
A CRITICAL EVALUATION OF PROCLAMATION OF STATE EMERGENCY UNDER THE CONSTITUTION OF INDIA

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CHAPTER 1: INTRODUCTION

India, known as the "Union of States," boasts a unique federation that combines aspects of both a unitary and federal system. This intricate political structure can be attributed to the nation's rich history, diverse society, and occasional divisive tendencies. The Constitution has clearly defined the roles and responsibilities of the Central and State governments, which must adhere to its guidelines. However, in certain circumstances, the Constitution grants the Central government the authority to intervene in State matters in order to preserve peace, unity, and the integrity of the nation. As a result, Article 356 of the Indian Constitution is often deemed controversial, granting extensive power to the President to impose their rule in States under a broadly-framed mandate. According to the Constitution of India, no single organ of government has been given absolute power. Instead, it is "We, the people of India" who hold the highest authority. As such, the will of the people should not be interfered with unless there are exceptional circumstances.

Article 356 of the Indian Constitution serves as a crucial and fundamental provision for the effective functioning of the states under the direct supervision of the President. It grants the central government the authority to step in and take over the state's powers if it fails to govern effectively. This provision, thoughtfully crafted by Dr. Ambedkar, allows for a peaceful and efficient administration of the state by the President in times of misgovernance. Its implementation empowers the central government to declare a presidential order in a state that has failed to maintain its operations clearly, ensuring that the state's duties are carried out effectively.

As the years have gone by, the relevance of Article 356 of the Constitution has only grown, with its utilization and misuse both on the rise. While there are undoubtedly instances in which

it is necessary for the central government to take control, there are also cases where it is the centre itself that engineers the circumstances to serve their own political agenda. In certain situations, invoking this provision is imperative for maintaining national security and promoting effective governance. This need is significantly heightened in states that are vulnerable to terrorism or have a history of seeking secession, such as Jammu and Kashmir, Nagaland, and Arunachal Pradesh. However, it is important to note that there have been instances of Article 356 being misused for political gain. It is a common occurrence for Centre and State Governments to belong to opposing political parties.

This dynamic has had a significant impact on the relationship between the two, as well as the concept of federation, state autonomy, and the trust of the mandate. In recent times, the frequent imposition of President's Rule in various states has become a source of concern. It is concerning that since the inception of our Constitution in 1950, this measure has been taken a staggering 116 times. This statistic paints a troubling picture for a mature Constitution of 74 years. It is worth noting that in most cases, State Assemblies have been dissolved or suspended, despite having a democratic mandate, due to issues such as political defections, conflicting governments at the Centre, and hung assemblies.

The primary aim of this study is to analyze the underlying causes of the excessive use of President's Rule in India and its repercussions on the country's federal system. In addition, this research delves into the haphazard utilization of President's Rule and its detrimental effects on the state's federal structure and the relationship between the central and state governments.

1.1 AIM AND OBJECTIVE

The main aim of this paper is to critically analyze the present constitutional provisions and the role of courts in interpreting these provisions governing the imposition of President Rule in States. This study also critically analyzes the instances of imposition of President's Rule all over India in different states at different point of time. The main focus has been put on the use of Article 356 of the Constitution of India after the landmark judgment in the case of *S.R. Bommai* in 1994.

1.2 RESEARCH QUESTION

- a. Whether the Proclamation passed by the President enshrined under Article 356 is

justiciable?

- b. Whether Article 356 violates the State Autonomy and thus, Indian Federalism?
- c. Whether there has been any change in the use of Article 356 post S.R. Bommai and Sarkaria Commission?

1.3 LITERATURE REVIEW

1. A.G. Noorani, Constitutional Questions in India (2002)

A.G. Noorani in his famous work titled "Constitutional Questions in India" has descriptively deals with various constitutional problems. Among other problems his main focus is on the imposition of President's Rule in states and various articles covering different aspects of President's Rule have been incorporated in this work. He has critically analysed the Article 356 and also discussed in detail the Bommai case and its implications.

2. H.M. Seervai, Constitutional Law of India, vol.1.3 (2013)

H.M. Seervai in his work Constitutional Law of India! has given an insight of Article 356 of Indian Constitution. The author has discussed the Article 356 in the light of Indian Government Act, 1935 and Constituent Assembly Debates so that the real intention behind such provisions can be better understood. The author has highlighted the main parts of debates of constituent assembly and the loopholes left by our constitution makers. The author has also briefly compared the Indian constitutional provisions with that of American constitutional provisions. This work further covers the landmark judgements delivered by Supreme Court of India. The author has critically analysed the issues raised and decided in such judgements.

3. Dr. Anil Kumar Dubey 'PRESIDENTIAL TAKEOVER OF THE STATE GOVERNMENT' ILI Law Review summer issue [2018].

The author defines through this article that 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 is said clearly through this article.

**4. K. Jayasudha Reddy and Joy. V. Joseph ‘EXECUTIVE DISCRETION AND ARTICLE 356 OF THE CONSTITUTION OF INDIA: A Comparative Critique’
Electronic Journals of Comparative Law vol. 8.1 [2004].**

This article explains us about the federalism in India and development of the article 356 how it is evolved and how its drafted the constituent assembly. This article also clearly tells about the recommendations given by the Sarkaria commission and gives a comparative analysis of the emergency powers of the president of America and Malaysian government. The author also tells us how the article 356 was a failure in invoking the emergency of the state and how it has been mis used in the past days by different governments.

1.4 RESEARCH METHODOLOGY

This paper involves purely doctrinal research. The researchers have undertaken an extensive study of both primary and secondary sources including the Constitution of India, Committee Reports pertaining to the topic, Journal Articles and Books on the Subject, and relevant Case Laws.

1.5 SCOPE

The prime reason for this paper is to basically survey the embodiment of Article 356, its working by and the escape clauses that should be explored to check the subjective use of the equivalent. The extent of this investigation is to see if the article 356 of the Indian constitution is being utilized in a right manner and furthermore to know how the article 356 is being utilized which is making inclination and which breaks the connection between the middle and the state. The article 356 which is being utilized by the inside in holding hands with the senator so as to separate the apparatus of the state which isn't in fulfilment for them.

CHAPTER 2: HISTORICAL DEVELOPMENT OF IMPOSITION OF PRESIDENT’S RULE IN INDIA

2.1 Historical Development

By tracing back to its historical origins, the imposition of President's Rule in various states provides valuable insights into the sequence of events, regulations, and laws that have led to the current state of affairs. This practice can be traced back to ancient times, where the values

of good governance and the notion of a mandate were embodied in the principles of "dharma" and "Rajadharma".¹ As civilizations evolved in the medieval period, empires were divided into smaller administrative units, each with its own autonomy as long as it did not pose a threat to the king's power. However, this concept was further solidified during the British rule in the Modern Era.

President's Rule as a concept was first introduced in the Morley-Minto Reforms of 1909, a crucial moment in history. While the Act expanded the functions of Provincial Councils, allowing them to propose resolutions on budget and public matters (excluding defence, foreign affairs, and Native States), these resolutions held no real power and were at the discretion of the government. In 1916, the Indian National Congress boldly requested that the British Government formally declare its plans for granting self-governance in India.

The Act of 1919 planted the seeds of Central interference in Provincial autonomy. Section 12 of the Act granted power to Governors, Lieutenant- Governors and Chief Commissions to reject bills passed by provincial legislatures. Additionally, they could also hold back bills and refer them to the Governor General for further review. Section 13 further expanded this interference by requiring Governors to certify the passage of Bills on reserved subjects that were not introduced or failed to pass in the Legislative Council. As a result, these Bills would ultimately become Acts after being reserved for consideration by the King-in-council.

A highly debated aspect of the Act was its extensive grant of authority to the Governor-General, enabling him to exercise it independently.²

The 1931 white paper stated that in the event of a constitutional breakdown, the Governor would possess special abilities to guarantee the effective operation of the government. These changes were implemented by the joint committee on Indian Constitutional Reforms. Unfortunately, the lack of progress in previous reforms sparked widespread protests among the Indian population. In order to appease the desires of the populace, a fresh committee was established to examine potential changes to the legal and constitutional systems which was led by John Simon.³

¹ Justice M. Rama Jois, *Legal and Constitutional History of India* (2015) p. 1-2

² Shri Ram Maheshwari, *President's Rule in India*, (Macmillan: New Delhi, 1977)

³ V.D. Kulshrestha, *Landmarks in Indian Legal and Constitutional History* (2009) p.16

The Government of India Act, 1935 conferred distinct authority to the Governor in the event of a constitutional crisis. Section 45 dealt with emergencies at the national level, while Section 93 addressed emergencies at the provincial level. In accordance with Section 45 of the Act, the Governor General may, by proclamation, declare that, to the extent specified in the proclamation, his duty shall be exercised at his discretion; or he may assume all or any of the powers vested or exercised by any Federal authority.⁴ If the Governor General is satisfied that circumstances have arisen that render the government of the Federation incapable of carrying out the provisions of this Act, he may do so. Sections 45(2) through (4) delve into the procedural aspects of issuing and revoking a proclamation. This crucial process includes the possibility of repealing a proclamation with another proclamation, or extending its effect. Once issued, the proclamation must be delivered to the Secretary of State and presented before both parliamentary chambers. Upon issuance, the proclamation will remain in effect for six months, unless revoked. However, if necessary, its duration may be extended for an additional 12 months through a resolution passed by both houses of parliament.⁵

According to Section 45 Sub-section (5), laws made by the Governor General during a proclamation could remain in force for up to two years after the proclamation ended, unless they were repealed or re-enacted. Furthermore, Section 93 (a) also addressed the failure of constitutional machinery in a province and allowed the Governor to issue a proclamation to take over any or all functions of provincial bodies if necessary. This provision echoed the maximum three-year extension limit for such proclamations, highlighting the importance of effective governance during times of crisis. It is undeniable that these provisions were put in place to address any subversive elements that may try to undermine British policies. However, it is ironic that these same provisions were adopted by the Constituent Assembly when drafting the Constitution for a liberated India. In fact, they went on to form the foundation of Article 356 in the Indian Constitution.⁶

Article 356, like Section 93, may seem to have a limited purpose of addressing the failure of constitutional functioning. However, its roots as a tool of colonial dominance and the immense authority it grants to the Central government explains its frequent misuse to protect the ruling

⁴ H.V. Sreenivasa Murthy, *History of India* (2011) p.233

⁵ *ibid*

⁶ *ibid*

party in Delhi. As pointed out by JR Siwach in 1977, the main priority in invoking Article 356 has consistently been the welfare of the Congress Party at the Centre.⁷

2.2 Analysis of Article 356

Once a Proclamation is issued by the President under Article 356(1)⁸, the President takes on the role of executive power for the state. Parliament also assumes legislative power for the state while the Presidential proclamation is in effect. Additionally, the President is granted the authority to make necessary provisions for the proper execution of this Article. A subsequent Proclamation has the power to revoke the original Proclamation. Prior to two months passing from its initial issuance, the Proclamation must be presented to both the Houses of Parliament. Unless both Houses of Parliament approve, the operation of the Proclamation will cease after two months. Should Parliament approve the Proclamation, it will remain in effect for six months. If Parliament sees fit, they may extend the duration for another six months at a time.⁹ However, a Proclamation shall not remain in force for more than three years (or five years for Punjab). Once the maximum duration has passed, neither the Parliament nor the President have the authority to continue the Proclamation. At this point, the constitutional machinery must be reinstated in the State.

The interpretation of Article 356(1), which grants the power to issue a Proclamation, must be harmonized with the power of Parliament to approve such a Proclamation. Additionally, the purpose of Article 356(3)¹⁰ is to serve as a safeguard, allowing Parliament to check the President's authority under Article 356(1). However, this safeguard becomes meaningless and ineffective if the President takes irreversible actions, such as dissolving the Legislative Assembly, without the approval of Parliament. Therefore, it is imperative that the President refrain from using their power to dissolve the Assembly until Parliament has given its approval under clause (3) of Article 356. The Legislative Assembly can be suspended by the President till then. The provision to present the Proclamation before Parliament serves as both a safeguard against abuse of power and a defense of the idea that Parliament holds ultimate authority over the Executive.

⁷ M.P. Singh, *Outlines of Indian Legal and Constitutional History* (2006) p.158

⁸ Article 356(1), Constitution of India, 1950

⁹ A.G. Noorani, *The Constitutional Questions* (2002) p. 41

¹⁰ Article 356(3), Constitution of India, 1950

In 1976, the 42nd Amendment granted the President complete immunity from judicial review when declaring a Proclamation under Article 356. However, with the 44th Amendment in 1978, this constraint was lifted, allowing the courts to intervene if the Proclamation is found to be made in bad faith or lacks a reasonable connection to the President's satisfaction.¹¹

In 1978, the 44th Amendment of the Constitution replaced clause (5) of Article 356 with a new one, while omitting the previous clause (5). The new clause (5) states that both Houses of Parliament cannot pass a resolution to extend the emergency beyond one year unless (a) there is a current Proclamation of emergency and (b) the Election Commission certifies that the continuation of Art. 356 is necessary due to challenges with holding state Legislative Assembly elections. It should be noted that the Emergency can only be extended beyond one year if the conditions outlined in clause (5) are met. This Amendment now requires specific conditions to be satisfied, whereas previously the Government had the option to extend the Emergency for up to three years without proper justification.¹²

In 1984, the 48th Amendment to the Constitution brought about another change to clause (5) of Article 356. A new proviso was added, stating that in the event of a Proclamation being issued under clause (1) on the 6th day of 1983 for the State of Punjab, the previous reference to a period beyond one year would now be interpreted as a period beyond two years. This amendment sparked much debate and discussion.¹³ The clause (5) of the current legislation states that the Presidential Proclamation from Oct. 6, 1983, regarding Punjab, could only remain in effect for a maximum of one year, unless the specific criteria mentioned therein were met. This provision was put in place to address the unique circumstances that were present in Punjab at the time.

In 1990, the Constitution (64th Amendment) Act brought about changes to the proviso in Clause 4, specifically in relation to the State of Punjab. The first proviso of this clause, which originally referred to a time period of 'three years,' was modified to include an additional six months.¹⁴ Additionally, it was stated that the conditions outlined in Clause 5 would not apply to the proclamation issued on May 11, 1987 concerning the State of Punjab.¹⁵ The Indian government enacted the 67th Amendment to the Constitution in 1990, which granted a 6-month

¹¹ H.M. Seervai, *Constitutional Law of India* (vol.3) (2013) p.3106

¹² Added by 44th Constitutional Amendment Act, 1978

¹³ S.K. Singh, *Role of President under Article 356*, *Cochin University Law Review* (Dec.1998) p.462-465

¹⁴ *ibid*

¹⁵ Added by 64th Constitutional Amendment Act, 1990

extension of President Rule in the state of Punjab.¹⁶ The following year, the 68th Amendment was put into effect, extending the duration of President Rule in Punjab to a full 5 years.¹⁷

One may challenge a Proclamation under Article 356 through judicial review, using any of the same grounds that can be used to question executive decisions based on subjective satisfaction. For instance, the following grounds throw more light on the same¹⁸:

- a. The Proclamation has been issued without taking into account the essential purpose of Section 356 of the Constitution, which is to address a breakdown of the Constitutional machinery in a State. It can be argued that there is no reasonable connection between the given reasons and the President's satisfaction, making it invalid for the President to exercise power under Article 356.
- b. The utilization of the authority granted by Article 356 is clearly driven by ulterior motives, as any statutory order lacking good faith holds no validity in the eyes of the law.

According to Article 357¹⁹ of the Constitution, the President is not solely responsible for the Legislative power of the Union. However, in order to address urgent situations that require immediate laws, the Constitution grants the President the authority to issue ordinances. This provision allows for the efficient and timely enactment of laws when needed.

As per Article 367 (2)²⁰ of the Constitution, there exists no fundamental differentiation between a law enacted by the Legislature and an ordinance put forth by the President. Both are the direct result of wielding Legislative power and are therefore bound by the restraints that the Constitution has imposed upon such authority. It is important to note that ordinances released by the President and Governors, as well as laws crafted by the President or their delegates under Article 357(1)(a)²¹, are considered legislative acts and must adhere to the same Constitutional limitations.

¹⁶ Added by 67th Constitutional Amendment Act, 1990

¹⁷ Added by 68th Constitutional Amendment Act, 1991

¹⁸ Dr. Basu, in the Constitutional law of India (1988), pages 403, 404

¹⁹ Article 357, Constitution of India, 1950

²⁰ Article 367(2), Constitution of India, 1950

²¹ Article 357(1)(a), Constitution of India, 1950

2.3 Sarkaria commission recommendations on proclamation of emergency

Despite having safeguards outlined in Article 356, the Center has invoked the Article on multiple occasions due to its vague language. It wasn't until 1987, when the Sarkaria Commission released its report, that the ambiguity surrounding Article 356 was clarified. Appointed in 1983 and spending four years researching ways to improve Center-State relations, the Commission, led by Justice R.S. Sarkaria, was instrumental in bringing clarity to the issue. The following are some of the recommendations of the commission²²:

1. The utilization of Article 356 must be approached with great caution, only as a final recourse in dire situations. Exhausting all other potential solutions is crucial before invoking this provision, taking into account the nature of the constitutional dilemma and the pressing demands of the circumstances.
2. The State must be warned, explicitly, that its governance does not align with the Constitution. Prior to invoking Art. 356, any response from the State must be carefully considered. However, in critical cases, immediate action must be taken to avert disastrous consequences.
3. When a foreign attack or internal chaos paralyzes the government of a state, it sets the stage for a potential collapse of the constitutional machinery. In such a scenario, the Union must exhaust all possible options under Article 355 to fulfill its primary duty of containing the situation.
4. In times of political turmoil, it is crucial for the Governor to exhaust all options in finding a Government that has strong backing in the Assembly. If this seems impossible, and snap elections can be held promptly, the Governor should consider asking the outgoing Ministry, if one exists, to act as a temporary caretaker government, as long as their defeat was solely due to a significant policy disagreement and not any accusations of misconduct. Of course, this arrangement would only be feasible if the Ministry is willing to continue in their role. After making the decision, the Governor ought to dissolve the Legislative Assembly, placing the outcome of the constitutional crisis in the hands of the people. In the meantime, the caretaker Government should be permitted to operate. Adhering to customary practice, the caretaker Government should

²² Ministry of Home Affairs, Report of the Sarkaria Commission (1987) Ch. 6

limit themselves to maintaining normal governmental functions and abstain from making significant policy choices.

(b) If the vital components outlined above are missing, the Governor would be acting inappropriately if they were to dissolve the Assembly and establish a caretaker Government. Instead, they ought to suggest the implementation of President's rule without dissolving the Assembly.

5. It is imperative that all Proclamations are brought before each House of Parliament as soon as possible and no later than the end of the two-month period specified in clause (3) of Article 356.
6. It is imperative that the State Legislative Assembly be granted the respect and autonomy it deserves. Therefore, it is necessary to amend Art. 356 in order to prevent the Governor or President from dissolving the Assembly prior to the Proclamation being presented to Parliament and thoroughly examined. This measure would uphold the principles of democracy and allow for fair and just decision-making.
7. To ensure effective checks and balances, it is imperative for Article 356 to include protective measures similar to those outlined in clauses (7) and (8) of Article 352. These provisions would empower Parliament to reevaluate the validity of a Proclamation's prolonged implementation.
8. In order to enhance and reinforce the effectiveness of judicial review for cases of mala fides, an appropriate Amendment should be introduced. This Amendment should make it mandatory for material facts and grounds to be included as integral components of a Proclamation issued under Article 356(1), regardless of clause (2) of Art. 74 in the Constitution. Not only will this provide more substance to the review process, but it will also allow for greater oversight by Parliament on the Union Executive's exercise of this power.
9. When it comes to invoking Art. 356, it's typically the President who takes action upon receiving a report from the Governor. The Governor's report is then presented to both Houses of Parliament. It is crucial that this report is thorough and well-written,

providing all necessary information and grounds for the President to determine whether the conditions described in Art. 356 have indeed arisen.

10. The report from the Governor that leads to the issuance of a Proclamation under Article 356(1) should be shared widely in all forms of media and in its entirety.

11. Proclaiming President's rule in a State is typically done through the Governor's report, as laid out in Article 356(1).

CHAPTER 3: ANALYSIS OF IMPOSITION OF PRESIDENT'S RULE IN INDIA

As aptly stated by Granville Austin, the wielding of President's Rule in States can be seen as a direct assault on the principles of participative governance.²³ According to official data, the President's Rule has been enforced a staggering 116 times in various states since 1950.²⁴ Its application has been justified for reasons such as coalition breakdown, non-compliance with the central government's directives, party defections, and deteriorating law and order. However, it is an unfortunate reality that many of these instances were simply the result of political manipulation. Rather than being used for the intended purpose, most cases of President's Rule have made headlines for its misuse. The initial case of its implementation in Punjab set a precedent that signaled a negative trend for future governments.²⁵ Even in its 116th occurrence in Maharashtra, the misuse of this rule persists. Such occurrences raise questions about the credibility and integrity of fundamental principles like democracy, federalism, and the respect for the will of the people.

²³ Granville Austin, *Working of Democratic Constitution* (2012) p. 612

²⁴ As per the figures given in an answer to a RTI from Ministry of Home Affairs Government of India dated 24.4.2019.

²⁵ Swaminathan S. Anklesaria Aiyar, *Why Punjab has suffered Long, Steady Decline*, 2012-Chapter-2

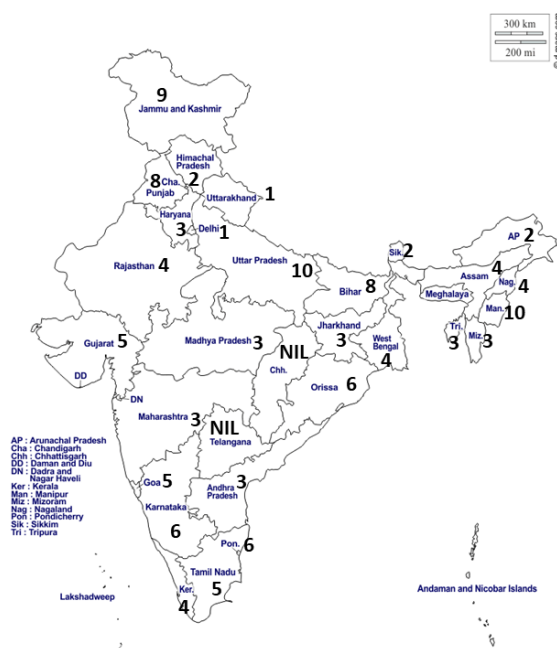


Figure 1: Number of times President's Rule has been imposed in Indian states and Union Territories²⁶

In Figure 1, it can be seen that President's Rule has never been imposed in the modern states of Chhattisgarh and Telangana. However, it has been imposed a total of 10 times in both Manipur and Uttar Pradesh, making them the states with the most occurrences of this rule. In the past, this rule has also been imposed in four other states - Vindhya Pradesh, Patiala and East Punjab States Union, Andhra State, and Travancore Cochin - in the years 1949, 1953, 1954, and 1956, respectively. Notably, the imposition of President's Rule in these states was solely for the purpose of their reconstitution, and there was no interference from the judiciary. This temporary measure was necessary at the time for the better functioning of these states.

However, it is not true that the application of President's rule is always unnecessary. This article delves into the imposition of President's rule in different states of India, providing detailed context. A comparative study is also conducted to analyze the trend of imposing President's rule in various states before and after the landmark judgment in the *S. R. Bommai v. Union of India*²⁷ case.

²⁶ Anil Ghanghas, Imposition of President's Rule in Indian States from Independence to 2020: An analysis, *Studies in Indian Place Names* (UGC Care Journal), ISSN: 2394-3114 Vol-40-Issue-70-March -2020 (2020) p. 770

²⁷ *SR Bommai v. Union of India*, (1994) 3 SCC 1

Andhra Pradesh: President's rule has been implemented in Andhra Pradesh a total of two times, with a duration of 561 days. On both occasions, the justification for this action was the division of the state. In 1973, the Jai Andhra movement was the catalyst for the first imposition of President's rule, lasting approximately 1 year under the government of Indira Gandhi. The state saw a similar situation unfold in 2014, when Chief Minister Kiran Kumar Reddy resigned and did not comply with the desires of his party members to split the state. As a result, the Supreme Court's ruling in the *Bommai v. Union of India*²⁸ case did not play a role in either of these instances, as the imposition of President's rule was deemed lawful.²⁹

Arunachal Pradesh: 102 days have passed since Arunachal Pradesh was first placed under Article 356. The state first experienced President's rule in 1979, following a series of defections within the 39-member assembly. Shockingly, 17 out of the 21 members of the Janata government abandoned their party, resulting in the appointment of Mr. Tomo Riba as Chief Minister. However, this was short-lived, as just six weeks later, five more members defected to the Congress party. As a response, the Lieutenant Governor dissolved the assembly, acting upon the Chief Minister's suggestion.³⁰

In 2016, Arunachal Pradesh found itself once again under President's rule. The state's Chief Minister, Mr. Nabam Tuki, locked the assembly and invalidated the membership of fourteen Congress members, a move that was later revoked by the Deputy Speaker, High Court, and Supreme Court. As a result, Mr. Kalikha Pul was appointed Chief Minister for a period of approximately one month. However, the Supreme Court later ruled the imposition of President's rule as unwarranted and in violation of the constitution. In a momentous verdict, the court also criticized the Governor's interference in legislative affairs and the Speaker's authority in the Vidhan Shaba.³¹

The aforementioned situations of President's rule being implemented can be attributed to the defection of members in both instances. This was further solidified in 2016 when the Supreme Court made the declaration that the imposition of President's rule in Andhra Pradesh was

²⁸ *ibid*

²⁹ Huffington Post https://www.huffingtonpost.in/entry/centre-threatening-to-impose-presidents-rule-in-andhra-pradesh-chandrababu-naidu_in_5c458300e4b027c3bbc33b4e last seen on 12/03/ 2020

³⁰ The Hindu Business Line <https://www.thehindubusinessline.com/news/national/after-41-years-ap-comes-under-presidents-rule/article 20732889.ece> last seen on 30/11/2020 Huffington Post

³¹ *ibid*

unconstitutional. Despite this ruling following the landmark Bommai³² Judgement, it had minimal impact on the legislature.³³

Assam: Throughout the history of Assam, President's rule has been imposed four times - in 1979, 1981, 1982, and 1990, totaling a length of 1115 days. However, since the Bommai Judgement³⁴, this rule has not been invoked in the state. The first instance was in 1979 when the All Assam Students' Union (AASU) launched the 'Assam Agitation' to protest against the presence of illegal foreign nationals in the state. The agitation was endorsed by the United Liberation Front of Asom (ULFA) which resulted in the breakdown of law and order, thus, requiring the implementation of Article 356.³⁵ The following year, in 1981, the same agitation led to the collapse of the elected government, leading to the imposition of Article 356 yet again. Despite the government's efforts, the violence and unrest persisted, and the need for President's rule arose once more in 1982. During President's Rule, Operation Bajrang was initiated to eliminate ULFA militants. However, it was observed that at this time, CM Prafulla Mahanta held a strong majority in the Assembly, leading many to dub this intervention as a strategic move by the central government for political gain.³⁶

Bihar: Bihar has been subject to extended periods of President's Rule, totaling 1001 days. The first three instances (1968, 1969, 1972) were a result of the unstable political environment caused by multiple defections, causing the government to lose its majority. However, in 1977 and 1980, despite having majority support in the Assembly, the Bihar government was dismissed. In 1995, President's Rule was enforced for a short period of eight days due to technical issues with the electoral process. The NDA government then imposed central rule for another 25 days, citing the brutal massacre of 22 individuals and the subsequent killing of 11 dalits. Even Prime Minister Atal Bihari Vajpayee later acknowledged that the implementation of central rule was a mistake. Most recently, the indecisive outcome of elections led to the imposition of central rule yet again. In a monumental decision, the Supreme Court declared that the lack of opportunity for elected legislatures to form the government rendered it unconstitutional. As such, it can be inferred that out of a total of eight instances, four of them

³² SR Bommai v. Union of India, (1994) 3 SCC 1

³³ See supra note 29

³⁴ SR Bommai v. Union of India, (1994) 3 SCC 1

³⁵ Dr. Anil Kumar Dubey, "Presidential takeover of state government" ILI Law Review Summer Issue 2018, 1-41. Available at <http://ili.ac.in/pdf/akd.pdf>. last seen on 12/11/ 2023

³⁶ *ibid*

resulted in the unconstitutional imposition of President's rule – two of which occurred before the Bommai Judgement³⁷ and two after.³⁸

Delhi: In the year 2014, Delhi faced a significant change as President's Rule was instated for about 362 days. This was a direct result of Chief Minister Arvind Kejriwal's resignation following his inability to pass the Jan Lokpal Bill in the Delhi Assembly. The application of Central rule in Delhi was a legally sound decision.³⁹

Goa: In a momentous event in 1966, the Assembly of the Union Territory of Goa was dissolved for the very first time by imposition. The reason, a vital opinion poll was to be conducted to determine the fate of Goa was that, should it be merged with the state of Maharashtra. This was followed by three more occasions when the Centre imposed Article 356: in 1979, in 1990, and in 1999. These decisions were made due to the lack of a stable government formed after successive elections. However, the fifth imposition of Article 356 came about in a contentious manner. It followed a controversial confidence vote secured by the Chief Minister, Partap Singh Rane. In total, prior to the landmark Bommai judgement⁴⁰, President's Rule was imposed thrice, while two times were justified by valid reasons. In sum, the state was under the directive of Article 356 for a total of 645 days.

Gujarat: Gujarat has had a tumultuous history with Article 356, which has been invoked five times in the state since its inception. In 1971, it was imposed due to the loss of majority, while in 1974, the Navnirman Movement, an anti-corruption protest, resulted in the resignation of MLAs and the eventual dissolution of the assembly. Two years later, in 1976, the government collapsed, leading to the imposition of Article 356. In 1980, Indira Gandhi dismissed nine non-Congress party ruled states in Rajasthan, Bihar, Gujarat, Maharashtra, Odisha, Punjab, Tamil Nadu, Uttar Pradesh, and Madhya Pradesh. And in 1996, following a controversial confidence vote, the government was once again dismissed, bringing the total days of Article 356 imposition in the state to 1237. However, the imposition of Article 356 in Gujarat in 1980 and

³⁷ SR Bommai v. Union of India, (1994) 3 SCC 1

³⁸ India Today, The story of Four States <https://www.indiatoday.in/india/story/four-states-have-gone-under-president-s-rule-since-2014-1618317-2019-11-13> last seen on 12/11/ 2023.

³⁹ Chand, Phul (1990), "Federalism and Indian Political Parties," cited in Verinder Grover (ed.) (1990), Political System in India. vol. IV, Deep and Deep Publications: New Delhi, pp. 490-91.

⁴⁰ SR Bommai v. Union of India, (1994) 3 SCC 1

1996 was deemed unconstitutional. The passage of the Bommai Judgement⁴¹ in 1994 ultimately had no impact on the unlawful imposition of Article 356.

Haryana: In both 1967 and 1977, the authorities in Haryana faced a critical decision: whether or not to exercise Article 356 and take control of the state government, which by then was already in the hands of the ruling party. Similarly, in 1991, omense defections resulted in the imposition of President's Rule during the term of Chief Minister Om Parkash Chautala. These three instances occurred before the Bommai Judgement⁴² and collectively resulted in the state being under the rule of the President for a total of 362 days.⁴³

Himachal Pradesh: Twice in Himachal, Article 356 was invoked, first in 1977 and again in 1992, for a combined duration of 406 days. Interestingly, on both occasions, the government held a majority in the assembly, which was prior to the landmark Bommai Judgment.⁴⁴

Jammu and Kashmir: It is a Union Territory, holds the record for the second highest number of times Article 356 has been imposed among all the states in India. In fact, it leads the pack with a staggering total of 3922 days or nearly 4000 days under its belt. The imposition of Article 356 in this region has been a recurring event, with instances occurring in 1977, 1986, 2008, 2015 and 2018 due to loss of majority. Additionally, in 1990, President's rule was declared in response to the volatile situation caused by insurgency and breakdown of law and order.

In 2016, the untimely passing of Chief Minister Mufti Mohammad Sayeed led to changes in the political landscape. As a result, in 2019, the splitting of Jammu and Kashmir state into two union territories, UT of Jammu and Kashmir and UT of Ladakh, led to the continuation of the President's rule that had been imposed on 19 June 2018. This decision was made under section 73 of the Jammu and Kashmir Reorganisation Act, 2019, as it was deemed that Article 356 did not apply to Union Territories. Thus, the use of President's Rule in such circumstances has been a recurring necessity, having been implemented three times before and six times after the Bommai Judgment.

⁴¹ *ibid*

⁴² *ibid*

⁴³ India Today <https://www.indiatoday.in/magazine/indiascope/story/19910430-with-president-rule-in-haryana-fiefdom-slips-away-from-devi-lal-hand-814381-1991-04-30> last seen on 12/11/2023

⁴⁴ (1994) 3 SCC 1

Jharkhand: In the years 2009, 2010, and 2013, this region faced a challenging situation as President's Rule was enforced not once, not twice, but three times. Due to the loss of majority, and in accordance with the Bommai Judgment⁴⁵, the rule was justified and lasted for a total of 621 days. Despite efforts, no stable government could be formed, causing a tumultuous period for this region.⁴⁶

Karnataka: Karnataka has experienced six instances of President's rule throughout its history. In four of these cases (1971, 1989, October 2007, and November 2007), the state was under direct rule from the central government for a total of 877 days due to a loss of majority by the ruling party. In 1977, even though Chief Minister Devraj's party held the majority, the government was dismissed. Similarly, in 1990, Veerendra Patil's government was also dismissed. However, it was the landmark judgement in the famous case of S.R. Bommai vs Union of India in 1994 that brought significant changes. This ruling addressed the issue of misuse of Article 356, which had been a concern since Bommai's government fell due to being a minority in 1989 and 1990. As a result, the ruling greatly reduced the potential for future central governments and governors to exploit this article.⁴⁷

Kerala: Back in 1959, Kerala was rocked by the first ever imposition of Article 356, when the government was ousted despite having ample backing from the Assembly. This was followed by subsequent instances in 1964, 1970, and 1979, where President's Rule was put in place due to a lack of majority. It's worth noting that all of these occurrences predated the infamous Bommai Judgement⁴⁸, and amounted to a combined total of 1233 days.

Madhya Pradesh: The state of Madhya Pradesh has faced the imposition of Article 356 three times, in the years 1977, 1980, and 1992. It is worth noting that all three of these instances occurred prior to the ruling of Bommai Judgement. Interestingly enough, the state government was in the majority during each of these occurrences, reflecting the unconstitutional nature of

⁴⁵ SR Bommai v. Union of India, (1994) 3 SCC 1

⁴⁶ Times of India, Nine Governments; Three spells of President's Rule in Jharkhand <https://economictimes.indiatimes.com/news/politics-and-nation/nine-governments-three-spells-of-presidents-rule-in-jharkhand-in-14-years/articleshow/45619632.cms?from=mdr> last seen on 11/12/2023

⁴⁷One India <https://www.oneindia.com/india/karnataka-how-many-times-has-state-been-under-presidents-rule-2921124.html> last seen on 19/11/2023

⁴⁸ SR Bommai v. Union of India, (1994) 3 SCC 1

these impositions. Overall, the state was placed under Article 356 for a collective duration of 562 days.⁴⁹

Maharashtra: The imposition of Article 356 in Madhya Pradesh has occurred on three separate occasions, in 1980, 2014, and 2019. The first instance took place before the Bommai Judgement⁵⁰, and was deemed unconstitutional as the Sharad Pawar led government held the majority. However, two subsequent instances occurred, when no single party was able to form a government, resulting in a total of 156 days under central rule.⁵¹

Manipur: Manipur holds the record for the highest number of President's Rule instances, tying with Uttar Pradesh for a total of 2337 days. The first time it was invoked was in January 1967, coinciding with the first Elections to Manipur Union Territory Assembly. This was followed by two more instances in October 1967 and 2001 due to a lack of majority. Defections played a key role in the imposition of Article 356 in 1977, 1981, and 1982. The state saw an increase in violence and deteriorating law and order, leading to President's Rule being declared in 1969 and 1993. During the periods of 1973, 1979, and 1981, President's Rule was imposed even though the ruling party held a clear majority. Despite this, Manipur saw Article 376 invoked a total of nine times prior to the Bommai Judgement⁵², with three of those instances being deemed unconstitutional.⁵³

Meghalaya: In both instances, in 1991 and 2009, the opposition central government ousted the incumbent government after a successful confidence vote in the Assembly by the Chief Minister. This occurrence happened twice - once prior to the Bommai Judgement and again thereafter - with a combined duration of 172 days.⁵⁴

Mizoram: The state of Mizoram has faced the imposition of President's Rule on three separate occasions: in 1977, 1978, and 1988. These instances were triggered by the resignation of the Chief Minister, the collapse of the government, and defections resulting in a minority,

⁴⁹ Department Of Public Relations, M.P. <https://www.mpinfo.org/MPinfoStatic/English/whoiswho/cmlist.asp> last seen on 01/12/2023

⁵⁰ (1994) 3 SCC 1

⁵¹ Deccan Herald, <https://www.deccanherald.com/national/national-politics/presidents-rule-imposed-in-maharashtra-for-third-time-775622.html> last seen on 01/12/2023

⁵² SR Bommai v. Union of India, (1994) 3 SCC 1

⁵³ Factly, Which state was under President's rule most number of times? <https://factly.in/state-presidents-rule-number-times/> last seen on 12/11/2023

⁵⁴ President's Rule in Meghalaya unfortunate <https://economictimes.indiatimes.com/news/politics-and-nation/presidents-rule-in-meghalaya-unfortunate/articleshow/4283582.cms?from=mdr> last seen on 22/11/2023

respectively. Interestingly, these events occurred prior to the landmark Bommai's Judgement⁵⁵, and together lasted a total of 704 days.

Nagaland: In 1975, Nagaland was placed under the first and longest-ever President's rule, as a result of rampant defections and counter defections. Then, in 1988, a second President's rule was enforced when the ruling Congress government, led by Hokushe Sema, lost its majority. The third instance of President's rule in Nagaland occurred in 1992, in response to the unstable political landscape and worsening law and order conditions. In 2008, Nagaland experienced its shortest period under President's rule, lasting a mere 1547 days. This action was taken following the Bommai Judgement⁵⁶, when the government was dismissed due to a contentious vote of confidence secured by Chief Minister Neiphiu Rio in the Assembly.⁵⁷

Orissa: In Odisha, President's Rule has been implemented a total of six times, all occurring before the Bommai judgement⁵⁸. This action was taken for a combined duration of 751 days. In both 1961 and 1971, President's Rule was declared because the government had lost its majority. In 1973, the Chief Minister recommended its imposition as the government was on the brink of collapse. In 1976, President's Rule was enforced after Chief Minister Nandini Satpathy was ousted and the assembly was suspended. The last two occasions, in 1976 and 1977, saw Article 356 used despite the Constitution's provisions as the respective governments held a majority in the assembly. This pattern of frequent use of President's Rule has raised concerns about its misuse and abuse of power.⁵⁹

Patiala and East Punjab States Union: In 1953, the then-Punjab East Princely States Union (PEPSU) found itself under President's rule, a decision made after the dismissal of the Akali Dal government and lasting for a lengthy 346 days.⁶⁰

Pondicherry: President's Rule has been imposed for six times in Pondicherry, all before Bommai's judgement for total 2616 days. In 1968, president's rule imposed and assembly was dissolved as opposition parties had a chance to form a government which was not at par with

⁵⁵ (1994) 3 SCC 1

⁵⁶ *ibid*

⁵⁷ Multi President Rule in Nagaland <https://www.easternmirrornagaland.com/multi-presidents-rule-in-nagaland/> last seen on 22/11/2023

⁵⁸ SR Bommai v. Union of India, (1994) 3 SCC 1

⁵⁹ Government Of Odisha <https://www.odisha.gov.in/content/odisha-profile/history-after-medieval> last seen on 22/11/2023

⁶⁰ Swaminathan S. Anklesaria Aiyar, Why Punjab has suffered Long, Steady Decline, available at <https://object.cato.org/economic-freedom-india/Economic-Freedom-States-of-India-2012-Chapter-2.pdf>

the ideology of the constitution. In January 1974, and March 1974, president's rule imposed as government came in minority and in 1978 due to political instability. In 1985 and 1981, President's Rule was minused. In 1985, Congress withdrew from coalition government, but Chief Minister was not given chance to prove hid majority. In 1991, government dismissed in spite of having a majority in the Assembly.⁶¹

After a lapse of 30 years, President Ram Nath Kovind imposed President's rule in the Union territory of Puducherry. The President issued an authoritative order on Thursday after receiving a report from the Puducherry administrator on February 22. The report deemed the territorial administration incapable of executing its duties in accordance with the Government of Union Territories Act, 1963. This came in the wake of the resignation of Congress Chief Minister V Narayanasamy and his cabinet colleagues on Monday, after speaker V P Sivakozhundhu announced that the government no longer held majority in the legislative assembly.⁶²

Punjab: Punjab was the first Indian state to experience President's Rule in 1951, thanks to a fierce factionalism within the Punjab Congress. This was followed by the imposition of President's Rule in 1966, in order to separate the state. In later years, from 1968 to 1987, President's Rule was imposed repeatedly due to various reasons such as lack of a majority party, misuse of power by the government, and the emergence of unrest and lawlessness. The state of Punjab has been subjected to a lengthy period of President's Rule, specifically totaling to 3477 days.

Rajasthan: When President's rule was implemented in Rajasthan for the first time in 1967, it was a historic moment. The unpredictable results of the elections were the cause of this extraordinary measure. This authority was used three more times in the years that followed, in 1977, 1980, and 1993. It is concerning, nonetheless, because the President's rule unjustly toppled the government in spite of the assembly's majority. Together, these incidents—all of which took place prior to the Bommai ruling⁶³—amounted to 563 days of political turmoil.

Sikkim: Twice in Sikkim's history, President's rule was enforced for a total of 713 days,

⁶¹ Economic Times, Polics and Nation <https://economictimes.indiatimes.com/news/politics-and-nation/puducherry-delhi-though-uts-have-different-rules-cm/articleshow/64642497.cms?from=mdr> last seen on 22/11/2023

⁶² The Indian Express, President's Rule imposed in Puducherry <https://indianexpress.com/article/india/presidents-rule-imposed-in-puducherry-7204735/> last seen on 28/11/2023

⁶³ SR Bommai v. Union of India, (1994) 3 SCC 1

preceding the Bommai ruling⁶⁴. This was a result of the government's failure to secure a majority in 1978 and 1984.

Tamil Nadu: Prior to the Bommai ruling⁶⁵, President's rule was implemented in Tamil Nadu five times in total—in 1971, 1976, 1980, 1988, and 1991 for a total of 1197 days. Every time, the government took use of its majority in the legislature to abuse it.⁶⁶

Travancore-Cochin: Despite being a fairly short-lived state, it experienced an emergency in 1956 as a result of the Congress Party's 379-day schism and subsequent loss of majority.

Tripura: Three times (1972, 1978, 1993), for a total of 231 days, Article 356 was enforced in Tripura prior to the Bommai Judgement⁶⁷. It was used twice (1972 and 1993) because of a deteriorating state of law and order, and once again (1978) because of a shifting political landscape.

Uttar Pradesh: Out of all the states in India, the highest number of times President's Rule has been enforced is in Uttar Pradesh and Manipur, with a combined total of 1689 days. The first time this action was taken was back in 1968, when Congress withdrew its support and the loss of majority led to the imposition of President's Rule. And it was in 1970 and 1975 when internal conflict within the party resulted in the need for President's Rule. The rebellion of the Provincial Armed Constabulary sparked the enactment of Article 356 in 1973. Despite having a majority, President's Rule was imposed unconstitutionally in 1977, 1980, and 1992. The indecisive results of the elections led to the imposition of Article 356 in 1995 and 2002. Therefore, prior to the Bommai Judgement⁶⁸, Article 356 was invoked a total of seven times in Manipur, with four instances being deemed unconstitutional.⁶⁹

Uttarakhand: In 2016, the misuse of Article 356 was brought to light when it was imposed for 44 days in Uttarakhand. The issue of President's rule in the state was brought before the High Court, where Chief Justice KM Joseph and Justice VK Bist made a strong statement by saying, "Even the President is not immune to error." They went on to emphasize that no one,

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ Indian Express <https://www.newindianexpress.com/states/tamil-nadu/2017/feb/17/tamil-nadu-chief-ministers-who-failed-to-complete-term-1571635.html> last seen on 28/11/2023

⁶⁷ *SR Bommai v. Union of India*, (1994) 3 SCC 1

⁶⁸ *ibid*

⁶⁹ Bhagwan D. Dua *Presidential Rule in India: A Study in Crisis Politics* Asian Survey Vol. 19, No. 6 (Jun., 1979), pp. 611-626 DOI: 10.2307/2643898

regardless of their position, is above the law and that the legitimacy of the President's decision could be questioned in court. This serves as a reminder that in a democratic society, the law reigns supreme and no one is exempt from its scrutiny. The next day, the Congress-led government in Uttarakhand, headed by Harish Rawat, was reinstated as per the High Court's ruling. However, on April 22nd, the Supreme Court intervened and put a hold on the Uttarakhand High Court's decision.⁷⁰

Vindhya Pradesh: For 1070 days starting in 1949, the former state of Vindhya Pradesh saw the imposition of President's rule following the resignation of its Chief Minister. This marked the first instance of such a ruling in Vindhya Pradesh, yet with the state's reconstitution and renaming, Punjab now holds the technical title of being the first state where President's rule was imposed.

West Bengal: West Bengal has been subjected to Article 356 on four occasions in the years of 1962, 1968, 1970, and 1971, all of which took place prior to the groundbreaking Bommai Judgement⁷¹, for a total duration of 1022 days. The first instance was triggered by the unfortunate passing of the state's Chief Minister, while the subsequent three times were a result of the breakdown of coalition governments.

India, a country known for its rich history and diverse culture, has only two states that have eluded the imposition of President's Rule until this day - Chattisgarh and Telangana. Although one may wonder why this is the case, perhaps it can be attributed to the fact that these two states were established relatively recently - Chattisgarh in 2000 and Telangana in 2014 - in comparison to other Indian states.⁷²

CHAPTER 4: JUDICIAL DIRECTION REGARDING MISUSE/IMPOSITION OF PRESIDENT'S RULE

The early cases involving the Judiciary demonstrated a lack of assertiveness when it came to the interpretation of Article 356. Prior to 1977, only the various High Courts were granted the chance to preside over and elucidate cases related to the imposition of President's Rule. On

⁷⁰ Uttarakhand: The curious case of President <https://www.dnaindia.com/india/report-uttarakhand-the-curious-case-of-president-s-rule-2206032> last seen on 28/11/2023

⁷¹ SR Bommai v. Union of India, (1994) 3 SCC 1

⁷² Mala moni Mahanta Borah, State Emergencies in India: A Chronology of Article 356, (LAP Lambert Academic Publishing, 1st edn., 2015).

separate occasions, all High Courts dismissed petitions citing their lack of authority to assess the President's discretionary judgment. In 1977, the Supreme Court of India had a momentous occasion as it tackled the issue of President Rule imposition in states and the interpretation of Article 356. While ultimately rejecting the petition, the apex court opened the door for limited judicial review. This pivotal case, known as *S.R. Bommai's case*⁷³, set a precedent for Article 356 and added a new layer of complexity by allowing judicial review of proclamations made under this article.

In the influential case of *Ram Jawaya Kapur v. State of Punjab*⁷⁴, the Supreme Court laid out the exact role and authority of the President. While the President may hold the executive powers, the Court made clear that they are merely a symbolic figurehead. The true executive powers rest with the Council of Ministers, whose guidance and advice the President relies on for carrying out their duties.

The landmark case of *K.K. Aboo v Union of India*⁷⁵ marked the court's initial encounter with the issue of imposing President's Rule. The single bench ruling held that the proclamation made under Article 356 was not subject to judicial scrutiny and that impeachment was the appropriate solution. However, resorting to impeachment for every proclamation would be unreasonable unless the situation calls for extreme measures. Despite its efforts, the judgement failed to provide a clear understanding of the principles surrounding Article 356.

The Supreme Court of India, in the case of *State of Rajasthan v. Union of India*⁷⁶, had the unique opportunity to examine and interpret Article 356 of the Constitution. In this seminal case, the apex court established that judicial review can be exercised only when the underlying grounds are presented. As such, the court's decision allows for a restricted scope of judicial review.

In the iconic *A.K. Roy v. Union of India*⁷⁷ case, the Supreme Court of India delved into the role and scope of the President's discretion. The court highlighted that while the concept of a "political question" originated in the United States, the President's position and responsibilities in India differ greatly. Unlike the US President, who wields independent executive powers and

⁷³ *SR Bommai v. Union of India*, (1994) 3 SCC 1

⁷⁴ (1955) 2 SCR 225

⁷⁵ AIR 1965 Kerala 229

⁷⁶ AIR 1977 SC 1361

⁷⁷ AIR 1982 SC 710

is accountable to the people who elected them, the President of India is bound to act in accordance with the council of ministers and is ultimately answerable to Parliament rather than the public directly. Therefore, the President's satisfaction is determined by the council of ministers, not by the people.

4.1 S.R Bommai⁷⁸ and post cases

The court addresses the application and abuse of article 356, the authority to impose President's Rule over a state, through the Bommai Judgement. President's Rule, which went against the federal nature of the Indian political system, where administrative tasks are shared by union and State governments, would be invoked about 2.5 times a year after independence. At the forefront of the opposition to the careless application of article 356 was Bhimrao Ambedkar. He asserted that there was a high likelihood of this essay being misused for selfish purposes. His observation had proven accurate on several occasions prior to 1994, when Article 356 was frequently misused to overthrow state governments headed by political parties that disagreed with the federal government.

In 1989, S.R. Bommai - the Chief Minister of the Janata Dal Karnataka government at the time - faced the harsh consequences of article 356 as his cabinet was dismissed by the Congress-led centre. The dissolution was justified by claims that Bommai had lost a majority due to rampant defections. However, he was denied the opportunity to prove his majority.

Bommai, determined and undeterred, took the governor of Karnataka to court in opposition to their proposal of imposing President's Rule. Despite the High Court's dismissal of the case, Bommai persisted and escalated it to the Supreme Court. After a grueling five-year legal battle, the Supreme Court delivered a groundbreaking ruling in 1994, marking an end to the arbitrary removal of State governments under article 356. This landmark judgement, famously known as the Bommai Judgement, continues to be one of the most referenced and revered decisions made by the Supreme Court.

4.2 Major points in the Bommai⁷⁹ Judgment

The judges provided crucial guidelines to safeguard against the potential abuse of Article 356.

⁷⁸ SR Bommai v. Union of India, (1994) 3 SCC 1

⁷⁹ SR Bommai v. Union of India, (1994) 3 SCC 1

Emphasizing the significance of a floor test, they also recommended issuing a warning to the concerned state and allowing ample time for a response. Furthermore, they highlighted limitations on the President's authority, barring any irreversible actions or dissolution of the assembly before a proclamation is approved by Parliament. Their stance aligns with the recommendations of the Sarkaria Commission on the utilisation and misapplication of Article 356. After careful consideration, the judges determined that the central government should exercise utmost caution when invoking this constitutional provision in order to maintain the delicate balance of power between the centre and the states.

4.3 Justifiability of Art 356

The unanimous decision of the judges declared that Presidential Proclamation can be legally challenged. If the proclamation is found to be acting in bad faith, the court has the authority to invalidate it. Furthermore, the court has the jurisdiction to examine the pertinent evidence used by the President in reaching the proclamation. The court ruled that this evidence, which serves as the basis for the advice given, can be thoroughly scrutinized as it does not fall under the category of advice and is not prohibited by Article 74(2) of the Constitution. The court holds authority to provide redress in instances of misapplication of Article 356. Additionally, in various scenarios, Section 123 of the Evidence Act may also be invoked. This landmark case not only paved the way for judicial scrutiny, but also curtailed the flagrant abuse of this provision.

4.4 Bar on President's Power

The President's powers, as outlined in Article 356, are not absolute but rather conditional in nature. While the President's personal satisfaction holds weight, it must also be supported by relevant information and serve as a prerequisite for action. Additionally, any Proclamation made by the President must also be approved by both Houses, ensuring a checks and balances system. Furthermore, the court has the authority to reinstate a government in the event that the President's Proclamation goes against the Constitution. The court holds the authority to not only offer redress but also to prevent any form of exploitation of this provision. Even if the parliament has approved it, the proclamation can still be contested in a court of law. Such a decision fortifies the federal structure and serves as a barrier against unjust removal of the government for personal or political motives.

Since the implementation of the Sarkaria Commission and Bommai⁸⁰ case, there has been a significant decrease in governmental abuse. This was especially evident in the case of **C.R. Das v. Union of India**⁸¹, where the governor attributed the breakdown of constitutional machinery to the deteriorating law and order situation in the state. However, the President rejected this claim, stating that poor governance does not equate to a breakdown. Despite the government's attempt to justify the situation and imposing emergency measures, it ultimately failed to gain approval from the Rajya Sabha.

The court in **Rameshar Prasad v. Union of India**⁸² emphasized that the imposition of emergency must be based on solid and legitimate reasons, rather than the Governor's arbitrary choices. Despite this, interim relief was not awarded and elections were held, indicating a disregard for the principles established in the Bommai⁸³ case. Clearly, the journey towards preventing misuse of power was laden with challenges and setbacks.

In the highly anticipated verdict of **Harish Singh Rawat v. Union of India**⁸⁴, the outcome of the Bommai case, the state government was ultimately absolved of the need for a floor test. Initially, the governor had called for a floor test, but before it could take place, Presidential rule was imposed, leading to raised concerns. The central issue at hand was the passing of a no-confidence motion during a period of suspended animation in the assembly. In a bold move, the High Court stepped in and declared that a floor test must be conducted to determine the validity of the proclamation. This groundbreaking decision was deemed to have rendered the Presidential rule void from the very beginning.

The case of **Shiv Sena and Ors v. Union of India and Ors.**⁸⁵ is a recent example in which the Supreme Court of India has once again emphasized the significance of a "floor test" in cases where there is no clear mandate after elections and the state is placed under President's Rule. This ruling holds great importance as it marks the first time the Supreme Court has acknowledged the necessity for such measures to uphold democratic principles and ensure good governance for citizens.

⁸⁰ SR Bommai v. Union of India, (1994) 3 SCC 1

⁸¹ AIR 1999 Pat 221

⁸² (2005) 7 SCC 149

⁸³ SR Bommai v. Union of India, (1994) 3 SCC 1

⁸⁴ (2016) 16 SCC 757

⁸⁵ Writ Petition (civil) No. 1393 of 2019

It is evident that the higher judiciary has significantly contributed to curbing the arbitrary use of Article 356. Despite being invoked a total of 116 times since 1950⁸⁶, not all cases have been brought before the courts. The proportion of cases that have actually reached the courts is relatively small. Nonetheless, it is important to recognize that the laws surrounding Article 356 have largely been shaped by the judiciary. Starting in 1950 and lasting until 1993, the courts took a passive approach towards interpreting Article 356 and its associated provisions, citing the grounds of judicial review. However, with the turn of the new millennium in 1994, the highest court of the land has assumed a more active role in curbing the arbitrary use of Article 356 and protecting the democratic ideals embedded in our Constitution. Most recently, both the Supreme Court and High Courts have emerged as key players, not only in overturning unjust placements of Article 356, but also in reinstating just governments and carefully monitoring the entire process.⁸⁷

CHAPTER 5: CONCLUSION AND SUGGESTIONS

According to Dr. B.R. Ambedkar and the other creators of the Indian Constitution, the Indian Federation held a unique quality. During times of emergency, it had the ability to transform into a unitary system. In India, the emergency provisions were designed in a way that allowed the federal government to assume a unitary government's strength when necessary.⁸⁸ This belief stemmed from the idea that if such a situation were to arise in any state, it should remain a cohesive part of India instead of acting independently. The emergency provisions should only be utilized as a last resort when all attempts at peaceful resolution have been exhausted. It should be treated as a last resort, as it can greatly impact the federal structure of India's government. However, political parties at the center have repeatedly misused these provisions for their own agendas. Despite this, the removal of Article 356 from the Indian constitution should not be considered.⁸⁹ Unlike America, where states voluntarily united to form a Union, India is a forced unit. Therefore, if Article 356 is eliminated, it will prove to be a challenging

⁸⁶ As per the figures given in an answer to a RTI from Ministry of Home Affairs Government of India dated 24.4.2019.

⁸⁷ K Jayasudha Reddy & Joy V Joseph, 'Executive Discretion and Article 356 of The Constitution of India : A Comparative Critique' (2004) 8(1) EJCL

⁸⁸ Sandeep Shastri, "Indian Federalism And National Integration — A Critique", *The Indian Journal of Political Science*, Vol. 51, No. 2 (1990).

⁸⁹ Surendra Singh and Satish Misra, Concept of federalism in India: critical analysis, Law Times Journal, available at http://lawtimesjournal.in/concept-of-federalism-in-india-critical-analysis/#_ftn1 , last seen on 16/11/2023.

task to compel states to remain a part of India.⁹⁰

In our current circumstances, there are limited options available for fostering positive Center-State relationships and ensuring the success of President's Rule. One crucial factor is the responsiveness of the judiciary in navigating political complexities in a timely manner. Without robust judicial intervention, a ruling party may be tempted to prioritize short-term gains over future criticism, leading to potential expansion of power. The key question now is whether the judiciary is prepared to adapt and enforce established principles in today's dynamic climate. A strategic roadmap needs to be developed in order to revitalize the relationship between the Centre and the states, while simultaneously promoting a stronger sense of economic federalism.

The Bommai case marked a significant moment in Article 356 of the constitution. Delivered by a bench of nine esteemed Judges, this historical judgement allowed for the judicial review of proclamations made under Article 356 of the Constitution.⁹¹ This means that the court has the authority to scrutinize the evidence upon which the President formed their decision. Additionally, the apex court declared that the dissolution of State Assemblies should only occur as a last resort, with suspension being the preferred course of action. Moreover, the court stressed the importance of conducting a "floor test" in order to determine the majority in the house. This decision showcases the commitment of the court to uphold the principles of democracy and protect the rights of elected representatives.⁹² The Bommai case marked a significant moment in Article 356 of the constitution. Delivered by a bench of nine esteemed Judges, this historical judgement allowed for the judicial review of proclamations made under Article 356 of the Constitution. This means that the court has the authority to scrutinize the evidence upon which the President formed their decision. Additionally, the apex court declared that the dissolution of State Assemblies should only occur as a last resort, with suspension being the preferred course of action. Moreover, the court stressed the importance of conducting a "floor test" in order to determine the majority in the house. This decision showcases the commitment of the court to uphold the principles of democracy and protect the rights of elected representatives.

⁹⁰ Coomi Kapoor, *The Emergency* (Penguin Viking, 2nd edn., 2015)

⁹¹ Shri Ram Maheshwari, *President's Rule in India*, (Macmillan: New Delhi, 1977)

⁹² R.B. JAIN, Federalism in India: Emerging Trends and theFuture Outlook, available at <http://14.139.60.114:8080/jspui/bitstream/123456789/735/30/Federalism%20in%20India.pdf> , last seen on 22/11/2023

In recent years, the judiciary has taken a strong stance against abuse of Article 356 by implementing a unique approach. In these cases, the court not only determines the majority of the government through a floor test, but also closely monitors the process through various means such as sending an observer or live telecast. However, this intervention by the court can be seen as overstepping its boundaries into the realm of the legislature and executive, leading to the concept of "judicial over-activism". Ultimately, the principles set forth by the Supreme Court in the landmark Bommai case have become a guiding force for the higher judiciary in handling similar cases. This trend highlights the Supreme Court's creative role in preventing the misuse of Article 356 and protecting citizens' rights.

SUGGESTIONS

Article 356 of the Constitution does not exist in a vacuum, independent of other constitutional provisions and laws. As a result, relying solely on this provision for preventing its misuse may not be sufficient. It is, in fact, influenced by multiple factors. Considering the numerous causes behind the misuse of Article 356 and the diverse perspectives within society, the following are a few recommendations to curb its abuse and maintain a balance:

1. Revising Article 356 of the Constitution:

Article 356 is the primary means of imposing President's Rule in States. It outlines the specific conditions and procedures that must be met. However, amending Article 356 could go above and beyond to prevent its abuse or excessive use. Here are some changes that could be made:

- a. Condition of giving a show cause notice to the concerned State government before imposing Article 356.
- b. "or otherwise clause" must be elaborated to avoid misuse.
- c. Mandatory condition of mentioning the reasons in the proclamation issued by President under Article 356.
- d. Time period be reduced from 2 months to one month.
- e. Localized emergency which is to be applicable only in a part of State.

2. Effective anti-defection laws:

Anti-defection laws are crucial in combating the widespread issue of political defections in Indian politics. Despite having legislation in place, it is disheartening to see it being exploited by political parties for their own gains. Extensive research has highlighted the role of defections in the abuse of Article 356. Therefore, it is imperative that we revise and strengthen our anti-defection laws to effectively address this issue.

3. Floor test be expressly mentioned in the Constitution:

Frequent political defections and a fractured mandate in elections have been identified as significant factors that contribute to the misuse of Article 356. In these situations, the floor test becomes a crucial means of determining the true majority, whether it be in cases of hung assemblies or defections. Recent court cases have highlighted the necessity for the court to intervene and oversee the conduct of the floor test. Therefore, it is imperative that clear provisions be made within the Constitution to regulate the floor test. Such a provision would not only uphold the principle of separation of powers, but also eliminate the ambiguity surrounding the true majority in the legislature, which often leads to the imposition of President's Rule. Additionally, this would help to eliminate unnecessary delays and resolve the matter swiftly.

4. Role and functions of Inter-state council be re-defined:

Regular meetings of the inter-state council play a crucial role in strengthening the relationship between the Centre and State governments. These meetings provide a formal platform for them to work together towards the development of the nation. Despite the 10-year gap, a meeting was finally held in July 2016. It is necessary to redefine the role and function of the inter-State council and make it a regular aspect of Indian federalism. Doing so will promote cooperation and understanding between the State and Centre, allowing them to address and resolve any issues on a united platform.

5. Mobilizing public opinion:

The power of political sovereignty in India rests in the hands of its people. Through the democratic process, citizens elect their representatives for a term of five years. If they are dissatisfied with their performance, they have the ability to vote them out in the next election.

By educating and enlightening the populace, individuals are motivated and empowered to actively engage in political affairs. Therefore, it is crucial that the general public is well-informed about the political structure, current events, and government administration. This enables them to effectively exercise their political rights and participate in public affairs for the betterment of their country.

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