PRESIDENTIAL TAKEOVER OF STATE GOVERNMENT

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Abstract

The Union government can take over a State government under article 356 of the Constitution of India through Presidential proclamation if a situation has arisen in which the government of that State cannot be carried on in accordance with the provisions of the Constitution. The article 356 is a pivotal point around which most of the complex issues relating to Centre-State relation revolve. Due to this very nature, there has always been a controversy regarding this provision. Various aspects of the issue have critically been analysed in this research paper.

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I INTRODUCTION

The Indian constitutional system is unique because of its deeply imbibed culture of "Unity Amidst Diversity". India is a "Union of States" delineated for political and cultural unity, elimination of divisive forces and effective administration of the vast country. The Constitution of India is an organism which provides an excellent format for the smooth interaction between the Union and the States on the one hand and the States inter-se on the other.

The powers have been distributed between the Union and the States keeping in view the objective of the Indian Union. The Union has been given power under articles 245 and 246 to make laws on the matters enumerated in List I of the Seventh Schedule which are of all-India nature and are important for the unity and integrity of the nation. The States have been conferred power under the said provisions to make laws on the matters enumerated in List II of the said schedule which are necessary for the effective governance of the States. In order to ensure co-ordination and co-operation, both-the Union and the States - are given power to make laws on the matters enumerated in List III referred as Concurrent List. The executive power of the Union is extended under article 73 to the extent of its legislative power and the executive power of the States to the extent of their legislative powers under article 162.

Despite a clear demarcation of powers between the two, the Union has been empowered to legislate on the subject of State in certain situations specified under articles 249, 250, 252 and 253.

The demarcation of powers was made after a long debate in the Constituent Assembly. There were difference of opinion on the many provisions but, a consensus was ultimately arrived at.

A clear bent in favour of the Union is one of the characteristic features of the Indian constitutional system. The feature was evidently considered essential for the maintenance of unity and integrity of the country in view of its peculiar historical, geographical and political situations.

The circumstances under which the Union can enter the jurisdiction of the States are well defined. "Failure of constitutional machinery" under article 356 is one of such circumstances in which the Union may assume the legislative and executive powers of a State by a Presidential

proclamation if the government of the State cannot be carried on in accordance with the provisions of the Constitution. The power under this provision curtails the authority of the State temporarily and thus, is a drastic power. The provision, therefore, has been placed under the part "Emergency Provisions" dealing with emergency powers. Obviously, an emergency power needs a great caution whenever it is exercised.

Due to the aforementioned nature of the power under article 356, the demand for deletion of the provision was raised from certain quarters from time to time. Consequently, the provision became highly controversial.

The issue is a delicate one deeply affecting the Centre-State relations. However, it cannot be argued that the provision is a device in the hands of the Union to suppress the opposition party in a State and therefore unnecessary. The rationale behind the provision is clearly perceivable. The fault cannot be traced to the statutory mandate. As a matter of fact, it lies with the authority exercising the power under particular circumstances.

II RATIONALE OF THE PROVISION

Article 356 empowers the Union government to take over executive and legislative powers of any State by issuing a Presidential proclamation. In this way, the Union government is authorized to interfere in the affairs of the State in a direct and drastic manner. The rationale behind the article may be discussed under the following heads: 1. Objective of the Indian Union, 2. Nature of State Autonomy, 3. Duty of the Union towards States and 4. Justification of the Provision.

1. Objective of the Indian Union

It is usual practice amongst the constitutional experts to categories the Constitutions as federal or unitary which may not always be proper because, the Constitution of a country is product of a number of historical geographical and political factors distinguished from that of another country. Therefore, there is a difficulty in the categorisation of Indian Constitution in either of the two, *i.e.*, federal or unitary.

India has always been a distinct entity from time immemorial. It is regarded as a country of diversity where casteism, religion, communalism, regionalism and linguism work as divisive forces. These forces were at work throughout the history of the country.

A cursory glance at the long history of India-cultural, geographical and political- reveals that despite diversity, attempts were made from time to time to establish unity. The framers of the Constitution were quite aware of the aforesaid background and the idea of a United India informed each and every part of the Constitution.

When the Constituent Assembly of India met, the founding fathers were unanimous in insisting that there should be one governmental edifice for the whole of the country. The Constitution was so framed as to meet the peculiar situation of the country. The country was deliberately described as a "Union of State" under article 1 to discountenance the divisive forces and the term federation was purposely avoided.

2. Nature of State Autonomy

The term autonomy has been used in the sense of political independence and self government which negates political interference of another government.[1]

The States were not independent before the formation of Indian Union. They had no such status as the confederating States of United States of America or other federations had. Therefore, unlike the other federations, the Indian Union is not result of an agreement among the independent governments surrendering a specified part of their sovereignty or autonomy to a new federal government. Consequently, Indian States do not have a moral or legal right to secede and have autonomy distinguished from that of those States of other federations. The nature of State autonomy was considered in the Constituent Assembly as under: [2]

> The Drafting Committee wanted to make it clear that though India was to be a federation, ... not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement, no States has right to secede from it.

The powers of the Union and States are well defined by the Constitution. Therefore, neither of the two can exercise any power which has not been conferred by the Constitution. The Constitution is so well balanced that it confers on the Union adequate power to ensure the unity and integrity of the nation on the one hand and maximum autonomy to the States on the other.

[1] 4A *Words and Phrases* 662 (Permanent ed. 1658 to Date 1969); 2 *New Survey of Universal Knowledge Encyclopedia Britannica* 789 (1959) and 2 *The Encyclopedia American* (The International Reference Work First published in 1829) 667 (1960).
[2] VII *Constituent Assembly Debate* 43.

The Constitution is blamed to be biased in favour of the Union. No doubt, the Constitution assigns to the Union too large a field but, it does not mean that autonomy of the State has been curtailed. In response to this kind of criticism, Dr. B.R. Ambedkar, chairman of the Drafting Committee, stated that: [3]

> The States under our Constitution are in no way dependent upon the Centre for their legislative and executive authority. The Centre and the States are co-equal in this matter ..... It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal constitution.

The nature of the State autonomy was observed in *S.R. Bommai* v. *Union of India* as follows : [4] "The Constitution of India has created a federation but with a bias in favour of the Centre. Within the sphere allotted to the States, they are supreme".

Clearly, the States have no right apart from those conferred by the Constitution and they are supreme within the spheres allotted to them. Thus, any interference of the Union with the affairs of the State is not invasion on the authority of the State if the Constitution permits that.

3. Duty of the Union towards States

In view of objective of the Indian Union, a duty is imposed on the Union under article 355 to protect States against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

Article 356 empowers the Union government to take over the executive and legislative powers of a State in a situation in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. Evidently, such a power is concomitant to the constitutional duty of the Union under article 355 to ensure the governance of the State in accordance with the provisions of the Constitution.

4. Justification of the Provision

In view of the aforesaid duty, the interference of the Union government with the affairs of the State government cannot be deemed to be an encroachment on the authority of the State. This

[3] XI *Constituent Assembly Debate* 976.
[4] AIR 1994 SC 1918 at 2112 para 365 (9).

kind of criticism was refuted by the Framers of the Constitution that is clear from the following statement of Dr. Ambedkar: [5]

> ... in order to make it quite clear that Article 278 and 278 A [corresponding to Article 356 and 357] are not to be deemed as a wanton invasion by the Centre upon the authority of provinces, we propose to introduce Article 277-A [corresponding to Article 355].

A provision similar to article 356 also existed under section 93 of the Government of India Act, 1935[6] which is regarded as the base for the laying down of the scheme of Centre-State relations under the present Constitution.

Really, there is no escape from article 356 within the scheme of the Constitution in case of failure of constitutional machinery in a State. This article is the only means to resolve this kind of problem. It is another thing that the article may have been misused on many occasions.

III THE CONSTITUTIONAL CONTOUR

Article 356 is the constitutional mandate contained in Part XVIII under head "Emergency Provisions" and marginal note "Provisions in case of failure of constitutional machinery in States." It is clear from the positioning of this article that it is to be invoked in an emergent situation, viz. the failure of constitutional machinery. Provision of this article is divided into 5 clauses. Clause 1 is concerned with condition for invocation of the article and its consequences. Other clauses of the article deal with procedure for approval and extension of duration of the invocation.

Clause 1 of article 356 is as under:

> 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 -
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> (a) assume to himself all or any of the functions of the Governor 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 and
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> (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

[5] IX *Constituent Assembly Debate* 133.
[6] *See, The Law Report 1935, Public General Acts* (November 20, 1934 – October 25, 1935) 629.

Under sub cl. (c), the President can make incidental and consequential provisions necessary for giving effect to the objects of the proclamation.

Similar provisions have been made under section 92 of the Constitution of Jammu & Kashmir, for the State of Jammu & Kashmir, under section 51 of the Government of Union Territories Act, 1963 for the Union Territories and under article 239-AB for Delhi because, article 356 is not applicable in these cases.

It is clear from the provision of article 356 (1) that Presidential proclamation can be issued only when the President is satisfied that in a State, a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution and this satisfaction is formed either on the report from the Governor of the State or otherwise. The proclamation issued under this article is popularly known as President's rule. The instances of president's rule are indicated in the study as the case of State along with the date on which the incidents occurred. The provision of this article may be discussed under the following main heads: 1. Presidential Satisfaction and 2. Failure of Constitutional Machinery.

1. Presidential Satisfaction

As it is well known, in Parliamentary form of Government, real executive power vests in the Cabinet, not in the President. The President is nominal head and is bound to act in accordance with the decision of the Council of Ministers. This political philosophy is enshrined in article 74 (1) according to which "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice." It is the reason that President is not authorised to take individual decision. One thing is noticeable here that the word "shall" inserted by the Constitution (42nd Amendment) Act, 1976 to article 74 (1) completely excludes the scope for the individual Presidential decision except to send back the advice to reconsider once again under the proviso to article 74 (1). One thing worth mentioning here is that, before 1976, there was some scope for President's individual satisfaction because before 1976, provision of article 74 (1) was as follows : "There shall be a Council of Ministers at the head to aid and advise the President in the exercise of his functions".

At least one thing is clear about Presidential satisfaction that the President and the Council of Ministers act in co-ordination to each other and harmoniously. The course of events surrounding proposed proclamation under article 356 in October 22, 1997[7] with respect to State of Uttar Pradesh and in September 25, 1998[8] with respect to State of Bihar throw light on above mentioned aspect. In both the cases, the Council of Ministers recommended Presidential proclamation but, the President sent them back for reconsideration under proviso to article 74 (1) and the Council of Ministers did not press its recommendation. These instances are clear evidence of the President's role under article 356 and the constitutionally desired harmony between acts of the President and the Council of Ministers.

The Presidential satisfaction is formed on the report of the Governor or otherwise which means that the satisfaction formed depends on distinct idea, views or political attitude which work in the mind. It implies that it is subjective which is another aspect of nature of the Presidential satisfaction.

Scope for Judicial Review of Presidential Satisfaction

So for as question of scope for judicial review of the Presidential satisfaction is concerned, there was always a tussle between the executive and the judiciary on the issue of its reviewability and the court was barred to scrutinize it on the ground of mandate of cl. 2 of article 74 which is as follows: "The question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into in any court". To exclude the Presidential satisfaction from the ambit of judicial review, cl. 5 was inserted in article 356 by the Constitution (38th Amendment) Act, 1975 which was as follows : "Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in cl. (1) shall be final and conclusive and shall not be questioned in any court on any ground."

But, in the *State of Rajasthan* v. *Union of India*[9], the scope for judicial review of the Presidential satisfaction was evolved on the grounds : (i) Where the order was malafide, or (ii) Where the authority passing the order took into account extraneous or irrelevant consideration, or (iii) Where the authority passing the order failed to take into account relevant considerations.

[7] XXXXIII *Asian Recorder* (1997) 26897.
[8] XXXXIV *Asian Recorder* (1998) 27682.
[9] AIR 1977 SC 1361.

All the seven judges, namely, Beg[10] C.J., Chandrachud[11] J., Bhagwati and Gupta[12] J.J., Goswami[13], Untwalin[14] and Fazal Ali[15] were in agreement on the aforesaid three grounds. A fourth ground was considered by Beg C.J. as follows : "Where power was exercised against a Council of Ministers in the States simply because the Council of Ministers belonged to a particular caste or creed"[16]. But, it failed to win support from other members of the Bench.

The decision in the *Rajasthan Case* is a landmark in the history of article 356 in as much as room for judicial review of Presidential satisfaction was established in spite of a express bar of cl. 5 of this article. After the judgment of this case, cl. 5 was repealed by the Constitution (44th Amendment) Act, 1978 and thus, complete exclusion of judicial review of the Presidential satisfaction was removed.

But, the tussle between the government and judiciary regarding reviewability of the Presidential satisfaction never ended and a plea was always taken that due to being subjective, it is out of ambit of judicial review. In *S.R. Bommai* v. *Union of India*[17], the issue was considered thoroughly. The difficulty in testing the Presidential satisfaction was expressed by Ahmadi J. in the following words : "The opinion which the President would form ... would be based on his political judgment and it would difficult to evolve judicially manageable norms for scrutinising such political decision."[18]

Ramaswami J. expressed his opinion on this point as under : "The satisfaction of the President under article 356 (1) is basically subjective satisfaction based on the material on record. It may not be susceptible to scientific verification hedged with several imponderables."[19]

Although, the court cannot inquire as to what advice was tendered to the President, it can direct the government to produce the material before the court on the basis of which such advice was formed, as is clear from the observation made by Ahmadi J. as under: [20]

[10] *Id* at 1389 para 59.
[11] *Id* at 1400 para 127.
[12] *Id* at 1414-15 para 144.
[13] *Id* at 1420 para 170.
[14] *Id* at 1423-24 para 180.
[15] *Id* at 1439-40 para 206-7.
[16] *Id* at 1376 para 28.
[17] AIR 1994 SC 1918.
[18] *Id* at 1955 para 34.
[19] *Id* at 2025 para 136.

> It would suffice to say that since reasons would form part of advice, the Court would be precluded from calling for their disclosure but I agree that Article 74 (2) is no bar to the production of all the material on which the ministerial advice was based. Of course, the privilege available under the Evidence Act, Ss. 123 and 124 would stand on different footing and can be claimed dehors Article 74 (2) of the Constitution.

B.P. Jeevan Reddy J. expressed his opinion on this point more clearly in the following words: [21]

> The Court will not ask what advice was tendered to the President, what deliberations or discussions took place between the President and his Ministers and how was the ultimate decision arrived at. The Court will only see what was the material on the basis of which the requisite satisfaction is formed and whether it is relevant to the action under Article 356 (1).

In response to the plea that advice comprises material and, therefore, is beyond the scope of judicial review, he said: [22]

> The material placed before the President by the Council of Ministers does not thereby become part of advice. Advice is what is based on the said material. Material is not advice.... if the advice is tendered in writing, in such a case that writing is the advice and is covered by the protection provided by Article 74 (2).

In the light of aforesaid observations, it becomes clear that the Presidential satisfaction is not totally beyond the sweep of judicial review. The material on the basis of which it is formed can be scrutinized and it can be declared unconstitutional if it is not based reasonably on the material existing in the case under consideration.

Ground for Presidential Satisfaction

There are two grounds for the Presidential satisfaction - Governor's report or otherwise. The Governor's report is the main source of Presidential satisfaction. Reason is that the Governor is the main channel between the Union and States and the most reliable source for the information due to his position which is clear from the following provisions of the Constitution :

(i) Governor is appointed by the President under article 155.

(ii) Under article 154 (1), the executive power of the State is vested in the Governor to be exercised by him either directly or through officers subordinate to him.

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[20] *Id* at 1954 para 32.
[21] *Id* at 2072 para 256.
[22] *Id* at 2072-73 para 257.

(iii) All the executive actions are taken in his name under article 166 (1).

(iv) He is communicated all the decisions of the Council of Ministers under article 167 (a) and (b). Under article 163 (1), in spite of a Council of Ministers to aid and advice him, he has power to exercise his functions in his discretion also if he is required so and under cl. 2 of the same article, validity of anything done in his discretion shall not be called in question on any ground.

The position of the Governor was described as key actor in the *Bommai Case* in these words: [23] "The key actor in the Centre State relations is the Governor, a bridge between the Union and the States".

Due to Governor's position, it is easy for him to examine whether the government of the State can be carried on in accordance with the provisions of the Constitution. It is the reason that the phrase "On receipt of a report from the Governor" has been placed before the term "otherwise". Therefore, the Presidential satisfaction should be formed generally on the Governor's report. Support of other sources should be taken only when the Governor's report is not reliable because of legal malafides.

The Sarkaria Commission[24] recommended on this aspect that:[25] "... normally, President's rule in a State should be proclaimed on the basis of the Governor's report under article 356. This practice will operate ... as a check against arbitrary or hasty exercise of this extraordinary power."

Clearly, the Presidential satisfaction on the basis of other sources in disregard or in absence of Governor's report may constitute prima facie evidence of improper invocation of the article.

B.P. Jeevan Raddy J. observed about the extent of reliability of the Governor's report in the *Bommai Case* as under : [26]

[23] *Supra* note 17 at 2012 para 113.
[24] The Commission was set up under the chairmanship of Shri R.S. Sarkaria, a retired judge of the Supreme Court, by the Government of India vide notification dated 9th June 1983 to examine and review the working of the existing arrangement between the Union and State and recommend such changes or other measures as may be appropriate. The Report was published in 1988 entitled as "*Report of Commission on Centre-State Relation*s" (Part I).
[25] *Id* at 177 para 6.6.29 and at 180 para 6.8.11.
[26] *Supra* note 17 at 2096-97 para 323.

> When the Article speaks the satisfaction being formed on the basis of the Governor's report, the legal malafides, if any, of the Governor cannot be said to be irrelevant. The Governor's report cannot be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report .....

About the Governor's obligation while sending the report, it was observed in the *Bommai Case* that : "Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent with his oath."[27]

From time to time, precautions have been recommended to be adopted by the Governor while sending report for action under article 356. These are as follows:

(i) The Governor should explore all the possibilities of having a government enjoying majority support before he recommends Presidential rule in a situation of Political crises.[28] This kind of situation may occur where – (a) after a general election, no party or coalition of parties is able to secure an absolute majority[29]; or (b) a ministry resigns or is dismissed on loss of its majority[30]; or (c) the party having a majority in the Assembly refuses to form or continue the ministry.[31]

(ii) In such a situation, if installation of a government is not possible and fresh elections can be held without avoidable delay, the Governor should ask 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 is agreeable to continue. The Governor should then dissolve the Assembly leaving the resolution of the constitutional crisis to the electorate.[32]

(iii) If the ingredients described above are absent, the Governor should recommend Presidential rule without dissolving the Assembly.[33]

(iv) The report of the Governor 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[34].

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[27] *Ibid.*
[28] *Supra* note 24 at 179 para 6.8.04.
[29] *Id* at 171 para 6.4.02 (i).
[30] *Id* at 172 para 6.4.02 (ii).
[31] *Ibid.*
[32] *Id* at 179 para 6.8.04 (a).
[33] *Id* at 180 para 6.8.04 (b).

The Venkatachaliah Commission[35] has also recommended the same precautions as is mentioned in para (ii) and (iv).[36]

(v) The Governor should be very careful where the support to a ministry is claimed to have been withdrawn by some MLAs. In all such cases, the Governor should test the strength of the ministry on the floor of the House. The Governor should take the view of failure of constitutional machinery only after testing the strength on the floor of the House.[37]

(vi) The Governor can dismiss the State Government only where a Chief Minister refuses to resign after the ministry is defeated on a motion of no-confidence.[38]

The aforesaid precautions are very significant for preventing misuse of power. The need is only to follow them in their letter and spirit.

The term "Otherwise" under article 356 (1) empowers the President to act not only on the report of the Governor but on the information received from other sources also. It implies that the Governor's Report is not necessarily pre-condition for the Presidential satisfaction. The President himself is competent to assess the situation in the State when the Governor is either unwilling or unable to report.

The term "Otherwise" was not present in the original draft of the Constitution. After a great deal of discussion, the Constituent Assembly decided to insert the term in Draft article 278 (corresponding to article 356) in the light of duty cost on the Union towards States under article 277-A (corresponding to article 355) as is clear from the remark made in this regard by Dr. Ambedkar, chairman of the Drafting Committee.[39]

In adding "otherwise" in article 356(1), the Governor General's discretionary power under section 12(2) of the Government of India Act, 1935 may have been taken into consideration. Section 12 (2) was as follows : "If and in so for as any special responsibility of the

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[34] *Id* at 180 para 6.8.09.
[35] The Commission was constituted under chairmanship of Shri M.N. Venkatachalia, the former Chief Justice of India, by a resolution of the Government of India dated 22nd February 2000 (Vol. I at 1 para 1.1.1) to examine as to how the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and recommend changes (at 2-3 para 1.3.1). The Report was submitted to the Government on the 31st March 2002 (at vii) entitled as "*Report of the National Commission to Review the Working of the Constitution*" (Vol. I).
[36] *Id* at 170-71 paras 8.20.3 and 8.20.5.
[37] *See, supra* note 17 at 1988 para 77 and 2097-98 paras 325 and 327; *Supra* note 35 at 170 para 8.20.3.
[38] *Supra* note 35 at 170 para 8.20.3.
[39] *IX Constituent Assembly Debate 134.*

Governor General is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken."[40]

The Framers' of the Constitution did not consider any specific source which could be considered under the term "otherwise". The Supreme Court of India in *State of Karnataka* v. *Union of India* upheld the information received from the Commission of Inquiry under the sweep of "otherwise".[41]

The Sarkaria Commission suggested criteria of information received under the term "otherwise" as follows : "... the information received otherwise by the President must contain all the important facts to enable the President to form the requisite opinion."[42]

Keeping in view the aforesaid discussion, it can be said that the type of sources of the Presidential satisfaction is not questionable. What is considerable is whether such a satisfaction could reasonably be formed on the ground of information received from the source other than Governor's report in the concerned case.

2. Failure of Constitutional Machinery

According to article 356, failure of constitutional machinery is the pre-condition for the invocation of this article. In the Constitution, nowhere, failure of constitutional machinery is defined or situations, amounting to it are given. In article 365, non-compliance with the directions given by the Union is supposed to be the situation as contemplated in article 356.

In article 356, the expression, "the government of the State cannot be carried on in accordance with the provisions of the Constitution" is couched in general and wide terms. In day-to-day administration of the State, its functionaries take decisions or actions in discharge of their multifarious responsibilities some of which may not be strictly in accordance with all the provisions of the Constitution. In such a circumstance, it cannot be said that every such breach or infraction of a constitutional provision, irrespective of its significance, constitutes the situation contemplated in the article.

[40] *The Law Report 1935, Public General Acts* (November 20, 1934 – October 25, 1935) 576.
[41] AIR 1978 S C 68 at 95 para 40.
[42] *Supra* note 24 at 177 para 6.6.27.

There was a great difficulty before the Framers of the Constitution in providing any concrete criterion for judging the situations contemplated in this article. Pandit Thankur Das Bhargava rightly stated that: [43]

> ... no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted ..... Unless and until every attempts has been made, and unless he (the Governor) finds that even the ordinary liberties cannot be enjoyed by the people, he will not come to the conclusion that the Constitution has failed.

It is clear that the Constitution can be held to have failed only when all the provisions relating to the State under consideration have been exhausted to maintain the governance of the State and after all, the ordinary liberty of the people cannot be enjoyed. In the Constituent Assembly, the expression failure of constitutional machinery was left unexplained, as is clear from the following statement of Dr. B.R. Ambedkar, chairman of the Drafting Committee: "The expression "failure of machinery" I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning."[44]

It is remarkable here that in the Government of India Act, 1935, "Provisions in Case of Failure of Constitutional Machinery" have been made under sections 45 and 93 with respect to Federation and provinces respectively. But, nowhere, the expression failure of constitutional machinery has been defined or explained.

Specification of Failure of Constitutional Machinery

"Failure of constitutional machinery" is such a unique phenomenon that can neither be precisely defined nor a scientifically adopted standard can be given to evaluate the situation contemplated in article 356. In such a circumstance, it becomes difficult to specify all possible situations contemplated in this article. The difficulty felt from time to time in specifying the situation is evidence of magnitude of difficulty. Therefore, it is not possible to catalogue all unprecedented situations as failure of the constitutional machinery. What is possible is only to evaluate the concrete situations on the basis of provisions relating to States and situations

[43] *Supra* note 39 at 169.
[44] *Id* at 177.

recognised as failure of constitutional machinery. The difficulty in this regard was realised by the Sarkaria Commission as under: [45]

> A failure of constitutional machinery may occur in a number of ways. Factors which contribute to such a situation are diverse and imponderable. It is, therefore, difficult to give an exhaustive catalogue of all situations which would fall within the sweep of the phrase...

This kind of difficulty was also observed in the *Bommai Case*[46]. However, the Sarkaria Commission categorised certain situations as failure of constitutional machinery as follows: 1. Political Crisis, 2. Internal Subversion, 3. Physical Breakdown, 4. Non-compliance with the Union's Direction and 5. Reorganisation of States.

1. Political Crisis

Political crisis may be assessed on the following provisions of the Constitution-(i) There shall be a democratically elected Legislature for every State under article 168 and (ii) Under article 163(1), there shall be a Council of Ministers to aid and advise the Governor and the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State under article 164(2).

These constitutional provisions establish the system for the governance of the State from which we can infer that if no political party or coalition of parties is in a position to form the Ministry either after an election or at any stage during the tenure of the Assembly, or, if the Ministry fails to carry out its responsibility to the Assembly, it will amount to failure of constitutional machinery. Since these situations arise due to political failure or dead-lock or crisis, therefore, they may be termed "political crisis".

The Sarkaria Commission has mentioned that the failure of constitutional machinery due to political crisis may occur in the following ways :

(i) Where, after a general election, no party or coalition of parties is able to secure an absolute majority and despite exploration of all possible alternatives by the Governor, a situation emerges in which there is complete demonstrated inability to form a government commanding confidence of the Assembly.[47] Such kind of situation arose in following 5 cases :1. Goa Case -

[45] *Supra* note 24 at 171 para 6.4.01.
[46] *Supra* note 17 at 2056 para 217.
[47] *Supra* note 24 at 171 para 6.4.02 (i).

2nd December 1989[48], 2. U.P. Case-17th October 1996[49], 3. U.P. Case - 8th March 2002,[50] 4. Bihar Case- 7th March 2005[51] and 5. J. & K. Case 9th January 2015[52] and the presidential rule was imposed.

(ii) Where a ministry resigns or is dismissed on loss of its majority support and no alternative government commending the confidence of the Assembly can be formed.[53] On this ground, the presidential rule was imposed in the following 39 cases : 1. Orissa Case – 25th February 1961[54], 2. Kerala Case – 10th September 1964[55], 3. West Bengal - 20th February 1968[56], 4. Bihar Case - 29th June 1968[57], 5. Punjab Case - 23rd August 1968[58], 6. Kerala Case - 4th August 1970[59], 7. Orissa Case - 11th January 1971[60], 8. Orissa Case - 23rd January 1971[61], 9. Mysore (Karnataka) Case - 27th March 1971[62], 10. Mysore (Karnataka) Case - 14th April 1971[63], 11. Gujarat Case - 13th May 1971[64], 12. Punjab Case - 15th June 1971[65], 13. West Bengal Case - 29th June 1971[66],14. Manipur Case - 28th March 1973[67], 15. Nagaland Case - 22nd March 1975[68], 16. Gujarat Case - 12th March 1976[69], 17. Manipur Case - 16th May 1977[70], 18. Tripura Case - 5th November 1977[71], 19. Assam Case - 12th December 1979[72], 20. Kerala Case - 21st October 1981[73], 21. Kerala Case - 17th March 1982[74], 22. Assam Case - 19th March 1982[75], 23. Sikkim

[48] *Data India* November 27 – December 3, 1989 at 573.
[49] XXXX *Asian Recorder* (1996) 26049.
[50] *The Hindustan Times* (New Delhi) March 9, 2002 at front page.
[51] *The Hindu* March 8, 2005 at front page.
[52] *The Hindu* January 10, 2015 at front page.
[53] *Supra* note 24 at 172 para 6.4.02 (ii).
[54] VII *Asian Recorder* (1961) 3876.
[55] X *Asian Recorder* (1964) 6079.
[56] XIV *Asian Recorder* (1968) 8210.
[57] *Id* at 8420.
[58] *Id* at 8516.
[59] XV *Asian Recorder* (1970) 9747.
[60] XVIII *Keesing's Contemporary Archives* (1971-72) 24512.
[61] *Ibid.*
[62] *Id* at 24721.
[63] *Ibid.*
[64] *Ibid.*
[65] XVII *Asian Recorder* (1971) 10247.
[66] XVIII *Keesing's Contemporary Archives* (1971-72) 24723.
[67] XIX *Asian Recorder* (1973) 11398.
[68] XXII *Keesing's Contemporary Archives* (1976) 27597.
[69] XXII *Asian Recorder* (1976) 13109.
[70] XVIII *Asian Recorder* (1977) 13797-98.
[71] *Id* at 14070.
[72] XXVI *Asian Recorder* (1980) 15258.
[73] XXVII *Asian Recorder* (1981) 16322.
[74] XXVIII *Asian Recorder* (1982) 16568.

Case - 25th May 1984[76], 24. Mizoram Case - 7th September 1988[77], 25. Haryana Case - 6th April 1991[78], 26. U.P. Case - 18th October 1995[79], 27. U.P. Case - 27th October 1995[80], 28. Manipur Case - 2nd June 2001[81], 29. Goa Case- 4th March 2005[82], 30. Karnataka Case- 9th October 2007[83], 31. Karnataka Case- 20th November 2007[84], 32. Nagaland Case- 3rd January 2008[85], 33. J.&K. Case- 10th July 2008[86], 34. Jharkhand Case- 19th January 2009[87], 35. Meghalaya Case- 19th March 2009[88], 36. Jharkhand Case- 1st June 2010[89], 37. Jharkhand Case- 18th January 2013,[90] 38. Andhra Pradesh Case- 1st March 2014[91]and 39. J.&K. Case- 9th January 2016.[92]

(iii) Where the party having a majority refuses to form or continue the ministry and all possible alternatives explored by the Governor to find a ministry commending a majority in the Assembly have failed.[93] The situation (ii) and (iii) were also recognised as failure of constitutional machinery due to political crisis by the Administrative Reforms Commission.[94]

2. Internal Subversion

The failure of constitutional machinery due to internal subversion may occur where the government of a State is carried on in a manner contrary to the provisions of the Constitution.

Under article 355, a duty is imposed on the Union to protect States against external aggression and internal disturbance and to ensure the government of every State to be carried on in accordance with the provisions of the Constitution. As a corollary of this provision, the States are also under a liability not to carry on the government in a manner contrary to or subversive of

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[75] *Ibid.*
[76] XXX *Asian Recorder* (1984) 17791.
[77] XXXIV *Asian Recorder* (1988) 20259.
[78] XXXVI *Asian Recorder* (1991) 21705.
[79] XXXXI *Asian Recorder* (1995) 25203.
[80] *Id* at 25218-219.
[81] *Data India* June 9, 2001 at 505.
[82] *The Times of India* March 5, 2005 at front page.
[83] *The Hindu* October 10, 2007 at front page.
[84] *The Hindu* November 21, 2007 at front page.
[85] *The Hindu* January 4, 2008 at 14.
[86] *The Hindu* July 12, 2008 at front page and at 5.
[87] *The Hindu* January 20, 2009 at 10.
[88] *The Hindu* March 20, 2009 at front page.
[89] *The Hindu* June 2, 2010 at front page.
[90] *The Hindu* January 19, 2013 at front page.
[91] *The Hindu* March 2, 2014 at front page.
[92] *The Hindu* January 10, 2016 at front page.
[93] *Supra* note 24 at 172 para 6.4.02 (iii).
[94] I *Report of Administrative Reforms Commission* (September 1967) 276.

the provisions of the Constitution. In the light of this principle, the following are some situations amounting to breakdown of constitutional machinery due to internal subversion :

(i) Where the government of a State, although carried on by a ministry enjoying majority support in the Assembly, has been deliberately conducted for a period of time in disregard of the Constitution and the law.[95]

(ii) Where the government of a State deliberately creates a dead-lock or pursues a policy to bring the system of responsible government to a standstill.[96] Such kind of situation arose in 4 cases : 1. U.P. Case - 6th December 1992[97] and 2-4. M.P., H.P. and Rajasthan Case - 15th December 1992[98] and the States were placed under the Presidential rule.

(iii) Where the State government, although ostensibly acting within the constitutional forms, designedly flouts principles and conventions of responsible government.[99] Such kind of situation arose in 2 cases : 1. Nagaland Case - 3rd April 1992[100] and 2. Gujarat Case – 19th September 1996[101] and the States were placed under the Presidential rule.

(iv) Where a ministry, although properly constituted, violates the provision of the Constitution, or seeks to use its constitutional powers for purposes not authorised by the Constitution.[102] This situation was also recognized by the Administrative Reforms Commission.[103]

(v) Where the State government is fomenting a violent revolution or revolt with or without the connivance of a foreign power.[104]

3. Physical Breakdown

The following are instances of physical break-down constituting failure of constitutional machinery :

[95] *Supra* note 24 at 172 para 6.4.10 (i).
[96] *Ibid* para 6.4.10(ii).
[97] XXXIX *Asian Recorder* (1993) 22818.
[98] *Supra* note 17 at 2104 para 384.
[99] *Supra* note 24 at 172 para 6.4.10 (iii).
[100] XXXVII *Asian Recorder* (1992) 22292.
[101] XXXXII *Asian Recorder* (1996) 25985-86.
[102] *Supra* note 24 at 173 para 6.4.10 (iv).
[103] *Supra* note 92 at 276.
[104] *Supra* note 24 at 173 para 6.4.10 (v).

(i) Where a ministry, although properly constituted, either refuses to discharge its responsibilities to deal with a situation of internal disturbance, or is unable to deal with such a situation which paralyses the administration and endangers the security of the State.[105]

(ii) Where a natural calamity such as an earthquake, cyclone, epidemic, flood, *etc.* of unprecedented magnitude and severity, completely paralyses the administration and endangers the security of the State and the State Government is unwilling or unable to exercise its governmental power to deal with the situation.[106]

In *re A. Seeramulu*, these situations were also held as failure of constitutional machinery.[107]

(iii) The internal disturbance may also be considered as physical break down. To protect States against internal disturbance is one of the three duties of the Union under article 355. Article 356 could not be invoked on the basis of internal disturbance before June 20, 1979, as it was one of the three grounds for the invocation of article 352. The term "armed rebellion" was substituted for "internal disturbance" in article 352 by the Constitution (Forty-fourth Amendment) Act, 1978 which became effective from June 20, 1979. But, necessary change was not made in article 355. Hence, internal disturbance is a proper ground for invocation of article 356.

It is difficult to define precisely the term internal disturbance. It conveys the sense of domestic chaos which may take the colour of security threat. Such chaos may occur due to various causes. Large public disorder which throws out the control of administration and endangers the security of the State is, ordinarily, one cause. It can be natural also because natural calamity such as flood, cyclone, earthquake or epidemic may paralyse the government.[108] It is different from ordinary problems relating to law and order. In terms of gravity and magnitude, it is intended to connote a far serious situation.

The difference between a situation of public disorder and internal disturbance is not only of degree but of kind also. The former involves minor breaches of the peace of purely local importance while, the latter is an aggravated form of public disorder which endangers the

[105] *Supra* note 24 at 173 para 6.4.11(i).
[106] *Ibid* para 6.4.11(ii).
[107] AIR 1974 AP 106 at 110 para 9.
[108] *See*, *supra* note 24 at 168 para 6.3.04.

security of the State.[109] If it paralyses the State administration and the Government refuses to deal with the situation, it will amount to the abdication of governmental power and such abdication can be assessed as a physical breakdown.

The Presidential rule was imposed on the ground of physical breakdown in the following 7 cases : 1. Punjab Case - 11th May 1987[110], 2. Punjab Case - 6th March 1988[111], 3. J. & K. Case - 19th July 1990[112], 4. Assam Case - 28th November 1990[113], 5. Manipur Case – 31st December 1993[114], 6. Bihar Case - 28th March 1995[115] and 7. Bihar Case - 12th February 1999.[116]

4. Non-compliance with the Union's Direction

Article 365 of the Constitution declares non-compliance with or not giving effect to the directions given by the Union as the situation contemplated in article 356. Article 365 is as under:

> 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.

About the nature of this article, B. P. Jeevan Raddy expressed his view in the *Bommai Case* as follows : [117]

> The Article merely sets out one instance .... It cannot be read as exhaustive of the situation .... Suffice it to say that the directions given must be lawful and their disobedience must give rise to a situation contemplated by Article 356(1).

The provisions of articles 256, 257, 339(2), 344(6), 350-A, 351 and 360(3) empower the Union to issue directions to the States.

It may be asked whether all non-compliance with the directions of the Union will amount to failure of constitutional machinery? The answer is reasonably no, because, all directions cannot be weighed equally. For example, direction regarding means of communication of

[109] *Id* at 170 para 6.3.13.
[110] XXXIII *Asian Recorder* (1987) 19499.
[111] XXXIV *Asian Recorder* (1988) 19989.
[112] XXXVI *Asian Recorder* (1990) 21038.
[113] XXXVII *Asian Recorder* (1991) 21521.
[114] *Data India* 20-31 December 1993 at 1025-26.
[115] 41 *Keesing's Record of World Events* (1995) 40506.
[116] XXXX *Asian Recorder* (1999) 27986-87.
[117] *Supra* note 17 at 2094 para 315.

military importance under article 257 (2) and a direction for the implementation of the recommendations of Language Commission under article 344 (6) cannot be equated. The magnitude of the non-compliance affecting the Union-State relations will determine whether the non-compliance under a particular situation is the failure of constitutional machinery or not. The phrase "it shall be lawful for the President to hold" indicates that it depends on the President to weigh any non-compliance in the particular case whether it amounts to failure of constitutional machinery.

But, where in response to the prior warning or notice, the State government either applies the correctives and thus, complies with the direction or satisfies the Union that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that a situation contemplated in article 356 has arisen.[118]

5. Reorganisation of States

There have been 3 cases of imposition of Presidential rule when a Union Territory was made a full-fledged State, or a new State was created. The Presidential rule was imposed in Kerala on the 1st November 1956 when the new State of Kerala was created.[119] Manipur and Tripura were placed under Presidential rule on the 21st January 1972 when these Union Territories were made a full-fledged State.[120] Reason is that the newly created States lacked an appropriate legislature. In such a situation, a Presidential rule was inevitable to carry on the government of the State.

But, creation of a new State may not always be a conclusive ground for an action under article 356. In all the three above mentioned instances, a Presidential rule was already in enforcement.

IV IMPROPER INVOCATIONS OF THE PROVISION

The exercise of power under article 356 can be said to be fully justified only in 60 cases out of 123 occurred till writing of this paper. These cases have been placed under various categories specified as failure of constitutional machinery. In the remaining 63 cases invocation of this article evoked a great deal of controversy. But, it can be argued that power was not

[118] *Supra* note 24 at 173 para 6.5.01(vii).
[119] *Id* at 188 category (E) para (i).
[120] XVIII *Keesing's Contemporary Archives* (1971-72) 25148 and XVIII *Asian Recorder* (1972) 10623.

exercised in proper perspective in as many as 56 cases out of 63. 7 cases may be referred as "border-line cases" where both the possible views can be taken.

The situations of improper invocations may be categorised into following groups mainly on the basis of the analysis made by the Sarkaria Commission[121] : 1. Non-issuance of Warning to Errant State, 2. Dismissal of Ministry Commanding Majority, 3. Denial of Opportunity to Claimant, 4. Non-formation of Caretaker Government and 5. Wholesale Dissolution of Assemblies.

1. Non-issuance of Warning of Errant State

The power conferred under article 356 is drastic one. It is, therefore,

desirable that a prior warning or opportunity be given to the errant State. The Framers of the Constitution intended that the Union should adopt some precautions before taking any action against errant State under article 356.[122]

Therefore, the use of power conferred under article 356 will be improper if no prior warning or opportunity is given to the errant State to correct itself. Such a warning can be dispensed with only in case of extreme urgency where failure on the part of the Union to take immediate action will lead to disastrous consequences.[123]

Where in response to the prior warning or notice to an informal or formal direction under articles 256, 257, *etc*., the State government either applies the correctives and thus, complies with the direction of or satisfies the Union government that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that a situation contemplated in article 356 has arisen.[124]

It may be submitted that not issuance of prior may not be considered as conclusive ground to hold a Presidential proclamation improper. The issuance of prior warning should be considered as precautionary measure only.

2. Dismissal of Ministry Commanding Majority

[121] *See, supra* note 24 at 174-177.
[122] *Supra* note 39 at 177.
[123] *Supra* note 24 at 173 para 6.5.01 (vi).
[124] *Ibid* para 6.5.01(vii).

This category covers instances where article 356 is invoked to deal with intra-party problems or for considerations not relevant for the purpose of this article.[125] Thus, the instances of this category may occur in the following ways:

(i) Where the power under this article is used to sort out internal differences or intra-party problems of the ruling party[126] as was done in the following 8 cases: 1. Punjab Case -20th June 1951[127], 2. Punjab Case - 5th July, 1966[128], 3. Andhra Pradesh Case - 18th January 1973[129], 4. U.P. Case - 13th June 1973[130], 5. U.P. Case - 30th November 1975[131], 6. Orissa Case - 16th December 1976[132], 7. Karnataka Case - 31st December 1977[133] and 8. Karnataka Case - 10th October 1990.[134]

(ii) Where the power under this article is used merely on the ground of allegations of corruption or mal-administration against a ministry.[135] The Framers of the Constitution were also of the view that lack of good government in a State is not sufficient ground for action under this article.[136] Following 3 cases are example of such kind of instance : 1. Kerala Case - 31st July 1959[137], 2. Haryana Case - 21st November 1967[138] and 3. Tamil Nadu Case - 31st January 1976.[139]

(iii) Where despite the advice of a dully constituted ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the ministry an opportunity to demonstrate its majority support through the floor test, recommends the Presidential rule merely on the basis of his subjective assessment that the ministry no longer commands confidence of the House.[140] Following 3 cases are example of such kind of instance :

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[125] *See*, *supra* note 24 at 177 para 6.6.30.
[126] *Id* at 174 para 6.5.01 (viii).
[127] XVIII *Keesing's Contemporary Archives* (1950-52) 11577.
[128] XII *Asian Recorder* (1966) 7196.
[129] XIX *Asian Recorder* (1973) 11227.
[130] *Id* at 11521-22.
[131] XXI *Asian Recorder* (1975) 12943-44.
[132] XXIII *Asian Recorder* (1977) 13557.
[133] XXIV *Asian Recorder* (1978) 14145-56.
[134] XXXVI *Asian Recorder* (1990) 21455.
[135] *Supra* note 24 at 173-74 para 6.5.01 (i) & (x).
[136] *Supra* note 39 at 176.
[137] V *Asian Recorder* (1959) 2827-28.
[138] VIII *Asian Recorder* (1967) 8065.
[139] XXII *Keesing's Contemporary Archives* (1976) 27598.
[140] *Supra* note 24 at 173 para 6.5.01(iii)

1. U.P. Case - 1st October 1970[141], 2. Karnataka Case - 31st December 1977[142] and 3. Karnataka Case - 21st April 1989.[143]

(iv) Where power is exercised to resolve a breakdown in law and order because maintenance of public order, except the use of the armed forces of the Union in aid of the civil power, is subject matter assigned to States under Entry I, List II.[144]

The Presidential rule was imposed in the following 4 cases on the ground of breakdown in law and order : 1.Gujarat Case - 8th February 1974[145], 2. Manipur Case - 14th November 1979[146], 3. Punjab Case - 6th October 1983[147] and 4. Tamil Nadu Case - 30th January 1991.[148]

(v) Where in a situation of internal disturbance not amounting to or verging on abdication of its governmental powers by the State government, all possible means to contain the situation have not been exhausted by the Union in discharge of its duty imposed under article 355.[149]

(vi) Where this article is invoked on the basis of caste, creed and religion of the Chief Minister, as was considered in the *Bommai Case.*[150]

(vii) Where this article is invoked for superseding the duly constituted ministry and dissolving the Assembly on the sole ground that in the general election to Lok Sabha, the ruling party in the State has suffered massive defeat[151] as happened in 1977[152] and 1980.[153]

(viii) Where this article is invoked on the sole ground of stringent financial exigencies of the States.[154]

(ix) The exercise of power under article 356, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution, would be vitiated by legal malafides.[155]

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[141] XVI *Asian Recorder* (1970) 9827.
[142] XXIV *Asian Recorder* (1978) 14145-46.
[143] *S.R. Bommai* v. *Union of India*, AIR 1990 Karnataka 5 (F.B.) at 9 para 2.
[144] *Supra* note 24 at 169 para 6.3.11 - 6.3.13.
[145] XX *Asian Recorder* (1974) 11884.
[146] XXV *Asian Recorder* (1979) 15221.
[147] XXIX *Keesing's Contemporary Archives* (1983) 32444.
[148] XXXVI *Asian Recorder* (1990) 21612.
[149] *Supra* note 24 at 173 para 6.5.01(v).
[150] *Supra* note 17 at 2035 para 157.
[151] *Supra* note 24 at 173 para 6.5.01 (iv).
[152] XXIII *Asian Recorder* (1977) 13766.
[153] XXVI *Asian Recorder* (1980) 15367.
[154] *Supra* note 24 at 174 para 6.5.01 (ix).

3. Denial of Opportunity to Claimant

This kind of situation may arise in the following ways :

(i) Where the support to a ministry is claimed to have been withdrawn and outgoing Chief Minister is denied opportunity to prove his majority in the House. 1. U.P. Case - 1st October 1970,[156] 2. Karnataka Case - 21st April 1989,[157] 3. Arunachal Pradesh Case- 26th January 2016[158] and 4. Uttarakhand Case- 27th March 2016[159]are 4 examples of such kind of instance.

(ii) Where the claimant is denied opportunity to form a government after the general elections. 1. Kerala Case - 24th March 1965[160] 2. Rajasthan Case - 13th March 1967[161] and 3. Bihar Case- 23rd May 2005[162] are 3 examples of such kind of instance.

(iii) Where a ministry resigns or is dismissed on losing its majority support in the Assembly and the claimant is denied opportunity to form an alternative government.[163] The following 9 cases are the example of this kind of instance : 1. PEPSU (Punjab) Case - 5th March 1953[164], 2. Andhra Case - 15th November 1954[165], 3. Travancore Cochin (Kerala) Case - 23rd March 1956[166], 4. U.P. Case - 25th February 1968[167], 5. U.P. Case - 15th April 1968[168], 6. Orissa Case - 3rd March 1973[169], 7. Kerala Case - 5th December 1979[170], 8. Manipur Case - 28th February 1981[171] and 9. Nagaland Case - 7th August 1988.[172]

The 7 cases referred as "border-line cases" are : 1. Bihar Case - 4th July 1969[173], 2. West Bengal Case - 19th March 1970[174], 3. Orissa Case - 23rd March 1971[175], 4. Assam Case - 30th

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[155] *Ibid* para 6.5.01 (xi).
[156] XVI *Asian Recorder* (1970) 9827.
[157] See, *Supra* note 141.
[158] *The Hindu* January 28, 2016 at front page.
[159] *Harish Chandra Singh Rawat* v. *Union of India* Uttarakhand high court April 11, 2016 para 8.
[160] XI *Asian Recorder* (1965) 6389-90.
[161] XVI *Keesing's Contemporary Archives* (1967-68) 22081.
[162] *The Hindu* May 24, 2005 at front page.
[163] *Supra* note 24 at 173 para 6.5.01(ii).
[164] IX *Keesing's Contemporary Archives* (1952-54) 12819.
[165] *Id* at 13940.
[166] X *Keesing's Contemporary Archives* (1955-56) 15039.
[167] XIV *Asian Recorder* (1968) 8219.
[168] *Id* at 8300.
[169] XIX *Asian Recorder* (1973) 11324.
[170] XXVI *Keesing's Contemporary Archives* (1980) 30255.
[171] XXVII *Asian Recorder* (1981) 15984.
[172] XXXIV *Asian Recorder* (1988) 20207.
[173] XV *Asian Recorder* (1969) 9464.

June 1981[176], 5. J. & K. Case - 7th September 1986[177], 6. Goa Case - 14th December 1990[178] and 7. Manipur Case - 7th January 1992.[179] These cases have been considered to fall in the Category "Denial of Opportunity to Claimant" on the basis that in case of ambiguity, an interpretation of the Constitution is to be preferred which would enable a State to be governed by a democratically elected government as long as possible. However, equally plausible would be another possible view that the opportunity should be given to the Opposition party only when there is some chance of the said Opposition being in a position to form a stable government. The practice of giving opportunity should not be followed when it is likely to lead to corruption and horse-trading.

4. Non-formation of Caretaker Government

Such kind of situation arises where it is found that the formation of a viable government is not possible and fresh election becomes necessary but, no caretaker government is formed.[180] Following 5 cases are examples of such kind of instance : 1. Bihar Case-9th January 1972[181], 2. Bihar Case-9th March 1972[182], 3. Sikkim Case-18th August 1979[183], 4. Tripura Case-11th March 1993[184] and 5. Maharashtra Case- 28th September 2014[185]

5. Wholesale Dissolution of Assemblies

There have been instances where Legislative Assemblies of 9 States were dissolved simultaneously twice – first in 1977 and second in 1980 and Presidential rule was imposed on the sole ground that in the election to Lok Sabha, the ruling party in the State has suffered massive defeat. The article 356 was first invoked on the 30th April 1977[186] to dissolve Legislative Assemblies of Punjab, Haryana, H.P., U.P., Bihar, W.B., Orrisa, M.P. and Rajasthan and

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[174] XVI *Asian Recorder* (1970) 9517.
[175] XVII *Asian Recorder* (1971) 10136.
[176] XXVII *Asian Recorder* (1981) 16171.
[177] XXXII *Asian Recorder* (1986) 19131.
[178] *Data India* January 8-14, 1990 at 21.
[179] XXXVIII *Asian Recorder* (1992) 22185.
[180] *Supra* note 24 at 177 para 6.6.32.
[181] XVIII *Asian Recorder* (1972) 10621.
[182] *Id* at 10725.
[183] XXV *Asian Recorder* (1979) 15083.
[184] *Data India* 8-14 March 1993 at 188.
[185] *The Hindu* September 29, 2014 at 8.
[186] See, *Supra* note 152.

secondly on the 17th February 1980[187] to dissolve the Legislative Assemblies of U.P., M.P., Bihar, Orissa, Gujarat, Maharashtra, T.N., Punjab and Rajasthan for dissolving Assemblies of nine States simultaneously are such kind of instances.

In the *Bommai Case*, Ahmadi J. considered that merely because a different party is elected to power at the Centre, even if with thumping majority, is no ground to hold that a situation contemplated in article 356 has arisen. He justified his stand as follows: [188]

> It is a matter of common knowledge that people vote for different political parties at the centre and in the States and, therefore, if a political party with an ideology different from the ideology of the political party in power in any State comes to power in the Centre, the Central Government would not be justified in exercising power under Article 356(1) unless it is shown that the ideology of the political party in power in the State is inconsistent with the constitutional philosophy....

V SAFEGUARDS AGAINST ABUSE OF THE POWER

From time to time, various attempts were made to check the abuse of the power conferred by article 356. These may be classified into the following heads : 1. Framers' Approach, 2. Constitutional Mandate, 3. Recommendations of the Sarkaria Commission, 4. Recommendations of the Venkatachaliah Commission, 5. Recommendations of Punchhi Commission, 6. Approach of the Apex Court, 7. Approach of Inter-State Council and 8. Work of Authors.

1. Framers' Approach

The Framers of the Constitution were of the view that two precautions should be adopted before exercising power under article 356. This is clear from the following statement of Dr. Ambedkar, chairman of the Drafting Committee: [189]

> ... the President ... will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this Article.

[187] See, *Supra* note 153.
[188] *Supra* note 17 at 1953 para13.
[189] *Supra* note 39 at 177.

The commitment of the first precaution is possible within a short spell and it may provide an opportunity to errant State to correct the error. But, it cannot be adopted as a pre-condition to invoke the article. The second precaution is not always appropriate, as it is just like elections and time taking while a failure of constitutional machinery is an emergency situation requiring immediate action.

2. Constitutional Mandate

The constitutional mandate as the safeguard against abuse of the power may be studied in the two parts - Parliamentary approval and Presidential requirement to reconsider the advice of the Cabinet.

Parliamentary Approval

Every proclamation issued under article 356 has to be laid before each House of Parliament and ceases to operate at the expiry of two months unless it has been approved by both Houses as required by cl. (3) of this article.

A presidential proclamation is placed before the House and the Union Cabinet has to defend it. The proceeding is also published. Hence, Parliamentary approval works as a safeguard against the abuse of power conferred by this article.

Presidential Requirement to Reconsider the Advice

The President acts in accordance with the aid and advice tendered by the Council of Minister under article 74 (1). But, according to proviso to this article, the President may send back such advice for reconsideration once and after that, he is constitutionally bound to act in accordance with the advice tendered after reconsideration. Due to this provision, the Council of Ministers may hesitate while tendering advice to invoke article 356 for extraneous purposes.

The President sent back the advice on two occasions - firstly, on the 22nd October 1997 in case of U.P[190] and secondly, on the 25th September 1998 in case of Bihar.[191] On both the occasions, the Council of Ministers did not press its advice again.

3. Recommendations of the Sarkaria Commission

[190] XXXXIII *Asian Recorder* (1997) 26897
[191] XXXXVI *Asian Recorder* (1998) 27682.

The Sarkaria Commission recommended 8 safeguards in order to prevent abuse of the power conferred by the article. The following are the recommended safeguards :

(1) Article 356 should be invoked very sparingly as a measure of last resort when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the State.[192]

(2) A warning should be issued to the errant State that it is not carrying on the government of the State in accordance with the provisions of the Constitution. However, this may not be possible in a situation when denial of immediate action would lead to disastrous consequences.[193]

(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 for discharging paramount responsibility under article 355 should be exhausted to contain the situation.[194]

(4) (a) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support. If installation of such a government is not possible and fresh elections can be held without avoidable delay, he should ask the outgoing ministry, if there is one, to continue as a caretaker government. But, this guideline is applicable only when the ministry was defeated solely on a major policy issue, unconnected with any allegations of mal-administration or corruption and is agreeable to continue. He should then dissolve the Assembly.[195]

(4) (b) If the ingredients described above are absent, it would not be proper for the Governor to dissolve the assembly and install a caretaker government. He should recommend Presidential rule without dissolving the Assembly.[196]

(5) Every proclamation should be placed before each house of Parliament at the earliest, in any case before the expiry of two month period contemplated in cl. (3) of article 356.[197]

[192] *Supra* note 24 at 179 para 6.8.01.
[193] *Ibid* para 6.8.02.
[194] *Ibid* para 6.8.03.
[195] *Ibid* para 6.8.04 (a).
[196] *Id* at 180 para 6.8.04 (b).
[197] *Ibid* para 6.8.05.

(6) The Governor's 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 in article 356.[198]

(7) The Governor's report should be given wide publicity in all the media and in full.[199]

(8) Normally, the Presidential rule should be issued on the basis of the Governor's report under article 356 (1).[200]

The Commission also recommended following 4 amendments to be made in the article 356 :

(1) The 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.[201]

(2) Safeguards corresponding to cls. (7) and (8) of article 352 dealing with the provision that the President shall revoke a proclamation of emergency issued under cl. (1) or any proclamation varying it if the Lok Sabha passes a resolution disapproving the proclamation or continuance of such proclamation and procedure thereof should be incorporated in article 356 to enable Parliament to review the continuance of a proclamation.[202]

(3) To make the remedy of judicial review on the ground of mala-fides a little more meaningful, it should be provided through an appropriate amendment that the material facts and grounds on which article 356 (1) is invoked should be made an integral part of the proclamation notwithstanding anything in cl. (2) of article 74.[203]

(4) The word 'and' occurring between sub-clauses (a) and (b) in cl. (5) of article 356 should be substituted by 'or.'[204]

4. Recommendations of the Venkatachaliah Commission

[198] *Ibid* para 6.8.09.
[199] *Ibid* para 6.8.10.
[200] *Ibid* para 6.8.11.
[201] *Ibid* para 6.8.06.
[202] *Ibid* para 6.8.07.
[203] *Ibid* para 6.8.08.
[204] *Ibid* para 6.8.12.

The Venkatachaliah Commission has recommended 6 safeguards in order to prevent abuse of the power conferred by the article. The following are the safeguards :

(1) Article 356 must be used sparingly only as a remedy of the last resort.[205]

(2) In case of political breakdown, the concerned State should be given an opportunity to explain its position and redress the situation before invoking article 356 unless the situation is such that following the above course would not be in the interest of security of State, or defense of the country, or for other reasons necessitating urgent action.[206]

(3) The question whether the ministry in a State has lost the confidence of the Assembly or not, should be decided only on the floor of the Assembly and nowhere else.[207]

(4) The Governor should not be allowed to dismiss the ministry so long as it enjoys the confidence of the House. The Governor can dismiss it only when a Chief Minister refuses to resign after it is defeated on a motion of no-confidence.[208]

(5) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If installation of such a government is not possible and fresh elections can be held without avoidable delay, the Governor should ask the outgoing ministry to continue as a caretaker government, provided the ministry was defeated solely on an issue unconnected with any allegations of mal-administration or corruption and is agreeable to continue. He should then dissolve, the Assembly.[209]

(6) The Governor's 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 in article 356.[210]

It is worth mentioning here that four safeguards out of six- (1), (2), (5) and (6) have also been recommended by the Sarkaria Commission.[211]

The Commission also recommended 3 amendments to be made in article 356 :

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[205] *Supra* note 35 at 169 para 8.19.2.
[206] *Ibid* para 8.19.5.
[207] *Id* at 170 para 8.20.3.
[208] *Ibid.*
[209] *Ibid.*
[210] *Id* at 171 para 8.20.5.
[211] *See*, *supra* note 24 at 179 paras 8.6.01, .02, .04 and at 180 para 6.8.09.

(1) The word 'and' between sub-clause (a) and (b) of clause (5) of article 356 should be substituted by 'or' so that Presidential rule may be continued if elections cannot be held even without the State being under a Proclamation of Emergency.[212]

(2) Clauses (6) and (7) under article 356 may be added on the line of clauses (7) and (8) of article 352 in order to review the continuance of the proclamation and to restore the democratic process earlier than the expiry of the stipulated period.[213]

(3) Article 356 should be amended to ensure that the Assembly should not be dissolved either by the Governor or the President before the proclamation issued under the article has been laid before Parliament and it has had an opportunity to consider it.[214]

All the aforesaid amendments have also been recommended by the Sarkaria Commission.[215]

5. Recommendations of Punchhi Commission

The Punchhi Commission[216] referred recommendations of Commissions constituted previously and guidelines laid down in the *Bommai Case* in its report and recommended that the provisions of articles 352 and 356 should be used as a measure of last resort.[217] The Commission further recommended a constitutional or legal framework to deal with the situations which require Central intervention without invoking the extreme steps under articles 352 and 356. The Commission termed this kind of situation as "Localised Emergency" for which the constitutional or legal framework would ensure that the State government can continue to function and the assembly would not be dissolved while providing a mechanism to let the Central government respond to the issue specifically and locally.[218]

[212] *Supra* note 44 at 171 para 8.21.3.
[213] *Id* at 172 para 8.21.4.
[214] *Id* at 173 para 8.22.3.
[215] *See*, *supra* note 21 at 180 paras 6.8.06., .07 and .12.
[216] The commission was constituted in 2007 under the Chairmanship of Justice Madan Mohan Punchhi (Rtd.), former Chief Justice of India to examine Centre-State relations along with the possibility of giving sweeping powers to the Centre for *suo moto* deployment of Central forces in States and investigations of crimes affecting national security. The report of the commission was published in 2010 as report of commission on Centre-State relations.
[217] The report of the commission was published in 2010 as report of commission on Centre-State relations, vol. II Chapter 11at 226 para 11.11.01.
[218] *Ibid.*

The Commission also recommended suitable amendments in the Constitution to incorporate the guide-lines laid down by the Supreme Court in *Bommai Case*.[219]

6. Approach of the Apex Court

The Presidential satisfaction contemplated in article 356 is the satisfaction of the Union Cabinet and courts are barred to review it on the basis of mandate of article 74(2). To eliminate the chance of its judicial review completely, cl.(5) was inserted to article 356 by the Constitution (Thirty-eight Amendment) Act, 1975. The Supreme Court got occasion for the first time in *State of Rajasthan* v. *Union of India* to consider the issue on this aspect and established the scope for its judicial review.[220] After the decision of this case, cl. (5) was repealed by the Constitution (Forty-fourth Amendment) Act. 1978.

In *S.R. Bommai* v. *Union of India*, the Court considered all aspects of article 356 thoroughly and laid down following guidelines as safeguards against abuse of the power conferred under this article :

(1) 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.[221]

(2) If the court strikes down the proclamation, it has the power to restore the dismissed government and revive or reactivate the Assembly whether it was dissolved or kept under suspended animation.[222]

(3) The power to dissolve the Assembly shall be exercised only after the proclamation is approved by both the Houses of Parliament under cl.(3) and not before. The Assembly can only be suspended until such approval.[223]

The Sarkaria Commission has also recommended making appropriate amendment in the article to that effect.[224]

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[219] *Id at* 225 and 226 para 11.10.01.
[220] *Supra* note 9 at 1389 para 59, 1400 para 127, 1414-15 para 144, 1420 para 170, 1423-24 para 180, 1439-40 para 206&207 and 1376 para 28.
[221] *Supra* note 17 at 2003 para 91 (I) and 2112 para 365 (7).
[222] *Id* at 2004 para 91 (V) and 2113 para 365 (8).
[223] *Id* at 2004 para 91 (IV) and 2112 para 365 (3).
[224] *See*, *supra* note 24 at 180 para 6.8.06.

(4) In case both Houses of Parliament disapprove or do not approve the proclamation, the dismissed government restores and the suspended Assembly gets reactivated.[225]

(5) In all cases, where the majority to a ministry is claimed to have been withdrawn, the proper course for testing the strength is holding the test on the floor of the House.[226]

In *Rameshwar Prasad* v. *Union of India*, the Court reiterated that the Court can revive the Legislative Assembly whether kept in suspended animation or dissolved and restore the dismissed government it strikes down the proclamation issued under article 356.[227]

The power under article 356 was exercised on 26th January 2016 in the State of Arunachal Pradesh to topple an elected government (Nabam Tuki government) for political consideration. But, the government was restored by the Supreme Court.[228] This judgement can be said unprecedented because, the government was restored despite of the fact that there was a successor government (Khalikho government) in place.

In the Uttarakhand Case, the presidential rule was imposed on the 27th March 2016 to topple the State government headed by Harish Rawat without giving opportunity to prove majority while the outgoing Chief Minister was ready to prove his strength.[229] The Presidential proclamation was challenged by the outgoing Chief Minister in the Uttarakhand high court. A Division Bench of the high court quashed the proclamation on the 21st April 2016 and restored the dismissed government in view of ruling of the *Bommai Case*. Since, the petitioner was obliged to seek the vote of confidence on the date of proclamation, the Court also directed him to seek it on the 29th April.[230]

The Union government challenged the ruling of the high court.[231] The Supreme Court stayed the order of high court till 27th April for the simple reason that the judgement was not in public domain and directed the high court to release the signed judgement to the parties by April 26.[232] On the 6th May, the Court ordered a floor test to be held on the 10th May for the outgoing Chief Minister to prove his majority under the supervision of the Court.[233] The floor test was

[225] *Supra* note 17 at 2112 para 365 (5) (a).
[226] *Id* at 1988 para 77.
[227] AIR 2006 SC 980 at 995-96 para 21.
[228] *Nabam Rabia and Others* v. *Deputy Speaker and Others*, Supreme Court July 13, 2016 para 196 (III) and (IV).
[229] *Harish Chandra Singh Rawat* v. *Union of India*, Uttarakhand high court April 21, 2016 para 3.
[230] *Id* at para 97.
[231] *The Hindu* April 23, 2016 at 12.
[232] *Id* at front page.
[233] Petition for special leave to Appeal No. 11567/2016 called on for hearing on 9-5-2016 para 1.

held accordingly and on the perusal of the result of the voting, the Court found that the outgoing Chief Minister had obtained majority.[234]

Consequently, the presidential rule was revoked on the 11th May and Rawat government was restored.[235]

The law of judicial review regarding Presidential rule is very effective to prevent the abuse of power under article 356.

7. Approach of the Inter-State Council

The President may establish an inter-state council under cl. (1) of article 263 if it appears that the public interest would be served by the establishment of such a council charged with the duty of - (a) inquiring into and advising upon disputes which may have arisen between States; or (b) investigating and discussing subjects in which some or all of the States, or the Union and the States have a common interest; and (c) Making recommendations upon any such subject for the better co-ordination of policy and action with respect to the subject.

The Administration Reforms Commission recommended the constitution of an Inter-State Council to discuss and resolve problems of Centre-State relations as and when they arise.[236] The Inter-State Council constituted in pursuance of the recommendation has met eight times till writing of the work.[237]

There was general consensus in the 8th meeting of the Inter-State Council on the recommendations of the Sarkaria Commission and guide-lines laid down by the Supreme Court in the *Bommai Case* against abuse of article 356. It was also felt collectively that the safeguards recommended by Sarkaria Commission and guidelines laid down by the Supreme Court against misuse of the provision should be incorporated in the Constitution.[238]

8. Work of the Authors

From time to time, scholars also commented on the subject and made suggestions in order to prevent the abuse of power conferred under article 356.

[234] Petition for special leave to Appeal No. 11567/2016 called on for hearing on 11-5-2016 para 1
[235] *The Hindu* May 12, 2016 at front page.
[236] *Administraitve Reforms Commission Report on Centre-State Relations* (1969) at ii.
[237] *The Hindustan Times* (New Delhi) August 30, 2003 at 9.
[238] *Ibid.*

Shri Shriram Maheshwari made study of the President's rule from 1950 to 1976 and presented them in three phases- 1950-66, 1967-71 and 1972-76. He found in his study that President's rule was imposed on the many occasions for the political consideration and suggested that, it should be imposed in the situation as contemplated under article 356.[239]

Shri Rajeev Dhavan commented on the President's rule imposed upto time of his study and suggested that power should not be used for political consideration[240]

Shri.J.R.Siwach made study of President's rule into two parts- Part 1 deals with meaning and implication of failure of constitutional machinery and other related aspects. In part 2, he made state wise analysis of President's rule and concluded that the provision of article 356, which was included as a life saving device by framers of the Constitution, has become too poisonous for our political system and hence, has become undesirable.[241]Shri B.D. Dua has analysed instances of President's rule up to 1984. The study focused on the crisis at the state level and their resolution through the imposition of Presidential rule within a broad theoretical frame of developmental politics and concluded that the presidential rule, which was designed to preserve political unity against the threat of dysfunctional diversity manifested at the state level, has increasingly being used as a means to the establishment of Central Pre-dominance.[242]

Shri Harbir Singh Kathuria has analysed cases of President's rule from 1967-89 and concluded that power was grossly misused for political consideration and suggested that some healthy guidelines be evolved to direct President's rule so that constitutional obligation do not get subordinated to political expediencies.[243]

Shri S.C. Arora studied about President's rule in context of only Punjab and suggested that Punjab imbroglio should have been solved with the help of democratic process and within the democratic ambience.[244]

Shri Sunil Desta made a general study of constitutional provisions and practices relating to President's rule. He focused on a performance audit of President's rule and concluded the incorporation of article 355 and 356 necessary to ensure the responsible government in the State

[239] Shriram Maheshwari *President's Rule in India* (Macmillan Co. of India, Delhi 1977).
[240] Rajiv Dhavan *President's Rule in the States* (Tripathi 1979).
[241] J.R. Siwach *Politics of President's Rule in India* (Indian Institute of Advanced Study, Simla 1979).
[242] B.D. Dua *President's Rule in India 1950-1984* (S. Chand, Delhi 1985).
[243] Harbir Singh Khaturia President's Rule in India 1967-1989 (Uppal Ist ed. 1990).
[244] S.C. Arora *President's Rule in Indian States – A Study of Punjab* (Mittal, Delhi Ist ed. 1990).

and suggested the Constitutional method on the line of recommendations of Sarkaria Commission to be evolved to check the misuse of power.[245]

The study report of the Lok Sabha Secretariat presents instances of Presidential Rule in the States and Union Territories in the tabular form.[246]

VI CONCLUDING OBSERVATIONS AND SUGGESTIONS

The extra-ordinary power given to the Centre under article 356 was a logical necessity in view of the special responsibility assigned to it under article 355 with the unique scheme of Centre-State relations envisaged under the Indian Constitution. Therefore, it cannot be argued that the provision of article 356 is violative of State autonomy.

The repeated abuse of power caused dissatisfaction among States and the Centre State relations became tense. The States responded against the stand of Centre whenever they got opportunity.

The State of Tamil Nadu constituted in 1969 a Committee under the chairmanship of Dr. P.V. Rajamannar to examine the relationship between the Centre and the States and to suggest amendments to the Constitution so as to secure utmost autonomy to the States.[247] The Committee in its report (published in 1971) recommended deletion of article 356. The Committee considered the imposition of Presidential rule justified only in the contingency of complete break-down of law and order when the State government itself is unable or unwilling to maintain the safety and security of the people and property in the State.[248]

The State of West Bengal also demanded deletion of the provision and suggested holding of fresh elections and installing of a new government in the case of a constitutional breakdown.[249]

Evidently, various attempts were made from time to time to prevent the abuse of power conferred by article 356. But, due attention was not given in this regard. The recommendations given by various Commissions and guide-lines laid by the Supreme Court in this regard in

[245] Suil Desta *President's Rule in the States* (Deep & Deep, Delhi 1993)
[246] *President's Rule in the States and Union Territories,* Lok Sabha Secretariat (New Delhi 6th ed. 1996)
[247] *See, Report of the Centre-State Relations Inquiry Committee* at 1.
[248] *Id* at 223.
[249] *West Bengal Government Document of 1 December 1977* (West Bengal Memorandum) para 10.

Bommai Case are very valuable. The only need is to follow and implement them in their letter and spirit.

It has also been observed in some cases that State government flouted the principles and conventions regarding the democratic government. States should also not perform their functions in such a manner so as to compel the Central government to exercise power under the provision of article 356.

In order to prevent effectively the abuse of power, it is suggested that the amendments to the following effect should be made in the Constitution:

(1) The Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356 (1) has been laid down before Parliament and it has got an opportunity to consider it.

This kind of amendment will avoid considerable ill-consequences of pre-mature dissolution of the Assembly.

(2) The dismissed government will be restored after the lapse of the proclamation issued under article 356 (1) at the end of the two-month period in case both the Houses of Parliament disapprove or do not approve the proclamation.

Due to this kind of provision, the Central government may hesitate while invoking the power for an extraneous purpose.

(3) The safeguards corresponding to clauses (7) and (8) of article 352 dealing with the provision that the President will be bound to revoke a Proclamation of Emergency issued under clause (1) or a proclamation varying it if the Lok Sabha passes a resolution disapproving the proclamation or its continuance and procedure thereof should be incorporated in article 356 to enable Parliament to review the continuance of a Presidential proclamation.

A Presidential proclamation can remain enforceable for the two months without approval of Parliament under clause (3) of article 356 and for six months with the approval of Parliament under clauses (4). The proclamation may be revoked prior to completion of the period of two or six months in the presence of provisions like clauses (7) and (8) of article 352 if the purpose is fulfilled.

(4) To make the remedy of judicial review on the ground of mala-fides a little more meaningful, it should be provided that the material facts and grounds on which article 356 (1) is invoked should be made an integral part of the proclamation notwithstanding anything in clause (2) of article 74.

Article 356 (1) is invoked when the President is satisfied that a State government cannot be carried on in accordance with the provisions of the Constitution. The Presidential satisfaction is the satisfaction of Union Cabinet as he acts in accordance with the advice tendered by it under article 74 (1). Clause (2) of article 74 bars the courts to inquire the advice tendered to the President. The Courts were always barred to review the Presidential satisfaction on the ground of mandate of cl. (2) of article 74. But, the Supreme Court evolved some grounds for its review in *Rajasthan Case* and established scope in this regard in *Bommai Case* that the courts cannot inquire whatever advice was tendered. But, the material facts and grounds on which the Presidential satisfaction was formed can be examined.

Such kind of amendment may eliminate the chance of invocation of power for a extraneous purpose.

(5) The word "and" occurring between sub clauses (a) and (b) in clause (5) of article 356 should be substituted by "or" so that even without the State being under operation of a Proclamation of Emergency, the Presidential rule may be continued if elections cannot be held in the State.

Due to present arrangement in cl. (5) of article 356, a resolution with respect to the continuance in force of a Presidential proclamation for any period beyond one year cannot be passed unless the following two conditions (enumerated as sub-clauses (a) and (b)) are fulfilled:

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

(ii) the Election Commission certifies that the continuance of the proclamation is necessary on account of difficulties in holding general elections.

Circumstances may arise where it may be difficult to hold elections even without the Proclamation of Emergency and continuance of a Presidential proclamation may become

necessary in such a situation. It will, therefore, be more practical to de-link the two conditions so that the each condition may be operative in its own specific circumstances.

After all, effectiveness of any law is entirely dependent on its proper enforcement in the proper perspective. Howsoever excellent and significant a law may be, it cannot serve the purpose, or it may not be prevented from being controversial unless and until it is implemented in its letter as well as spirit.