

## CONSTITUTIONALISM AND ARTICLE 356 OF THE INDIAN CONSTITUTION<sup>1</sup>

### Abstract

A 'State'<sup>2</sup> is defined as an independent political entity occupying a defined territory, the members of which are united together for the purpose of resisting external force and preservation of internal order. All the people in the state cannot combine and operate all together all the time to achieve the desired goals. Thus Article 356 was put into action which gave wide powers to the central government to assert its authority over a state if civil unrest occurred and the state government did not have the means to end the unrest. This is one of the articles that gave the Indian constitution some amount of unitary character. This creates the need for Constitutional Law as the state cannot govern itself on an ad hoc basis without their being some norms and rules from which the governmental organs must draw their powers and functions. This very article list down the importance of various institutions and their framework which together works in building an effective government.

Legal provisions relating to human rights as a normative framework provide little guidance and help for the masses in India who are aspiring to fulfill their basic rights, in particular their right to acquire and experience the basic needs of survival and existence. The civil society seeks to enforce good governance so that all human rights are promoted and protected. It is imperative for the Indian society to work towards internalizing the values of constitutionalism so that the exercise of all powers is subject to accountability<sup>3</sup>.

Traditionally the structure of a country's government is divided into three institutional components:

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<sup>1</sup> Mr. Gaurav Mittal , Assistant Professor, ICAFI Law School, The ICAFI University, Dehradun & Mr. Gaurav Maheshwari, Legal Officer, Future Choice Group, Noida 63.

<sup>2</sup> Article 12, Indian Constitution, 1949- In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

<sup>3</sup>C. Raj Kumar, Honorary Consultant, National Human Rights Commission in India, "Constitutionalism and judicial governance" *The Hindu*, Oct. 18, 2007.

- (1) Legislature to make laws,
- (2) Executive to implement and execute laws,
- (3) Judiciary to interpret laws and administer justice.

The Constitution of a country may be federal or unitary in nature. Besides the concept of the Constitution, there is another important concept known as 'Constitutionalism'. It recognises the need for government but insists upon limitations being placed upon governmental powers but at the same time insists that limitations be placed on those powers. Only when the Constitution of a country seeks to decentralize power instead of concentrating it at one point, and also imposes other restraints and limitations thereon, does a country have not only 'constitution' but also 'constitutionalism'.

Preamble may be a point to check the presence of the constitutionalism. Our constitution enacted on 26<sup>th</sup> November, 1949, since then a question always a matter of great concern that whether preamble is the part of Indian constitution or not. However in 1960 it was held that preamble is not a part of constitution<sup>4</sup> but after a long time In case of 13 judges largest bench of Indian constitutional history rejected previous contentions and declared that Preamble is a part of Indian Constitution<sup>5</sup>.

## **Introduction**

The framers of the Indian Constitution were conscious that, the security of the nation and stability of its polity could not be taken for granted. Therefore, it was seen of utmost importance that in situations like grave emergency, the Union must have adequate powers to deal quickly and effectively with a threat to the very existence of the nation, on account of external aggression or internal disruption. Thus in such emergency, the Union shall have overriding powers to control and direct all aspects of administration and legislation throughout the country. A further duty was, therefore, laid on the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Thus a commission known as Sarkaria Commission was set up in June 1983 by the central government of India to examine the relationship and balance of power between state and central governments in the country and suggest changes within the framework of Constitution of India.

The 'Emergency Provisions of the Constitution form a fasciculus of nine Articles giving the President overriding authority to assume and exercise powers to deal with four types of extraordinary situations.

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<sup>4</sup> In Re: The BeruBari Union and Ors. 1960 AIR 1960 SC 845, 3 SCR 250

<sup>5</sup> Keshavanand Bharti v State of Kerela, AIR 1973 SC 1461

1. War or external aggression or armed rebellion. (Articles 352 and related Articles: 353, Proviso to 83(2), 250, 354, 358 and 359).
2. Where Government of the State cannot be carried on in accordance with the provisions of the Constitution<sup>6</sup>.
3. A situation of 'external aggression' calls for other action by the Union pursuant to the first part of Article<sup>7</sup>.
4. Financial stability or credit of India or any part thereof is threatened enabling the Union to give suitable directions<sup>8</sup>.

### **Historical Background**

Historically under the provision of Government of India Act, 1935 it's been said that if the Governor of a Province was satisfied that a situation has arisen in which the government cannot be carried on in accordance with the provisions of this Act, he may by proclamation assume to himself all or any of the powers in his discretion<sup>9</sup>. Similar powers were conferred on the Governor-General under Section 45. However, this Part never came into operation.

The Constitution-framers recognized that the provisions of Articles 355 and 356 were necessary to meet an exceptional situation where break-down of the Constitutional machinery occurs in a State. It was emphasized that, if responsible government in a State is to be maintained, the electors must be made to feel that the power to apply the proper remedy, when misgovernment occurs, rests with them.

Dr. B.R. Ambedkar, Chairman of the Drafting Committee, explained the purpose and nature of these provisions. The Constitution-framers conceived these provisions as more than a mere grant of over-riding powers to the Union over the States. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, Article 356 has been brought into action not less than 75 times.

### **Constitutional Provisions – Article 356**

The President on the receipt of a report from the Governor may by proclamation-

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<sup>6</sup> The Constitution Of India, 1949 (Article 356 and Article 357 of 1949)

<sup>7</sup> The Constitution of India, 1949, Article 355, Duty of the Union to protect States against external aggression and internal disturbance It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution

<sup>8</sup> The Constitution of India, 1949, Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened, President may declare a state of financial emergency.

<sup>9</sup> Government of India Act, 1935 (Section 93 of 1935)

- (a) Assume to himself all or any of the functions of the State Government;
- (b) Declare that the powers of the State Legislature are to be exercised by Parliament;
- (c) Make such incidental provisions as may appear to him to be necessary or desirable for giving effect to the provisions of the proclamation; also may even suspend in whole or in part the provisions of the Constitution relating to anybody or authority in the State<sup>10</sup>.

Parliament may confer that legislative power on the President and authorize him to further delegate it to any other authority<sup>11</sup>. The President is not however authorized to assume powers of the High Court, or to suspend any constitutional provision pertaining to it. Every proclamation under article 356 is to be laid before each house of Parliament, and it ceases to operate after two months, unless in the meantime, it has been approved by resolutions of both Houses of Parliament.

If at the time of issuing the proclamation the Lok Sabha is dissolved without approving it, and is approved by Rajya Sabha, then it ceases to operate thirty days after the date on which the Lok Sabha first sits after the general elections unless a resolution approving the proclamation is passed by it before that period.

The normal operative period for the proclamation is six months from the last of the days on which the Houses pass resolutions approving the same. Each time Parliament ratifies the proclamation, its life is extended for another six months.

In case Lok Sabha is dissolved within any period of six months, the proclamation remains in force for thirty days from the date the Lok Sabha first sits after its reconstitution within which period it can pass the necessary resolution. The Rajya Sabha should, however, pass the necessary resolution within the stipulated period.

Thus, the Governor makes his report in his discretion. It is this obligation which requires him to report to the President the acts of omission or commission of his Ministers which, cannot be carried on in accordance with the constitutional provisions and which, as the constitutional head, he is not able to check. Thus, the Governor acts as the head of the State as well as the holder of an independent constitutional office under oath to protect and preserve the Constitution<sup>12</sup>.

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<sup>10</sup> The Constitution of India, 1949, Article 356 Provisions in case of failure of constitutional machinery in State.

<sup>11</sup> The Constitution of India, 1949 (Art 357 of 1949)

<sup>12</sup> The Constitution of India, 1949, Article 356(1) If the President, on receipt of report from the Governor of the 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 assume himself all or any of the functions of State Government.

It is thus difficult to restrict the sovereign legislative power by judicial interference except so far as the express provision of written constitution. It is only the written provisions of constitution which may restrain legislative power, but where there is no written constitution, then, who restrain legislative power, and then its answer is judiciary by following various principles, precedents, customs, usages, and different statutes can check the consistency<sup>13</sup>.

A seven-judge bench dismissed the petition on several preliminary grounds, including its refusal to get into the thicket of political questions. Some judges even held that presidential satisfaction in invoking Article 356 of the Constitution was not justifiable. This action went unchallenged in the courts in the wake of the Rajasthan judgment<sup>14</sup>.

### **1. FAILURE OF CONSTITUTIONAL MACHINERY: MEANING**

A failure of constitutional machinery may occur in a number of ways. Even so, some instances of what does and what does not constitute a constitutional failure within the contemplation of this Article, may be grouped and discussed under the following heads:

- (a) Political crisis.
- (b) Internal subversion.
- (c) Physical break-down.
- (d) Non-compliance with constitutional directions of the Union Executive.

It is not claimed that this categorization is comprehensive or perfect. There can be no water-tight compartmentalization, as many situations of constitutional failure will have elements of more than one type. Nonetheless, it will help determine whether or not, in a given situation it will be proper to invoke this last-resort power under Article 356.

#### **Political Crisis**

- (i) A constitutional break-down may be the outcome of the political crisis or dead-lock. In situations like this, one or more alternatives may be available to the Governor like he may dissolve the Assembly so that fresh elections may be held
- (ii) The Governor in addition, may continue the outgoing Ministry for a short period as a caretaker government until elections are held and a new Ministry takes over since he need to act upon the aid and advice of ministry. But the legality of these alternative courses is one thing and their propriety or feasibility another. Governor should consult the leaders of

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<sup>13</sup> Gopalan V State of Madras (1950) SCR 88(100)

<sup>14</sup> State of Rajasthan v. Union of India (AIR 1977 SC 1361)

the political parties involved and the Chief Election Commissioner in deciding fresh elections without avoidable delay.

### **Internal Subversion**

- (i) As a corollary, it follows that correlated to the duty of the Union to preserve the democratic Parliamentary' form of government in the States contemplated by the Constitution, the States are also under a liability not to carry on the government in a manner contrary to or subversive of the provisions of the Constitution<sup>15</sup>.

### **Physical break-down**

- (i) Physical break-down can be where a Ministry, although properly constituted, either refuses to discharge its responsibilities to deal with a situation of 'internal disturbance'
- (ii) *Endangers the security* of the State or Where a natural calamity completely paralyses the administration and *endangers the security* of the State.

### **Non-compliance with constitutional Directions of the Union Government**

Non-compliance by a State Government with the directions of the Union Government can be seen where

- (i) Where a direction issued by the Union such as, Articles 256, 257 and 339(2) or, during an Emergency under Article 353, is not complied with by the State Government and the President thereupon holds under Article 365 that a situation, such as that contemplated in Article 356, has arisen
- (ii) If public disorder of any magnitude endangering the security of the State, takes place, and if the State fails to do so, the executive power of the Union Government is to be exercised and justify the latter giving appropriate directions<sup>16</sup>. If such a direction given to the State by the Union Executive is not complied with in spite of adequate warning<sup>17</sup>, the President thereupon may hold that a situation such as contemplated in Article 356, has arisen.

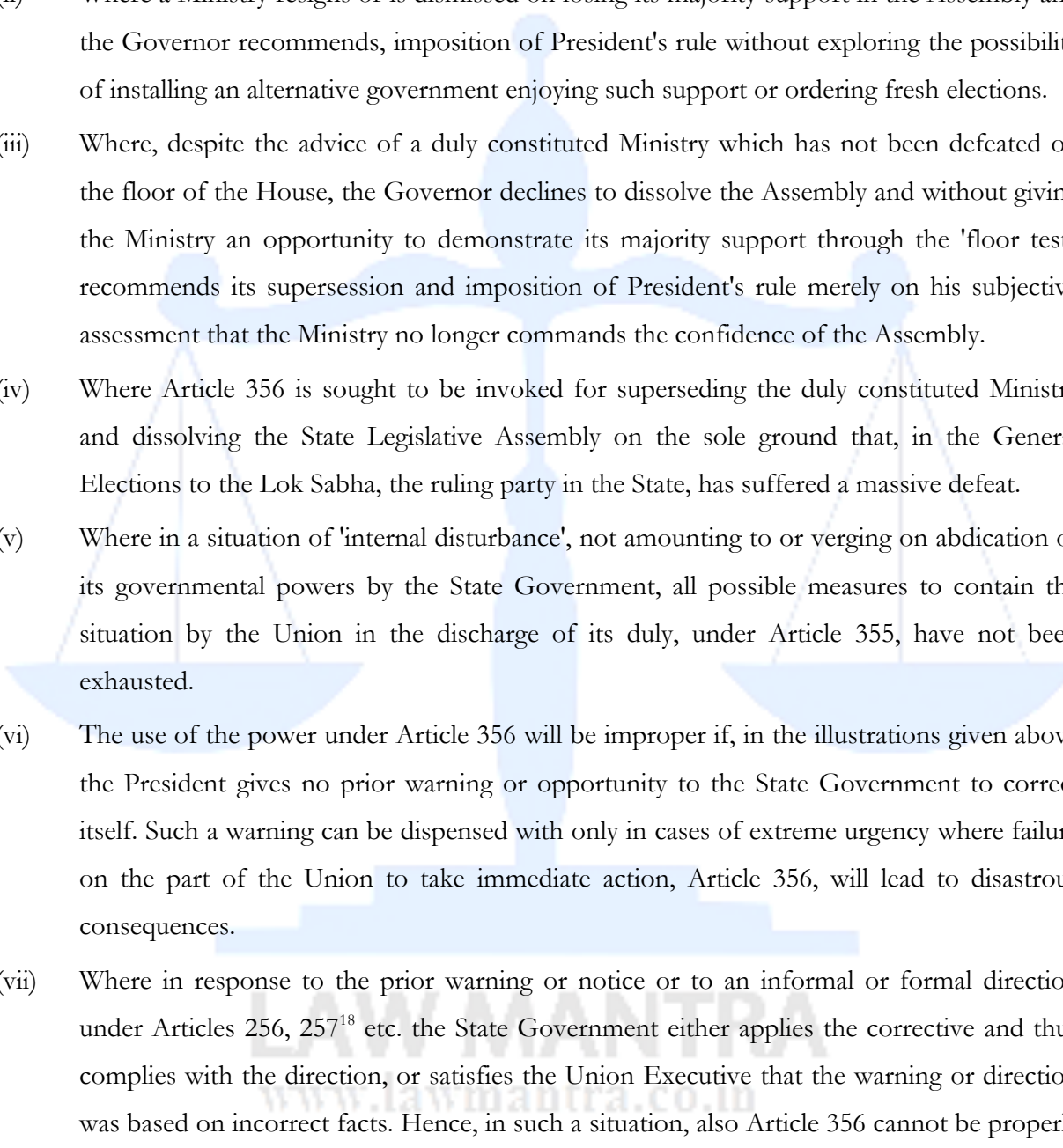
## **2. Illustrations of Improper Invoking of Article 356**

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<sup>15</sup> The Constitution of India, 1949 (Art 355 of 1949)

<sup>16</sup> The Constitution of India, 1949, Article 257 Control of the Union over States in certain cases.

<sup>17</sup> The Constitution of India, 1949, Article 257(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

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- (i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly is in office. Imposition of President's rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred.
  - (ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative government enjoying such support or ordering fresh elections.
  - (iii) Where, despite the advice of a duly 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 its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.
  - (iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.
  - (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 measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.
  - (vi) The use of the power under Article 356 will be improper if, in the illustrations given above the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, Article 356, will lead to disastrous consequences.
  - (vii) Where in response to the prior warning or notice or to an informal or formal direction under Articles 256, 257<sup>18</sup> etc. the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts. Hence, in such a situation, also Article 356 cannot be properly invoked.
  - (viii) The use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct.
  - (ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

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<sup>18</sup>The Constitution of India, 1949 (Article 256 and 257 of 1949)

- (x) This power cannot be invoked, merely on the ground that there are serious *allegations* of corruption against the Ministry.

The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution, would be vitiated by legal *mala fides*.

The Sarkaria Commission Report has considered the landmark judgement of the Supreme Court in **Rajasthan and others Vs Union of India**<sup>19</sup> and gave its recommendations after studying the prevailing practice of use of Article 356 and view of judiciary about it.

### 3. Recommendations of The Sarkaria Commission<sup>20</sup>

1. Article 356 should be used very sparingly, as off when all the available alternative measures fail to rectify the constitutional machinery in the state then it should be used a measure of last resort.
2. A warning should be issued to the State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. But not when immediate action has to be avail into action.
3. When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown, paramount responsibility under Article 355 should be exhausted to contain the situation.
4. (a) The Governor should explore all possibilities of having a government enjoying majority support in the Assembly in a situation of political breakdown. The caretaker government should be allowed to function during the functioning of interim period. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.  
(b) The Governor should recommend proclamation of President's rule without dissolving the Assembly.
5. Every Proclamation made is to be placed before each House of Parliament, in any case before the expiry of desired period of two month in clause (3) of Article 356.
6. Before the Proclamation is being issued under clause (1) of Article 356 the Governor or the President should not dissolve the State Legislative Assembly.

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<sup>19</sup> AIR 1977 SC 1361

<sup>20</sup> National Commission to review working of Constitution Report: *A consultation paper on: article 356 of the constitution*(2002)



7. Parliament in order to review continuance in force of a Proclamation, clauses (7) and (8) of Article 352 should be incorporated in Article 356.
8. 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 notwithstanding anything in clause (2) of Article 74<sup>21</sup> of the Constitution, the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the Proclamation issued under that Article.
9. A report should be a “speaking document” made by Governor is being placed before each House of Parliament 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.
10. There should be wide publicity in all the media and in full on the Governor's report, on the basis of which a Proclamation under Article 356(1) is issued.
11. Normally, the Governor's report under Article 356(1) should be the primary source to proclaim President's Rule in any State.
12. In clause (5) of Article 356, the word and occurring between sub-clauses (a) and (b) should be substituted by 'or'<sup>22</sup>.

The case of **SR Bommai vs Union of India**<sup>23</sup> gave one of the most significant judgements in the history of independent India. It was in the backdrop of PV Narasimha Rao govt. dismissed 4 state governments lead by BJP after Babri Masjid demolition.

The judgement tried to correct the federal balance by checking the arbitrary powers of the Centre to impose the President rule under Art 356. It said that the "satisfaction of the President" is not final, and can come under Judicial Review and could be inquired in the court. The judgment upheld the dismissal of BJP governments, for protecting Secularism, which comes under basic structure of the constitution. Yet it clarified, that mere break down of law and order is not a sufficient condition, but a "breakdown of constitutional machinery" is and It also gave enough leverage to state by stating that Parliament must approve the proclamation of President rule. It gave enough chance for state government to prove their majority by floor test and not outside the Assembly.

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<sup>21</sup> The Indian Constitution, 1949 Article 74 defines Council of Ministers to aid and advise President

<sup>22</sup> Government of India, Report: *A Consultation Paper On The Institution Of Governor Under The Constitution* (Department of Legal Affairs, 2002)

<sup>23</sup> 1994 AIR 1918, 1994 SCC (3)1

**Additional District Magistrate v. S. S. Shukla Etc**<sup>24</sup>, Supreme Court applied doctrine of procedure established by law in letter but not in spirit and overturned the judgment by high courts, declaring that article 32 –the right to approach to court to defend fundamental rights– remains suspended under emergency.

The Supreme Court in **Kihoto Hollohan v. Zachillhu and Others**<sup>25</sup> ruled that the speaker's decisions on disqualification were subject to judicial review. The result was that defection became a game of footloose legislators, ambitious leaders-in-waiting and grim court battles. The success of a political operation to topple a sitting government became dependent on speakers cooperating and courts staying away.

In **Rameshwar Prasad & Ors v. Union of India**<sup>26</sup> Governor Buta Singh, after an inconclusive election, recommended the dissolution of the state assembly, without it being convened even once. The court struck down the imposition as unconstitutional but refused to restore the assembly because another election had already been ordered. Singh resigned in the wake of the judgment.

**Makhan Singh v. State of Punjab**<sup>27</sup> Article 358 makes it clear that things done or omitted to be done during emergency could not be challenged even after the emergency was over. In other words suspension of Article 19<sup>28</sup> was completed during the period in question and legislative and executive action which contravened Article 19 could not be questioned even after the emergency was over.

### **The Current Situation in India**

The current situation of India shows that a law which has not been repealed but is ineffectual or defunct in practice is not so effective in nature as it creates imbalance thus considered to be “dead-letter” provision since the same has been activated numerous times till date creating a question of Emergency or Malfeasance. The National Commission to Review the Working of the Constitution (NCRWC), which was established on February 22, 2000, on the basis of a joint resolution of the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), submitted its extensive report in March 2002 stating that out of one hundred instances at least twenty instances might be termed as misuse. During tenure of Romesh Bhandari, Governor (Uttar Pradesh) its onerous to believe that he hardly made any effort to install a popularly

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<sup>24</sup> 1976 AIR 1207, 1976 SCR 172

<sup>25</sup> AIR 1993 SC 412

<sup>26</sup> (2006) 2 SCC 1

<sup>27</sup> 1964 AIR 381, 1964 SCR (4) 797

<sup>28</sup> The Constitution of India, 1949 (Article 19 of 1949)

government or to conduct a constitutionally mandated floor test so as to witness the firmness of the Legislative Assembly in the State for identifying a majority part before brisking application of the Article by the President. It was one justifiable move to impose President's Rule after the fall of Mayawati Government but with grounds to hold fresh elections as soon as possible. The mala fides of the Union Executive in preventing the assumption of office by an unfavorable political entity became clearly manifest in Governor Bhandari's actions and the decision of the United Front Government at the Centre, to re-impose President's Rule in Uttar Pradesh. The fixed issues in the Indian Constitution depends upon hand to hand movement as the Governor cannot be held responsible for his or her actions is the worst damage done to a state also he can only be removed by President on the Advice of Council of Minister thus being pretty much at pleasure of Union Executive. In its report, the NCRWC recommended that the President should appoint or remove the Governor in consultation with the Chief Minister of the State. This may act as a restraint on the misuse of power by the Office of the Governor.

Another scenario where we witnessed the misuse of Article 356 where President's Rule was imposed in State of Gujarat from September 1996 to October 1996, following the incidents of violence indulged in by members of the Gujarat Legislative Assembly. Soli Sorabjee (Former Attorney-General of India) pointed out that mere creation of violence within the Assembly cannot be treated as an instance of failure of the constitutional machinery; it would otherwise become very easy for malicious legislators to dissolve a duly elected legislative body by creating pandemonium in the Assembly and thereby prompting improper invocation of Article 356. The correct procedure to be followed in such a situation is to pass suitable legislation for disqualifying the guilty legislators<sup>29</sup>.

On the other extreme of misuse of Article 356 was the failure of the Union Executive - which was of the same political belief as the Government of Narendra Modi in Gujarat - to invoke Article 356 during the carnage following the Godhra train incident on February 27, 2002, in the State of Gujarat. To quote the words of Fali Nariman, noted lawyer and nominated member of the Upper House (Rajya Sabha) of the Indian Parliament during a parliamentary debate: 'Vital statistics tells us that there are more than 1, 00,000 persons in refugee camps and more than 30,000 people have been charge sheeted. Hence the Centre might be biased against dissolving that government by invoking Article 356. He also pointed out that the word 'otherwise' in the text of Article 356 becomes instrumental in such a situation to allow the President to act without waiting for the 'Governor's Report.

### **Some Recent Applications of President's Rule**

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<sup>29</sup> K. Jayasudha Reddy and Joy V. Joseph "Executive Discretion And Article 356 Of The Constitution Of India: A Comparative Critique" in Electronic Journal of Competitive Law (2004)

The Andhra Pradesh emergency breakdown on Feb 28<sup>th</sup> to June 8<sup>th</sup> 2014 almost with a span of 100 days. Political impasse following the resignation of Chief Minister Kiran Kumar Reddy and several other Congress party legislators from the Government as well as the Party, in protest against Indian Parliament passing Andhra Pradesh Reorganization Bill to bifurcate united Andhra Pradesh and create a separate Telangana State. President's rule revoked from Telangana areas on 2 June 2014 and bifurcated Andhra Pradesh areas on 8 June 2014. President rule reimposed unlawfully by the President after the two months time limit without taking approval of the Parliament under Article 356<sup>30</sup>.

Arunachal Pradesh also witnessed president's rule from Jan 25<sup>th</sup> to Feb 19<sup>th</sup> 2016 where 20 Congress MLAs joined hands with 11 of the BJP and two Independents, making the current government a minority government. Supreme Court declared the imposition of president rule as ultra vires and reinstated the dismissed Congress led government in the state. In a landmark judgement, it found fault with the unconstitutional role played by the Governor by interfering in the activities of legislatures and speaker of the Vidhan Shaba<sup>31</sup>.

Delhi witnessed chaos in emergency from Feb 14<sup>th</sup> 2014 to Feb 11<sup>th</sup> 2015 because Arvind Kejriwal resigned as Chief Minister after failing to table the Jan Lokpal Bill in the Delhi Assembly<sup>32</sup>.

Jammu & Kashmir emergency commenced on Jan 9<sup>th</sup> to March 1<sup>st</sup> 2015 for almost two months due to Failure of Government formation after fractured verdict in Assembly elections. BJP & PDP reached an understanding to form an alliance to form Government in J&K<sup>33</sup>.

Jharkhand faced prima facie emergency from January 18<sup>th</sup> to July 12<sup>th</sup> 2013 due to Loss of Majority. BJP's ruling coalition partner JMM withdrew its support to the government pushing it into a minority. Chief Minister Arjun Munda resigned and sought dissolution of the state Assembly<sup>34</sup>.

Maharashtra followed a short emergency for 33 days from Sept 28<sup>th</sup> to Oct 31<sup>st</sup> 2014 – 33 due to Govt. dismissed since Congress Separated from its allies NCP and Others<sup>35</sup>.

Uttarakhand also faced a short duration emergency heading from March 27<sup>th</sup> to April 21<sup>st</sup> 2016 due to Collapse of CM Harish Rawat's ministry following a split in the state unit of Congress party. In

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<sup>30</sup> B. Muralidhar Reddy and Anita Joshua “Andhra Pradesh to be under President’s Rule” *The Hindu* Updated May 19<sup>th</sup>, 2016

<sup>31</sup> Editorial, “Supreme Court restores Congress Government In Arunachal Pradesh” *The Hindu*, July 13, 2016

<sup>32</sup> Editorial, “President’s Rule imposed in Delhi” *The Hindu*, Updated May 18, 2016

<sup>33</sup> Editorial, “Presidential rule imposed in Jammu and Kashmir” *JagranJosh* Jan 9, 2015

<sup>34</sup> Editorial, “President’s rule imposed in Jharkhand” *The Hindu* Jan 9, 2013

<sup>35</sup> Editorial, “President’s rule imposed in Maharashtra” *Times of India* Sept 28, 2014

the hearing of related case, Uttarakhand High Court declared the President's rule imposition by the President unconstitutional and restored the Harish Rawat's led government in the state<sup>36</sup>.

Uttarakhand was put back into emergency within 24 hrs of up liftment of previous one on April 22<sup>nd</sup> to May 11<sup>th</sup> 2016 as Supreme Court of India held the stay on Uttarakhand High Court's verdict thus reinstating the President's rule in the state<sup>37</sup>.

## Conclusion

It is evident that there is a lack of effective safeguards against the much abused Article 356 of the Indian Constitution. The safeguard of 'parliamentary approval' - outlined in Article 356(3) - of a Proclamation under Article 356(1) could be biased because the Party that is in power at the Centre generally dominates Parliament by a majority vote. Furthermore, even a vote in Parliament declaring a particular imposition (or failure to impose) of President's Rule to be wrongful cannot undo the damage already done.

However, the repeal of Article 356 is not advisable because the Indian polity is rife with crises and there has to be some contingency against a constitutional deadlock in a State. The NCRWC also advised against the repeal of Article 356, as this would eventually create an imbalance in Union-State relations in upholding constitutional governance throughout India and that in many more instances than not the use of Article 356 was inevitable. Another option is to make a introduce a mandatory checks on the exercise of power under Article 356, by amendment. Even this is not advisable because it defeats the very purpose of the Article of dealing expeditiously with emergencies of constitutional failure in a State.

Therefore, the most practical course left open may be to let history take its course. Eventually, the public opinion in India, we hope will awaken to the fact that Article 356 may veritably have become a noose that is slowly tightening around the neck of democracy in India, suffocating the right of the people under the Constitution. In the meantime, to nurture budding public opinion we do have a resource not to be underestimated, which is the power of judicial review of the Supreme Court, which has on more than one occasion shown that it is a power to be reckoned with.

So we will have to suffice for now with occasional outcries against the Union Executive unsheathing or failing to unsheathe, at its sweet pleasure that double-edged sword called Article 356.

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<sup>36</sup> President's Rule, available at <http://www.dnaindia.com/india/report-uttarakhand-the-curious-case-of-president-s-rule-2206032> ( Last Modified May 3, 2016)

<sup>37</sup> Krishnadas Rajagopal "SC stays Uttarakhand HC judgement quashing President's Rule" *The Hindu* April 22, 2016