



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MISUSE OF ARTICLE 356: AN ANALYSIS OF PRESIDENT'S RULE ON STATE GOVERNMENT AND IMPACT ON INDIAN FEDERALISM

AUTHORED BY - VARUN KINI¹

ABSTRACT

Article 356 has always been in controversy because of its alleged misuse. It has acquired quite some notoriety due to its frequent use although it was supposed to be a dead letter. This Article gives the President the power to suspend the legislative assembly when the State isn't acting as per the Constitution through a Proclamation. President's rule is another term for it. This paper talks about how this provision has been grossly misused by The Union on various occasions and how it threatens the Federal structure of our Constitution. It also talks about various steps that can be taken to check the abuse of power. It also critically analyzes the suggestion given by The Sarkaria Commission and S.R. Bommai Case. It also sheds light on the justiciability of this Article and how it has changed over time. The author provides some recommendation which can be applied to curb the misuse.

This paper contends that Article 356² and its associated provisions have been responsible for the overthrow of popularly elected democratic governments in Indian states, leading to governance discontinuity and sparking public outcry.

Keywords- Misuse, President, Legislative Assembly, Constitution, Proclamation

1. INTRODUCTION

Article 356 of the Indian Constitution comes into effect when there is a breakdown of constitutional machinery within a state. The President is empowered to suspend the state's legislative assembly by issuing an Emergency Proclamation if the state government fails to function in accordance with constitutional provisions. Upon receiving a report from the Governor, the President, acting on the

¹ Student at Alliance University

² Constitution of India, Article 356

advice of the Council of Ministers and the Prime Minister, assumes control of the state government, a process commonly known as President's rule. However, this provision grants the Union considerable authority over the states, leading to concerns about potential misuse. Such misuse undermines the principles of federalism, which the Indian Constitution upholds with a strong central authority within a framework of cooperative federalism.

Granville Austin characterizes India's federal structure as one of cooperative federalism, where Article 355 imposes a duty on the Union to protect states against both external aggression and internal disturbance.³ While Article 356 is intended to enable the Union to fulfill this duty, questions arise regarding its impact on state autonomy. Its political exploitation has raised calls for its deletion, although such action could lead to further instability. Consequently, there exists considerable ambiguity surrounding the appropriate course of action. Given the implications for Centre-State relations, this issue demands careful consideration. While Article 356 is often wielded as a means for the Centre to exert control over state governments, it is important to acknowledge that its underlying rationale is understandable. Thus, the issue lies not with the statutory mandate itself but rather with its implementation by executive authorities.

1.1. RESEARCH OBJECTIVE

- Identifying the deficiencies within Article 356 that contribute to its abuse.
- Exploring the conditions necessitating the invocation of Article 356.
- Revealing the necessary amendments needed in Article 356.

1.2. LITERATURE REVIEW

*President's Understanding over State Government*⁴ in Dr. Anil Kumar Dubey's article, an extensive evaluation of Article 356 is presented. The author delves into the reasoning behind this provision and elucidates its constitutional framework. The complexity of relations between the Centre and the States is thoroughly analyzed, emphasizing the necessity of Article 356. Moreover, the improper applications of this provision are scrutinized, drawing insights from the Sarkaria Commission report and the S.R. Bommai judgment. The author advocates for the amendment of Article 356 based on these findings.

³ Constitution of India, Article 355

⁴ Anil Kumar Dubey, 'Presidential Takeover of State Government' [2018 Summer Issue] ILI Law Review

*State Emergency as per Article 356 and the principles of Indian federalism.*⁵ In Anil Ghanghas's article, the concept of state emergency within the framework of federalism is explored. The author establishes a connection between Article 356 and Indian Federalism, highlighting the importance of cooperative federalism. It is stressed that the authority granted by Article 356 should be employed solely for its intended purpose and not for the dismissal of a legitimately elected government. The analysis of Centre-State relations is conducted with scrutiny, leading to the observation that the Constitution allocates greater power to the Centre to foster cooperative federalism.

1.3. RESEARCH GAP

Article 356 has been frequently misused since its incorporation in 1950, despite originally being considered a dormant provision. It has been invoked over 120 times, raising concerns about its application.

1.4. RESEARCH QUESTION

- Whether Article 356 infringe upon State Autonomy and consequently, the principles of Indian Federalism.
- Whether there has been any alteration in the utilization of Article 356 following the S.R. Bommai case and the recommendations of the Sarkaria Commission?
- Whether there is necessity for the modification of Article 356?

1.5. RESEARCH METHODOLOGY

The method used by the researcher for the present research is doctrinal. This paper relied on and has been done with the help of secondary sources. The secondary sources have been taken from several legal documents, journals, reputed research articles, Government reports, and publications. Throughout the case study, legal, historical, analytical, and comparative methods were considered to assess a diverse range of secondary sources. An in-depth study has been done on the case laws related to the Article 356 of Constitution of India and several case laws were read and considered.

⁵ 7 Anil Ghanghas, 'State emergency under article 356 vis-à-vis Indian Federalism'

SCOPE OF ARTICLE 356

One notable element reinforcing the unitary aspects of the Constitution is the inclusion of the President's Rule, alternatively referred to as State Emergency or Constitutional Emergency, falling within the broader category of Emergency powers. Articulated in Article 356, this provision has been a subject of ongoing discourse since its introduction. Essentially, the article allows the President to declare an emergency in a state if they believe that the state government cannot function by constitutional provisions. This action entails transferring both executive and legislative powers to the Union. Although the introduction of Article 356 was originally predicated on its infrequent use, the framers of the Constitution could not have anticipated the potential for its widespread abuse in the evolving political landscape. Since gaining independence, successive Central Governments and political parties have employed Article 356 as a tool to indirectly assume control over state governments. It has been consistently argued that the President's discretion in wielding this power is essentially subject to the whims of the ruling Central Government. The noble intentions underlying the implementation of this provision have been overshadowed by the prevalent corrupt practices in contemporary politics. Whether there will be contemplation of amendments to curb its misuse poses a question rooted in the moral, ethical, and social responsibilities of a government towards its society.

The Constitution encompasses various provisions allowing for departures from the regular constitutional mechanisms, forming the emergency provisions outlined in Part XVIII. Aside from the provisions for a national emergency (Article 352) and a financial emergency (Article 360), there exists a Constitutional or state emergency commonly known as President's Rule, detailed in Article 356. Given the federal characteristics of our Constitution, which strongly leans towards the Union and is considered a basic structure, as established in the landmark *Kesavananda Bharati vs. State of Kerala and Anr. (1973)*⁶ judgment, it is logical to infer that the Union holds a responsibility to safeguard and uphold the constitutional essence of a State. This involves preventing a breakdown of its constitutional machinery in certain situations that may arise.

FEDERALISM AND ARTICLE 356 –

The Indian Constitution adheres to the principle of the separation of powers. Austin and A.H. Birch have referred to the Indian system as “Cooperative federalism,” signifying that it is a blend of both

⁶ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225

federal and unitary characteristics rather than strictly adhering to either. Maintaining a delicate equilibrium between Article 356 and Federalism is crucial. Following extensive debates and theories proposed by distinguished scholars and jurists, it can be asserted that the Constitution of India does not conform strictly to either pure federalism or pure unitarism; rather, it represents a fusion of both. The Indian Constitution exhibits federal characteristics with a robust Union, highlighting its unique design. It acknowledges specific situations where the Union holds a superior authority over the states, while simultaneously preserving the autonomy of states in other domains. This design aims to reinforce the underlying principle of the Union of India.

LEGAL ASPECT RELATED TO ARTICLE 356

Govt of India Act, 1938⁷

Article 356, derived from Article 93 of the Government of India Act, 1935, was initially instituted during a period when the British government began delegating certain powers to Indian Ministries. However, there was apprehension that granting absolute authority to these ministries might lead to attempts to exert control over the British government. Therefore, Article 93 empowered the governor to intervene in a province if it was deemed that the provincial government was not functioning in accordance with the said Act. The governor was granted the authority to assume control over their powers and exercise them at their discretion. Similarly, Article 45 extended similar powers to the governor-general concerning the Central Government.⁸

Incorporation of Article 356 by Drafting Committee of the Constituent Assembly

While Article 356 draws its origins from Article 93 and 45 of the Government of India Act, 1935, its purpose diverges significantly. India, characterized by vast disparities in social, economic, and political aspects, faced challenges in upholding democracy due to these differences. Variances in language, race, and religion often led to political divisions, posing a threat to the federal structure. To safeguard this structure, the power to intervene in state governments during extreme circumstances was vested in the President rather than the Governor.

⁷ Government of India Act 1935

⁸ National Commission to Review the Working of the Constitution, 'A Consultation Paper on Article 356 of the Constitution'' (The Hindu Centre, 2002)

https://www.thehinducentre.com/multimedia/archive/03091/ncrwc_3091109a.pdf

The controversy surrounding Article 356, initially discussed in the Constituent Assembly during the drafting of Article 278, highlighted differing perspectives. Some members vehemently opposed this provision, fearing it would perpetuate imperialistic tendencies. However, these objections were overruled by Dr. Ambedkar, who argued that no constitutional provision is immune from potential misuse. He contended that despite the possibility of abuse, excluding it on those grounds was not justified.

Dr. Ambedkar believed that Article 356 would likely remain dormant and unused. Even in situations necessitating its activation, he trusted that the President would exercise caution, issuing warnings to the concerned state. This provision was included to facilitate a smooth transition from feudal to democratic leadership. The framers envisioned the central government's role as that of a guide or facilitator in this process.

The Sarkaria Commission Report, 1983⁹

In Chapter 6 of the Sarkaria Commission report, thorough examination of Emergency Provisions, particularly Article 356, was conducted. The commission aimed to clarify the ambiguity inherent in the language of Article 356 by elucidating the concept of the Failure of Constitutional Machinery and providing examples of instances where Article 356 was improperly invoked. Furthermore, the commission provided detailed explanations regarding the application and utilization of this article.

Recommendations by the Commission

The commission put forward 8 safeguards and proposed 4 amendments concerning Article 356. These safeguards primarily emphasized treating Article 356 as a measure of last resort, to be utilized only after exploring all possible alternatives. It was recommended that a notice be issued to the errant state as a precautionary step. The commission stressed the governor's responsibility in exploring avenues to form a government with majority support, and if this is not feasible, allowing the outgoing ministry to serve as a caretaker government until fresh elections can be conducted promptly.

A crucial safeguard highlighted by the commission was the requirement for every proclamation under Article 356 to be presented before each house of Parliament without delay, particularly before the

⁹ Sarkaria Commission Report 1987, Ch VI

expiration of the two-month period specified in Article 356(3).

In terms of amendments, the commission proposed changes to ensure that the assembly cannot be dissolved under Article 356(1) without being presented before Parliament. Additionally, they recommended enhancing the effectiveness of judicial review against malafide intentions by making the material facts and grounds underlying the presidential satisfaction an integral part of the proclamation.

Failure of Constitutional Machinery

Failure of Constitutional Machinery can manifest in four scenarios. Firstly, a Political crisis may ensue when, following general elections, no government can be formed, or if the existing ministry resigns or loses majority without a viable alternative. In such cases, imposition of emergency measures becomes necessary. Secondly, Internal Subversion occurs when a state government intentionally disrupts constitutional provisions, creating deadlock or employing its power for unconstitutional purposes. Thirdly, Physical breakdown signifies a government's inability to address internal disturbances or natural calamities, resulting in paralysis of state administration or jeopardizing state security. Lastly, failure to adhere to directives issued by the Union government by the State Government, particularly if such non-compliance impacts center-state relations, also constitutes a failure of Constitutional Machinery.

Improper Invocation of Emergency

After analyzing the findings of the Sarkaria Commission report, the improper invocation of Article 356 can be classified into five categories:

- Failure to issue a warning to the errant state.
- Dismissal of a ministry commanding a majority,
- Denial of opportunity to claimant parties,
- Failure to establish a caretaker government, and
- Wholesale dissolution of assemblies.

A warning should precede the imposition of Article 356 as a precautionary measure since this provision is meant for extreme situations. Imposing emergency measures without prior warning would constitute misuse of this provision, except in cases where immediate action by the Union is

imperative. The commission observed that most instances of misuse were aimed at resolving intra-party disputes. For instance, the removal of a majority-holding government solely on grounds of corruption or maladministration, or the imposition of presidential rule based solely on the governor's assessment that the ruling party has lost majority without allowing the ministry to demonstrate its confidence through a floor test.

The third category involves the denial of an opportunity to the aggrieved party, where a government is prevented from forming after elections or not given a chance to prove its majority or explore alternatives.

Another form of misuse occurs when no caretaker government is established.

The most egregious misuse of Article 356 occurred in 1977 and 1980 when seven legislative assemblies were dissolved simultaneously twice, termed as wholesale dissolution by the commission. Emergency measures were invoked due to ideological differences between the state and central governments, highlighting the clear political motives behind such abuse of this provision.

LANDMARK JUDGEMENT

S.R. Bommai v. Union of India¹⁰

a landmark judgment aimed at curbing the misuse of Article 356. The views expressed by the judges in this case closely align with the recommendations provided by the Sarkaria Commission. The Supreme Court deliberated on key issues, including the justiciability of proclamations made under Article 356 and the extent of the President's powers to invoke emergency.

In essence, the Supreme Court examined whether proclamations made under Article 356 could be subject to judicial review and scrutiny, thereby determining their justiciability. Additionally, the court addressed the question of whether the President's authority to invoke emergency powers under Article 356 was absolute or subject to certain limitations.

Through its judgment, the Supreme Court provided significant guidance on these matters,

¹⁰ SR Bommai v Union of India (1994) 3 SCC 1

emphasizing the importance of judicial oversight to prevent the arbitrary and improper use of Article 356. The court's rulings in this case contributed to establishing parameters for the exercise of emergency powers and promoting accountability in the application of Article 356.

State of Rajasthan v/s Union of India

In the State of Rajasthan case, Article 356 included clause (5) inserted by the Thirty-eighth Amendment, rendering the satisfaction of the President mentioned in clause (1) final and conclusive. This satisfaction was deemed beyond challenge in any court on any grounds. However, the Forty-fourth Amendment in 1978 subsequently removed clause (5), rendering the observations made in the State of Rajasthan case irrelevant.

Following the Rajasthan case, the issue of judicial review of Presidential Proclamations under Article 356 was brought into question in the Gauhati and Karnataka High Courts. In the case of *Vamuzo v. Union of India*, where the Assam Assembly was dissolved on grounds of defection, a difference of opinion emerged between Chief Justice Raghaur and Justice Hansaria. While the former did not allow for judicial review, the latter opined that it is available under Article 356.

The High Court of Karnataka extensively deliberated on the law in *S.R. Bommai v. Union of India* when faced with a challenge to the Presidential Proclamation. In this case, the Governor reported to the President of India, recommending the imposition of President's Rule in the state. The imposition of President's Rule in Karnataka in 1989 and the subsequent dissolution of the Legislative Assembly, based on the Governor's report and "other information," were contested before the Karnataka High Court. The Full Bench determined that the Presidential Proclamation was justiciable.

Sunderlal Patwa v. Union of India¹¹

Following the demolition of the Babri Masjid in Ayodhya on December 6, 1992, President's rule was imposed in Madhya Pradesh on December 15, 1992. In a letter to the President, the then Governor of Madhya Pradesh, Kunwar Mahmood Ali Khan, referenced acts of omission and commission by the state, without specifying them. This proclamation faced a legal challenge in the Madhya Pradesh High Court.

¹¹ Air 1993 mp 214

The court ruled that the President's satisfaction in issuing the Presidential Proclamation, imposing President's Rule in Madhya Pradesh, and dissolving the State Assembly, did not align with circumstances relevant for invoking Article 356 of the Constitution. Consequently, the court deemed it liable to be quashed. Furthermore, the court highlighted that the 44th Amendment to the Constitution in 1978 had repealed clause (5) of Article 356, expanding the scope of judicial review. As a result, the Presidential Proclamation became subject to review based on grounds such as irrationality, illegality, impropriety, or mala fide, essentially, abuse of power.

The court emphasized the need for a cautious and sparing use of Article 356, considering its federal nature. This landmark judgment is considered a significant milestone in legal history, marking the first instance where a Presidential Proclamation was invalidated on the grounds of being unconstitutional.

MISUSE OF ARTICLE 356

The abolition of Article 356 is abrogated, as the framers of the Constitution envisioned its rare use, akin to a sword kept in its sheath, to be unsheathed only in egregious cases under Article 365. The latter article allows the President, or the Cabinet, to declare that the state government cannot function by the Constitution if a particular state defies a validly issued Central direction. The court, in such cases, scrutinizes whether the Union's direction was valid. However, despite over 100 instances, starting with the 1959 Kerala incident, Article 356 has been consistently misused, and there hasn't been a legitimate invocation.

Considering the perpetual temptation to misuse this presidential power, there is a pressing need for a change in the constitutional perspective. In essence, Article 356 should either be placed in abeyance or formally abolished.¹² Justice V.R. Krishna Iyer, a former Supreme Court judge and one of India's most distinguished constitutional thinkers, advocates for this transformative shift in approach.

The Sarkaria Commission strongly criticizes the frequent use of Article 356, suggesting that it is often driven by ulterior motives. It is advocated that the power conferred by Article 356 should be restrained, aligning with the recommendations of the Sarkaria Commission. I would go a step further

¹² Id.

and propose that the President's Rule be imposed on a state only after Parliament passes a resolution in both Houses. This additional step is deemed necessary to prevent the undue usurpation of state powers by the Center, which undermines federalism and poses a serious threat to the Constitution's basic structure. Imposing stringent limitations on the exercise of this power is essential to safeguard the principles of federalism.

The Bommai¹³ ruling serves as a stern cautionary message to the Union Government. In cases where a state perceives impending interference, the affected or threatened state should have the option to approach the Supreme Court through a quia timet action, seeking a stay on any hastily proposed intervention. It is crucial to acknowledge that the State Cabinet is accountable to the State Legislature, and as long as it retains the legislature's confidence, the Governor's pleasure is a mere constitutional formality. The powers of both the Governor and the President have been elaborated upon in Shamsher Singh's writings.

CRITICAL ANALYSIS

"The Constitution of India establishes a federal system, albeit with a tilt in favor of the Central government. Within the domains allocated to the States, they wield supreme authority." The equilibrium of powers delineated in the Constitution between the Centre and the States is commendable, offering a framework that safeguards the integrity and ethos of the nation. Article 356, far from encroaching on state autonomy, is crucial for upholding the federal structure. The question arises whether this Article should be abolished, yet such action would precipitate a disruptive shift in Centre-State relations, which the nation is not prepared for. Instead of deletion, it is imperative to enact appropriate amendments to ensure the judicious use of this Article.

Regarding judicial review, a uniform rule for all cases may not be feasible. However, landmark cases like the State of Rajasthan v Union of India¹⁴ and the Bommai case have established the judiciary as the ultimate interpreter of the Constitution, endowed with the authority to interpret and safeguard it through all means necessary. The Rajasthan case was pivotal as it introduced judicial review of the President's satisfaction, despite the statutory bars present in Article 356. The subsequent removal of

¹³ S. R. BOMMAI v. Union of India, (1994) 3 SCC 1

¹⁴ AIR 1977 SC 1361

these bars by the Constitution (44th Amendment) Act, 1978 underscored the importance of judicial oversight.¹⁵

In light of the Bommai case, it is evident that Article 356 does not enjoy absolute immunity. An unconventional instance of its misuse arose during the Godhra train incident in Gujarat in 2002 when the Union government refrained from invoking emergency despite a breakdown of constitutional machinery. This situation underscores the relevance of the term 'otherwise' in Article 356. However, no remedial actions were undertaken by the President to address the situation.

CONCLUSION AND SUGGESTIONS

States have endeavored to assert their rights whenever feasible. The authority granted by Article 356 is of grave significance as it disrupts the normal functioning of democracy, thus necessitating caution before its exercise. While various commissions have proposed safeguards to prevent misuse, their efficacy hinges on proper implementation.

Both the State of West Bengal¹⁶ and a committee formed by the State of Tamil Nadu have advocated for the deletion of Article 356. However, repealing this Article is impractical as its use is indispensable in certain circumstances, without which democracy could be jeopardized.

Efforts to curb misuse have been made, with notable improvements observed following the interventions of the Sarkaria Commission and the Bommai case. The judiciary has also underscored the principle that no entity is immune from judicial review, thus asserting its authority to provide remedies and prevent misuse in several instances.

Ultimately, Article 356 remains an integral component of the Constitution, and it is incumbent upon the executive branch to wield its power in accordance with constitutional principles.

"In the end, the efficacy of any law relies entirely on its proper enforcement within the correct context. Regardless of how excellent and significant a law may be, its ability to serve its purpose or avoid

¹⁵ Dubey (n 5)

¹⁶ West Bengal Government Document of 1 December 1977 (West Bengal Memorandum)

controversy depends on its implementation in both letter and spirit."¹⁷

To mitigate the persistent misuse of Article 356, the following amendments are proposed:

- The proclamation should receive parliamentary approval prior to the dissolution of the assembly to avert adverse repercussions.
- If both Houses fail to endorse the Proclamation, the state government should be reinstated.
- Safeguards should be similar to clauses (7) and (8) of Article 352 and should be introduced to review the continuation of the proclamation. Emergency proclamation would be triggered if the Lok Sabha passes a resolution disapproving it.
- Essential details and grounds forming the basis of Presidential satisfaction should be incorporated into the proclamation to enhance the significance of the principle of judicial review.

REFERENCES

Articles

https://www.thehinducentre.com/multimedia/archive/03091/ncrwc_3091109a.pdf

Misuse of Article 356. Jus Corpus Law Journal. (n.d.). <https://www.juscorpus.com/wp-content/uploads/2021/06/14.-Muskan-Khandelwal.pdf>

Misuse of Article 356 by the Governor. International Journal of Computing and Business Research (IJCBR). (n.d.). <https://www.researchmanuscripts.com/PapersVol1N1/10.pdf>

ARTICLE 356 OF THE CONSTITUTION. NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION. (n.d.).

<https://legalaffairs.gov.in/sites/default/files/Article%20356%20of%20the%20Constitution.pdf>

¹⁷ Dubey (n 5)