz., (i) the words "and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution" in Art. 355; and (ii) Art. 365, in its entirety. But then what would one say regarding Art. 256 and 257*, which no doubt, State the obvious yet if they are deleted, the courts may construe such deletions as bringing about a drastic change in centre State relations. In any event, the stage has not yet arrived in our Constitutional development, where we can think to delete Art. 356. What is required is its proper use and that has not yet arrived in our Constitutional development, where we can think to delete Art. 356. what is required is its proper use and that has to be ensured by appropriate amendments to the Article.

It needs to be remembered that only the spirit of cooperative 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. Under our Constitutionals system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the Government. The power of governance is distributed in several organs and institutions – a sine qua non for good governance. Even assuming the Centre has been given certain

[1] SUPRA

dominance over the States, that dominance should be used strictly for the purpose intended. An unusual and extraordinary power like the one contained in Article 356 cannot be employed for furthering the prospects of a political party or to destabilize a duly elected Government and a duly constituted Legislative Assembly. The consequences of such unfair and improper use may not be evident immediately.