



Article 356 of the constitution of India: An analysis in the present scenario

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Abstract

Article 356 of Indian Constitution is the most Controversial Provision as far as the relationship among states and Centre or federalism is considered but it is also a Unique, Extraordinary provision which almost every time of its implementation follows a novel and extraordinary course of action. The power conferred to Union by this article is both amazing and abstract. It may rightly be called twofold edged sword making it very prone to questionable and undemocratic. Many times strong voices have been heard in India to completely cancel it or to downgrade its power and authority. The main reason behind such questions is being various words, whose meaning is unclear, are given in this article such as 'or something different' in Article 356 (1). Few terms are also of the same nature such as 'dissatisfaction of the Constitutional equipment' in the State' is a 'questionable explanation'. These terms and words are being used by Central government to manhandle this article at its whims and desires as shown in Chapter 3 in details how this article has been misused in last six decades. Generally, The Governor also works hands in arm with Central government with respect to use of Article 356. Article 356 talks about the Provisions in case of failure of constitutional machinery in states. The state's governor issues the proclamation, after obtaining the consent of the President of India. If it is not possible to revoke Governor's rule within six months of imposition, the President's Rule under Article 356 of the Indian Constitution is imposed. The president rule is imposed in any state in case of failure of constitutional machinery, when on the recommendation of the Governor or by any source if president is of the opinion that there is breakdown of constitutional machinery or such situation has arisen that the government of the state cannot be carried in accordance with the provision of constitution for the better functioning of that state. But sometimes this power is misused that can be due to defection of ruling party lawmakers. According to Sakaria commission reports this power has been used over 100 times since Independence, the reason can be of spreading their party's power in the state whereas Judicial Review refers to the power of Judiciary to interpret the constitution to declare any such law or order of the legislature and executive void, if it finds them in conflict the Constitution of India. The researcher have chosen this topic so that they could find out about the uses and misuse of this article in contemporary time.

Keywords: constitutional equipment, administrative reforms, constituent assembly, constitutional machinery, lawmakers, etc

Introduction

In the Constituent Assembly also, Article 356 was the most discussed at length by the Constitution makers. This was certainly due the very nature of this Article, Constituent assembly makers were of the impression that if and when the situation may arise and Centre misuse it for their own benefit, it will not only harm the federal structure but will also make a mockery of the basic principles Indian Constitution is built upon. There were two School of thought in the Constituent Assembly which had opposing feelings about the incorporation of crisis arrangements in the Constitution. The first and principal school of thought consisted of Dr. B.R. Ambedkar, and T.T. Krishnamachari, who wanted to have an Article to sort out any crisis which is against the Union nature of India in the Constitution. The other school of thought consisting of H.V. Kamath, Prof. K. T. Shah, Prof. Shibban Lai Saksena and others had genuine reservation in this regard.

Prof. Shibban Lai Saksena while talking in the Constituent Assembly stated: "we are decreasing Provincial Autonomy to a joke. These Articles will decrease the State Government to incredible subservience to the Central Government". It appears that the establishing fathers of the Constitution caught that, if and when it (Article 356) would be abused, it would not just disregard the government character of the nation imagined by them yet in addition make a joke of equitable standards.

Dr. B.R. Ambedkar, the chairman of Constituent Assembly, while putting an expectation stated, "The Articles will never be called into task and they would remain a dead letter". It is certain however, that the establishing fathers of the Constitution would not have incorporated this Article without legitimate and cogent reasons as they discussed it at lengths and pondered on its every minute word to word detail before incorporating Article 356 in draft Constitution. It is however, well established that the establishing fathers of the Constitution have adopted Article 356 from Government of India Act, 1935. However, the gest of its use has totally been changes. While Government of India Act, 1935 gave the power to the Governor-General at the Center, so that States act according to it at every cost as per Section 45 and 83⁴. The present Constitution, is of the view that Article 356 can only be applied if no other option is left. It gives power to the President in specific situations only and then too after receiving the report of the Governor or Ruler of the State.

Imposition of Article 356 and dissolution of state assembly by Central government definitely puts the federal structure at a loss especially in a country like India, where States were brought together to form a Union rather than came together like America. It may also be thought as to look down upon State governments works, which do all administrative work at the base level. Until early 1990's, or up to the benchmark judgement of S.R. Bommai verses

Union of India case, 1994, Article 356 has been used by Central governments upon their will to control the states^[5]. The tension among India and neighbors has also had much effect of imposition of Article 356. Sometimes, when it was used unconstitutionally, it was opposed by neighboring countries to remind India about its democracy, about which India such proudly brags to the world. At other times, when States or neighboring countries have worked in such a way to threaten the Union of India, even Indian people have advocated use of this constitutional safeguard given to Centre by constitutional makers.

Mostly, Article 356 has been mistreated, when it was imposed when it was not required. Central government used it as a tool to bend States and show them Who's the boss? Such instances have been discussed in detail in previous chapters. But this is not the only way to misuse this important Law. It has also been misused, when it was not imposed even when the situation in the States gravely demanded. In 2002, after the Godhra train incidents, riots followed in Gujrat as well as few other states leading to casualties leading from 1200 to 2000 people, as stated by various sources⁶. The situation later blew up to leading to more than 1 Lakh people in evacuation camps and charge sheet on more than 30,000 people. However, Union government did not pay any heed to it and continued sleeping. What cannot be understood in this situation is that whether this situation did not seem good enough to then Central government to make a move under Article 355 and 356. It can be well concluded that "something different" word in Article 356 could have been instrumental in this situation empowers the president to act without sitting tight from Governor or parliament.

It might be concluded however from previous chapters that there are not enough safeguards in Indian Constitution which may prevent the abuse of the Emergency courses of action. It may also be stated that Central government overpowers the state governments by multitude of time. Even if, abuse of President's Rule is put to vote test in parliament, as provided in the „parliamentary support“ as per in Article 356(3) - of a Proclamation under Article 356(1), maximum chances are that it is going to be rectified as the majority party forms the Central government. In addition, even a vote in Parliament declaring a particular bother (or powerlessness to compel) of President's Rule to be shameful can't fix the mischief formally done. So, clearly there are not enough shield against the abuse of Article 356 of the Indian Constitution by the Union government.

Still, present analysis agrees with The National Commission to Review the Working of the Constitution (NCRWC), when it urged that Article 356 should not be dropped, as that would lead to disparity among the Union and State relationship in keeping up Constitutional organization, as in various emergency situations the use of Article 356 is certain. In these situations, present study also agrees with the Commission on Centre-State Relations popularly called as Punchhi Commission when it talks about a leading body of trustees while taking any decision on implementation of Article 356 among others. Present study also agrees with Sarkaria Commission that Centre does not consult Chief Minister of the State, while appointing Governor and a personal rapport between the Chief Minister and Governor is a must for a federal system to work. Hence, State Government should be consulted and its view should be given importance while appointing the Governor. The State

Government may provide a panel from whom Governor may be chosen by the Union. Present study agrees with a fixed term of five years to the Governor and their clearing by the system of arrangements by the State Legislature as followed by Parliament for the President.

Articles 355 and 356 should be different so that burden torn zones can be brought under standard Union Rules for an obliged period. More clearly speaking, the regions of the State, where an emergency is actually present may be controlled using these Articles rather than whole States, when the situation so arise to undermine the misuse of these emergency Articles. Such an emergency should not be for more than 3 months in one spell. It may be continued for another 3 months if the situation remains the same or deteriorates further.

Putting such provisions in place, situations like Uttarakhand and Arunachal Pradesh which happened recently can be avoided and the heavenly Article 356 which should be used in rarest circumstances can be put to its much needed glory in democratic country like ours as independence of States is very important issues if Indian federalism is considered. Along with constitutional measures another very important institution which may prevent Article 356 from being a "weapon of abuse" is Judiciary. Supreme Court also must use its power of Judicial Review to the full extent, so that such happenings may be avoided in future.

In any case, India as nation is flooded with various unique challenges frequently and Article 356 is the last weapon which can be used in such circumstances. However, worse the weather of Indian Union may become, Article 356 is an umbrella which can be used to stop the situation from getting ugly. In this view, the cancelation of Article 356 isn't judicious as there must be some probability against a built up end in a State. The National Commission to Review the Working of the Constitution (NCRWC) has also suggested against the invalidation of Article 356 as it will bring an unevenness in Union-State relations as nonuse of Article 356 is inevitable in keeping set up a federal organization like India. Another thing which can be done is to correct of Article 356 has been used as power show by Centre. This also will not be logically correct as it discredits the very purpose of the Article of overseeing emergencies of ensured dissatisfaction in a State.

Considering all the above points, the most reasonable left open may be to look at the history of implementation of Article 356 more carefully. If looked this way, we will find that since last seven decades of independence, imposition of Article 356 has come a long way. Present study trusts in the federalism structure of India and is of the view that Article 356 may veritably have transformed into a noose that is step by step fixing around the neck of Central government's controlled frameworks in India, providing the benefits of an all-inclusive community as envisioned by the Constitution makers. Meanwhile, to evaluate, India does have the Supreme Court with the power of legitimate review, which at various instances shown to be helpful in this regard.

Frequent Use of Article 356

Article 356 has been utilized, abused and mishandled much of the time. D.D. Basu, in his book 'Prologue to Constitution of India (nineteenth Ed.) at page 483 says " No Provision of the Constitution has been so frequently utilized, abused and mishandled as Article 356, 108 times since 1954".

The NCRWC was constituted in February 22, 2000, by Ministry of Law, Justice and Company Affairs, Government of India to “examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features” which submitted its broad report in March, 2002. In its examination, the NCRWC expressed that “in at any rate twenty out of more than one hundred cases, the conjuring of Article 356 may be named as abused”.

A standout amongst the most helpful affection for Governors to prescribe the inconvenience of President's Rule has been that of the 'unsteadiness' of the Government. Upto December 1978, out of multiple times, multiple times President's Rule was forced on this ground alone. It is likewise fascinating to take note of that President's Rule has been forced one hundred and multiple times up to this point. Between 1950-1966, the President's rule was forced ten time in six States and one Union Territory. The Nehru period saw just seven of them that is in Punjab (1951), Pepsu (1952), Andhra (1954), Travancore Cochin (1956), Kerala (1956 and 1959) and Orissa (1961). Between 1964-1966 it was forced multiple times in Kerala in 1963 and 1965, when Lai Bahadur Shastri was the Prime Minister. Amid Mrs. Indira Gandhi's time of Prime-Ministership between 1966-77, President's Rule was forced thirty-five times in fifteen States, and one Union Territory. In March 1977, the Jania Government came into power at the Center and the President's Rule was forced in upwards of nine States on April 30, 1977 subsequent to dissolving their Assemblies. President's Rule was additionally forced in Karnataka, Tripura, Mizoram and Pondicherry after the happening to the Janta Party in power at the Center. Again after Mrs. Indira Gandhi ended up Prime Minister and the President's Rule was forced in upwards of nine States on February 18, 1980 in the wake of dissolving their Assemblies.

From the above basic investigation of the intensity of the President to break down State Assemblies under Article 356, “the end develops that this arrangement (Article 356), which was planned to be a 'security valve by the casings of the Constitution, has been utilized as a solid weapon to get rid of their preferred Governments not in the State”.

This demonstrates the desires for the establishing fathers of the Constitution that Article 356 would be most sparingly utilized have been totally gave a false representation of. Dr. B.R. Ambedkar said in debate over this Article that Center would intercede “just when the Government isn't carried on in consonance with the arrangements set down for the Constitutional Government of the Provinces. Regardless of whether there is great Government or not in the Province isn't for Center to decide”.

He was not ignorant of the likelihood of the maltreatment of these Provisions however battled himself with communicating the expectation that “they will never be brought into activity and they will stay dead letter”. Dr. Ambedkar lived to upbraid, in the Rajya Sabha, the inconvenience of President's Rule in PEPSU in 1953 as “The most rough sort of assault on the Constitution”. Along these lines, the 'gross maltreatment' of the Center's capacity to assume control over the organization of a State makes a joke of the government standard.

It might be expressed that on the vast majority of the events, there was no defense for summoning Article 356 and forcing President's Rule. It is seen that the decision party at the Center has abused the Article for its trivial political finishes. The facts confirm that with couple of special cases, the Article kept up its certified soul till 1967, after which political pluralism started to command the scene. In the changed political set up, Article 356 started to obtain an alternate appearance. The position moved from as the last report of the President to the primary retreat of the decision party at the Center. In 1977, the first non-congress government headed by Morarji Desai came to control at the Center based on a command against the overabundances submitted amid crisis. It squandered no time in toppling down Congress governments in every one of the States where the gathering had been steered in the Parliamentary surveys.

An examination of the instances of burden of Article 356 has demonstrated that this Article has not been utilized for real reason. As a general rule, the arrangement has been abused to advance the political interests of the gathering in power at the Center.

For all intents and purposes, every single ideological group or alliances that came to control at the Center have controlled Article 356 to suit their political advantages. Hence, the anxiety and uncertainty communicated by the establishing fathers of the Constitution with respect to the likelihood of Article 356 being 'manhandled' or 'abused' for political purposes demonstrated prophetic. All these point to the lacks, errors, irregularities and the infringement of standards and solid works on encompassing the inconvenience of President's Rule under Article 356.

Sarkaria Commission's Recommendations in the Context of Article 356

The Sarkaria Commission, was formed in 1983 due to increasing pressure for more autotomy to the States. It was headed by Justice R.S. Sarkaria. It took four years to research and deliberate on various provisions which may improve Center-State relations and presented its Report in 1987, which cleared the indefinite quality encompassing Article 356.

Uncommon Use of Article 356

The Sarkaria Commission recommended Article 356 may be used in exceptional cases, when no other choice is left. The Commission also observed that the few terms in the article itself are vague and have been manhandled by various institutions at various times. The Sarkaria Commission said that these terms are there, because they are critical in meaning, degree and effect, and may be of use if exceptional circumstances arrive. So, in view of the above targeting them as a mistake of the Constitutional Machinery is ethically wrong. Commission also emphasized in case of any certified breakdown of the Constitutional Machinery, only Article 356 has answers for the State. Any abuse or maltreatment of this exceptional power would hurt the lion's share rule surface of the Constitution.

The Sarkaria Commission, reviewed recommendations it received from individuals and affiliations and on social occasions. It also agreed with the Constitutional forefathers when they said that “Article 356 should be used sparingly, as a last measure, when each and every available alternative had fail to check or revise a breakdown of Constitutional Machinery in a State”.

Avoiding Disastrous Consequences

According to the Sarkaria Commission's report, the imposition of President's Rule should not be done for preposterous emergency, where Centre government dissatisfaction's leading to imposition of Article 356 would incite tragic results. The Commission also recommended a notice should be issued to the errant State, stating how particular State is not working according to the Constitution. Even after the notice, Central government must wait for the reply from the State before hasty imposition of President's Rule. However, if the situation is deteriorating at a very fast pace and conditions are such that issue of notice and waiting for reply will further worsen it, Article 356 may be used as a last resort.

The Governor's Obligation to Explore Alternatives

In condition of political breakdown arises in any State, till another majority government is formed, the gatekeeper government should carry on the ordinary works. In such scenario, before the imposition of President's Rule, the Governor should research every single possibility of forming a stable Government. If the scenario is such that fresh choices of forming stable government can be held within small time frame, the Report recommends that the Governor should request the previous dynamic Ministry to continue as an administrator government. Such ministry was should be seized to exist only on a critical course of action issue, such as maladministration or degradation. The Governor was then advised to separate the Legislative Assembly of the state, leaving the objectives of the situation to the electorate, by.

The Proclamation of Emergency and the Governor's Report

The Sarkaria Commission Report favors appropriate adjustment of Article 356 to consolidate Proclamation material as well as grounds, on which Article 356(1) is being imposed in particular State. The report submitted by the Governor to the Presidents for imposition of President's Rule should be a 'talking record'. It must have a clear and accurate explanation of each and every material reality and grounds dependent on which the President may satisfy himself with respect to the nearness or by and large of the situation considered in Article 356.' The Commission's Report moreover recommends giving wide consideration in all media to the Governor's Report.

The proposals given by the Sarkaria Commission's Report are expansive and only noteworthy sections may be used/ followed while state. Centre relations are concerned. Honorable P.V. Rajamannar, Ex. Chief Justice of the Madras (now Chennai) High Court, who was also Chairperson of the Inquiry Commission, appointed by Tamil Nadu State to give a review Center-State Relations, also agrees with the Sarkaria Commission in some points. However, in recent past also, suggestions from these committees and commissions are being completely ignored by various Governors and even central government, when they make a mockery of Indian Constitution at large.

S. R. Bommal V. Association of India President's Power Under Article 356 isn't Absolute or Arbitrary

The decision conveyed by Supreme Court in 'A. R. Bommai V. Union of India was a milestone judgment of Indian Constitution. In this historic judgement, the Supreme Court

set apart the worldview and impediments under whom Article 356 was to work. Soli Sorabjee, previous Solicitor-General of India and also a prominent legal scholar has said that, "After the Supreme Court's judgment in the S. R. Bommai case, it is all around settled that Article 356 is an outrageous power and is to be utilized if all else fails in situations where it is show that there is an impasse and the established apparatus in a State has fell."

The other judges of the Supreme Court also agreed with the maximum parts of the proposal given by the Sarkaria Commission. Nonetheless, few points given by the renowned judges choosing the S.R. Bommai case, are follows:

1. Article 356 or popularly called President's Rule of the Constitution gives a power to the President, which he shall use if circumstances have emerged when the Government of a State cannot be carried, as the Constitution's arrangements. Under Indian Constitution, the power to be used in extremely rare cases after discussion with the Union Council of Ministers and the Prime Minister. The article's fulfillment is emotional in nature.
2. The pre-condition for the imposition of President's Rule a report submitted by the Governor along with "relevant material and proofs" that situation in the State is out of control and no other option is left than imposition if Article 356. This article gives the President a molded power. Presidents shall act only after the report with relevant material attached. So, it's not a flat out power to the President. The suggestions given by the Sarkaria Commission for the activity of intensity under President's Rule justify genuine thoughts for all concerned.
3. In spite of the fact that the force of dissolving of the state Legislative Assembly may be said to comprehend Clause (1) of Article 356. It must be used having admiration for the general built up plan. The President must use it after the Proclamation is asserted by the two Houses of Parliament (Rajyasabha and Lok Sabha) under Clause (3) and not before. Without their ratification, the President may suspend the State Legislative Assembly as per Sub-Clause (c) of Clause (1). The State Legislative Assembly should be gone to exactly where, it was before the Proclamation.
4. As per Clause (1) of Article 356 proclamation can be issued only where the situation has become severe as per the inspection. If the condition so arise, the Government has to make use of Article 356. But, at one place their cannot be two governments at one time. So, keeping the State Government can't be holding the office, while President's Rule has been imposed at a place.
5. As per Clause (3) (a) of Article 356, it is considered as a watch out for the powers of the President alongside as a 'shield' against 'abuse'. If Rajyasabha and Lok Sabha object/don't support the Proclamation, it will end at the completion of the two-months of its imposition. After that, the state government which was ousted will be reestablished.
6. Article 74(2) stops from an enquiry being requested on whether any, and what 'counsel' was offered by the Council of Ministers to the President. However, It doesn't bar the Supreme Court from calling upon the Council of Ministers (Union of India) to the Court

- himself, to know about the 'material' whereupon the President had molded the basic 'satisfaction'.
7. The Proclamation imposed under Article 356(1) is not immune from 'legitimate study'. The imposed proclamation can be stroked down by the High Court as well as The Supreme Court if (i) it is found to be 'mala fide' (ii) to be relied on 'unessential or pointless' grounds among various other reasons. Clause (5) introduced by the 38th (Amendment) Act] was again dropped by the 44th (Amendment) Act, so that imposition of President's Rule can now be reviewed as per Indian Constitution by the Court.
 8. If the High Court or the Supreme Court may decide to strikes down the declaration. The honorable court also may restore the rejected State Government to office along with reestablishment and reactivation of the State's Legislative Assembly. Among this, the honorable Court may allow the exhibits, laws and orders passed during the time period when President's Rule was still imposed to remain valid. If such decision is taken by the Court then, such laws/rules/orders shall not hinder hinder the State Government or State Legislative Assembly.

It can well be concluded from above that Bommai's Judgement made clear that the President's ability/ power to imposed Article 356 in any state is 'not by and large' or 'optional'. The President's Rule cannot be imposed by the President at his own motivation, without reasonable reason. A short record of Sarkaria Commission's proposals on Center-State Relations and specifically, with reference to the utilization of Article 356, would be important. The Commission is determined in prescribing that Article 356 ought to be utilized all around sparingly in extraordinary cases as a proportion after all other options have run out, when every accessible option neglect to anticipate or redress a Constitutional breakdown in a State. "All endeavors ought to be made to determine the emergency at the State level" before taking plan of action to the arrangements of Article 356. The Commission additionally proposed that a notice should be issued to the concerned State, explaining how it is not carrying on the State Government as per the Constitution. The clarification received from the concerned State should be considered before making decision to implement Article 356 in that State.

In a situation of political breakdown, the Commission saw that the Governor should research every single potential result of having an organization with a predominant part support in the Legislature. If it is past the domain of creative mind to hope to present such an assembly and if fresh choices can be held promptly, he should demand that the dynamic administration continue as a watchman government if the administration was squashed unlawfully and did not faced any charges of maladministration or debasement, and is perfect to continue. The Commission has similarly recommended the methodology to be taken following on the declaration of President's Rule. Each pronouncement should be put before each House of Parliament at the most dependable. Be that as it may, since the Constitutional Provision in Clause (3) of Article 356 sets out this should be done before the expiry of two months time period, it acts the saint of the Central government and this proposition is in every practical sense rendered lacking.

Another proposition of the Commission is important. The Commission proposes that the Legislative Assembly of the State should not be separated by the Governor/President before the affirmation is laid before the Parliament and Parliament has considered it. The Commission moreover endorsed that Article 356 should be properly changed to ensure this. The interest in this proposition is that it enables the Parliament to discuss the issues drew in with the announcement and it is dispersed in the media. After the trade, it presumably won't be functional for the organization to deteriorate the Assembly if the State Government has a strong assemblage of proof against the dismissal of the administration and the breaking down of the Assembly and general inclination affirms this. In any case, if the Central government acknowledges a shielded lion's offer, observing obvious would happen, yet this offers an opportunity to Parliament to discuss the issue in the whole of its outcomes. Another immense proposition of the Commission is that the shields relating, on a fundamental dimension, is to merge Clauses (7) and (8) of Article 352 in Article 356 so as to enable the Parliament to review the continuation of Proclamation in intensity of the Proclamation sporadically. The heart of the fix suggested by the Commission is that the material substances/grounds on the basis of which Article 356 (1) is imposed also should be made an important part of the declaration. This would be helpful for legitimate review to some degree. The Commission proposed this should be given, through a fitting change, not with-standing anything in condition (2) of Article 74 of the Constitution. This will engage the troubled party to approach the Supreme Court and High Court to choose if the presentation is all around set up. Moreover, in light of the method of reasoning of the decision will be created into the pronouncement, the Supreme Court will very likely well-spoken on the Constitutional authenticity of the revelation without assaulting the Constitutional space of the authority. The Commission has recommended that the report of the Governor dependent on which the President showings under Article 356 normally should be a talking record and should contain an accurate and clear verbalization of each material reality and ground dependent on which the President has satisfied himself with respect to the nearness or for the most part of the situation thought about in Article 356. Further, the Governor's Report should be given wide consideration in all of the media and in full. Apparently, the Sarkaria Commission has gone past the writers of the Constitution and their precursors in proposing certain recommendations with regards to the use of Article 356. Clearly, these proposition are radical.

Legal Review—President's Power Under Article 356 is Subject to 'Legal Review'

The weakness of a Proclamation under Article 356 to legal audit is past question, in light of the fact that the power under Article 356(1) is a restrictive power. In the activity of the intensity of legal audit, the court is qualified for look at whether the condition has been fulfilled or not. So the contention really spins around the degree and reach of legal survey. From the choices on account of 'Province of Rajasthan v. Union of India and the S.R. Bommai case, unmistakably there can't be a uniform principle material to all cases. It will undoubtedly change contingent on the topic, idea of the right, and different variables.

Be that as it may, where it is conceivable the presence of 'fulfillment' can generally be tested on the ground that it is 'mala fides' or dependent on completely 'superfluous and insignificant grounds'. The pertinence of legal survey in issues including the utilization of Article 356 is additionally accentuated in the Supreme Court judgment, when the honorable court held that the court was not blocked from striking down a law or a preceding of Proclamation of Emergency, as ultra vires to the Constitution, in light of the fact that the Proclamation was in power around then.

'Legal audit' of the Proclamation under Article 356(1) was first tried in 'State of Rajasthan v. Union of India'. The Supreme Court, being a definitive mediator of the Constitution, has the intensity of 'legal survey' on all activities exuding from or engaged by any established arrangement. Despite the fact that the intensity of the President under Article 356 concerns his political judgment and the courts typically abstain from entering the political shrubbery, this power abhors cover resistance from legal audit. It must be resolved in the individual cases based on legitimacy, which is unmistakable from legal survey.

However, except if the mala fides of the Presidential Announcement is showed up, the Courts have been asked by the Supreme Court to avoid delving into the President's satisfaction for need of judicially sensible benchmarks. This point is amply clear by virtue of *Minerva Mills and Others v. Relationship of India and Others*, where the Supreme Court tolerated generally goodness its ability to take a gander at the authenticity of a Proclamation of Emergency issued by the President. The Supreme Court in this issue viewed, cover alia, that it should not defer to play out its built up commitment basically in light of the way that it incorporates considering political issues. Meanwhile, it should keep itself to breaking down whether the built up necessities of Article 356 have been found in the introduction of the Proclamation and it should not go into the sufficiency of the substances and states of the presidential satisfaction within the sight of a situation of emergency.

Along these lines, we can safely gather that, anyway limited, the Presidential Proclamation under Article 356 is at risk to 'Legitimate Review'.

Proposals of the Standing Committee Constituted by Inter-State Council (ISC): Use of Article 356

The Inter-State Council (ISC) involved a 'Standing Committee' to examine the issue relating to Center-State relations including abuse of Article 356. The Committee endorsed the issue of alert or show cause see with seven days time to reply to it and the pronouncement be issued basically in the wake of contemplating the appropriate response of the concerned State Government. The Standing Committee went to some degree more remote than the Sarkaria Commission by communicating that the declaration should contain the substance of the notice similarly as the appropriate response of the State Government thereto. The revelation isn't in the possibility of a Court judgment to contain all of these fixings. The Standing Committee prescribed that the season of two months for getting the underwriting of Parliament might be diminished to one month. Regardless, the season of two months is a really concise period and there is no inspiration to decrease it to one month. The Standing Committee further recommended that the declaration be certified by a two-third bigger part in

Parliament. In such way it may be displayed that in these days of collusion government, where no social occasion has even a larger part, the condition that the announcement be avowed by a two-third overwhelming part would absolutely refute the objective and amplexness of Article 356.

The Administrative Reforms Commission, the Rajamannar Committee, the Sarkaria Commission in conclusion the Supreme Court choice in the Bommai case which went into the thorny issue have propelled a couple of recommendations, proposals and choices. So far no huge proposition of these Commissions or the choices of the Court have been recognized, nor were they melded in the Constitution by technique for modification to Article 356.

Judicial Guidelines

In 'S.R. Bommai V. Union of India' the Supreme Court has set out certain Judicial Guidelines with respect to the suspension or disintegration of State Assemblies and forcing President's standard. The 'Rules' recommended are:

Presidential Proclamation dissolving a State Legislative Assembly is liable to 'legal survey'. On the off chance that a State Government neutralizes secularism. President's standard can be forced. No discount expulsion of resistance rules States governments when another, ideological group accept control at the Center.

On the off chance that President's standard is forced distinctly on political contemplations the Court can even reestablish the Assembly. Burden of President's standard and disintegration of State Assembly is impossible together. State Assembly can be broken up simply after Parliament supports Central standard. The Supreme Court or a High Court can force the Union Government to uncover 'material' on whose premise President's standard is forced on a State.

The intensity of the President Under Art. 356 is a protected power, it's anything but a flat out power. The presence of material is a pre-condition to shape the fulfillment to force the President's standard.

Suggestions

To the exclusion of everything else, it is suggested that, all of the methods prescribed by the building up dads should be seen by the Union Government before leaving on the weight of President's Rule. Dr. B.R. Ambedkar had obviously raised in the Constituent Assembly that before falling back on Article 356 the vital thing the President will do is issue an insignificant 'advised' to the region that has fizzled, that things were not happening in the way by which they were wanted to happen in the Constitution. If the 'see' crashes and burns, the second thing for him to do will be to organize a race empowering the overall public of the State to settle matters without any other individual. It is exactly when those two fixes miss the mark that he would rely upon this Article. It is believed that the President of India won't limit his mindfulness with respect to the Constitution only, yet notwithstanding the systems of the Constitution Assembly. The musings and soul contained in the dialog of Constituent Assembly, should be participated in Article 356. It may be battled this may not be possible under all conditions. The realities may affirm that such conditions (shared, religious disharmony threatening to national activities, etc.) can similarly be joined where alerted and mentioning of races may not be gone to. It is significant that these pre-affirmation steps should be merged in the Constitution, in light of the way that so far since the inception of the

Constitution, welcoming rebukes were not by any stretch of the imagination given, assumed 'appears' were not created, and 'general supposition' was not gathered by the power arranged ideological gatherings.

The Inter-State Council (ISC) may be moreover reached out by co-choosing past Presidents, past Chief Justices of the Supreme Court, Attorney General, etc and this Council may be advanced with the notice limit of discussing each and every presentation of President's Rule and the measures taken by the President in similarity of such declaration. The outcome of these musings may be set before the Parliament and moreover before the general populace. At whatever point realized, it will make our association a vigorous reality and cutoff the augmentation for 'aficionado' movement. The Council could have a never-ending Standing Committee which could generally screen issues relating to Center-State relations and the weight of Article 356 out of a State.

The closeness of a 'strong and strong opposition', 'attentive mainstream end' or all the more all the 'nearness of a free press' go far in ensuring that Article 356 is used as was proposed by the building up of the Constitution. It was the joined intensity of these three associations which enabled to address the wrong decisions of the Center and the equal achieved the restoration of Rama Rao in Andhra in 1984, Kalyan Singh in U.P. in 1998 and Rabri Devi in Bihar in 1999. In any case, appallingly, the Indian Parliamentary system misses the mark on a strong confinement, cautious Public Opinion and an-Independent Press. These associations should be the moving soul behind any Parliamentary structure. In any case, constantly, these establishments consider their own stakes just and look at issues from factional and normal edges.

To engage Governors to play out their abilities fittingly according to the courses of action of the Constitution, it is essential that lone ideal individuals are designated as Governors. A Governor to be assigned must be a fair person who by his ability, character and direct rouses respect. Demolished, vanquished and 'wore out' administrators should not be chosen as Governors.

It is moreover suggested that a Governor should remain in office for his full five years term and the framework for his ejection should be made equal to supported for the Judges of Supreme Court and the Governor should be ineligible for some other office under Government after retirement.

As time goes on 'general notion' alone can satisfactorily control the abuse of the power under Article 356. In order to achieve this reason we ought to plan ground-breaking 'mainstream end'. Unavoidably, the famous evaluation in India, we seriously trust, will blend to the way that Article 356 may veritably have transformed into a noose that is progressively fixing around the neck of greater part rule government in India, gagging out the benefit of the overall public under the Constitution.

In the interim, to support developing 'prevalent evaluation' we do have a benefit not to be barely cared about, which is the force of 'lawful review' of the Supreme Court, which has over and over exhibited that it is an ability to be figured with.

The Administrative Reforms Commission, the Rajamannar Committee, the Sarkaria Commission in conclusion the Supreme Court's choice in Bommai's Case which went into this thorny issue, have propelled a couple of recommendations, proposals and choices. So far no significant recommendation of these Commissions or the

choices of the Court have been recognized, nor were they participated in the Constitution by strategy for change to Article 356.

It is startling to observe that Article 356 has been 'used for one hundred and on numerous occasions as of recently and out of this it has been 'mishandled' on numerous occasions since the Sarkaria's recommendations, on different occasions after the Bommai judgment and on numerous occasions since the official activism appeared by President Narayanan. All these show that no shields, paying little mind to whether Constitutional or normal or even legitimate will ensure a penny percent guarantee against maltreatment or abuse of the Constitutional courses of action aside from if the ideological gatherings are centered around reasonable conviction framework, measures and practices.

Further, no current ideological gathering has dependably mentioned the wiping out of Article 356. Neither the Congress nor the non-Congress gatherings have so far really endeavored to gain the required changes in the course of action. This suggests there is every likelihood for Article 356 being mishandled to the extent that the political strategy of the country proceeds as in the past.

It is, along these lines, clear that the political methodology of today will continue to be so until any of the genuine social occasions in India can do or has the political will to accomplish an outrageous change in the political strategy of the country achieving the rising of another political culture. With respect to the present government structure, the States can't demonstrate any drive in accomplishing a Constitutional change. Thusly, the movement ought to start from the Center or the States should have the choice to convince the Union Government to review the Constitution. The Constitution must be restored to what its writers arranged it to be. For this, sensible rectifications should be made in the light of the point of the setting up of the proposition of the Sarkaria Commission, the decisions of the Supreme Court in Bommai case and the proposals submitted here. It is critical that such a review should be grasped by a body set up after effective gathering with the States so it bearings their conviction moreover. Its proposition must be executed fittingly.

All said and done, finally, the Constitutional and political methodology depends upon the political expert, their conviction framework and their strategy for completing things. In this particular situation, the view of Dr. B.R. Ambedkar in the Constituent Assembly give off an impression of being relevant and enormous. He viewed:

In any case horrendous a Constitution may be, it may finish up being incredible if the people who are called to work it happened to be a better than average bundle. The working of the Constitution does not depend totally upon the possibility of the Constitution.

So what is required is extraordinary statesmanship and respect for reasonable and government models. Nobody yet this can check the hankering to lynch the opposition controlled State Governments.

Nevertheless, this is more troublesome than one may anticipate. It may require some more prominent venture to recognize it. Till we achieve this, it is crucial that we should have genuine confinement and invigilatory segment before this shocking force is made operational.

The originators of the Constitution of India relied on the Parliament as a 'basic secure' against the usage of force under Article 356. "The principle 'Secured guard' against the

abuse of force under Article 356, is the 'satisfaction' by parliament as given under Clause 3 of this Article. As things stand today the fundamental fruitful shield against the maltreatment of the Article appears, apparently, to be the Judiciary. As and when the power is uniquely used against a State Government the Courts isolated from considering the case should in like manner have the choice to be turned out with a choice inside a brief time allotment. It is prescribed that the capacity to issue writs in such way will enable the Supreme Court and the High Courts to pass on propitious choices. This will put the Constitutional technique back on the rails pushing ahead with no more.

It is in like manner significant that „particular principles and the technique“ be progressed and developed with the objective that political thoughts are kept aside while rehearsing the power under Article 356 therefore that vote based framework and federalism can suitably flourish in our country.

It is also recommended that the recommendations of Administrative Reforms Commission, Sarkaria Commission on Center-State Relations, and the proposition of Standing Committee of the Inter-State-Council (ISC), as for capacities and employment of Governor and besides with respect to use of Article 356, should be recognized and intertwined in the critical Constitutional courses of action by fittingly changing Article 356.

The 'Legitimate Guidelines' given in S.R. Bommai's case should be given due idea and some of them may be participated in the Constitution by changing Article 356.

Certain 'sound and Democratic Conventions' ought to be progressed, made and sought after by Political social affairs in ability to avoid the maltreatment of Article 356.

Honestly, Article 356 'needs another look' for guaranteeing State Autonomy and just surface and government character of the Constitution.

In spite of the way that it is hard to list the pictured conditions falling inside the ambit of Article 356, there is steady inclination among noticeable. Constitutionalists that the Article should be used particularly in exceptional and phenomenal cases wherein the Center is compelled by the oversees of good Conscience and its commitment to keep up the Constitution.

Conclusion

In conclusion, Article 356 should be used only in extreme cases as the last resort, after the exhaustion of all accessible options for rectification of failure of constitutional machinery in the State. Besides, before taking recourse to the provisions of Article 356, all attempts should be made to resolve the crisis at State level. A caveat should be issued to the concerned State along with seeking an explanation in specific terms and any explanation received from the State should be taken into account before taking action under Article 356. In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly, before recommending the proclamation of President's Rule without dissolving the Assembly. The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation has been laid before both the Houses of Parliament and it has an opportunity to consider it for ensuring this an amendment in Article 356 required. Safeguards provisions should be incorporated in Article 356 to enable Parliament to review continuance in

force of a Proclamation. An appropriate amendment is required to make facts and grounds of the Proclamation under Article 356 subject to the judicial review and answerability may be under the preview of ombudsman system. The report of the Governor must contain clarity of all the facts and grounds to the satisfaction of President to the existing state of affairs reflecting in Article 356. The Governor's report should be given full publicity in the media and in complete so that abuse of discretionary power may not go unnoticed. For choosing a Chief Minister, the Governor should be guided by Constitutional principles and conventions of parliamentary and federal system rather than personal or guided choices.

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