Chapter-5
THE GOVERNOR AND ARTICLE 356

India is a country having federal system which in practice shows dominance of Union government over States government. To establish this situation Governor a representative of Centre places a key role. Constitutionally Article 356 has empowered the Governor to show its presence in the State function.

Genesis of Article 356:

The Constitution of India has given power to the President under Article 356 dismissed a democratically elected State government. It is an extreme and unusual power. It is indeed a power, which, if misused or abused, can destroy the constitutional equilibrium between the Centre and its constituents units. The historical and constitutional genesis of the provision for President’s rule in the States as incorporated in the Constitution of India, which grants extremely extensive and unusual power to the Centre to meet an extraordinarily exceptional situation where breakdown of constitutional machinery occurs in a State. This would provide a spectacle of the origin of the Article, changes effected in it, its development and final transformation into its present form. This is examined chronologically with reference to the Government of India Act of 1909, Act of 1919, Act of 1935 and the Draft Constitution of India as discussed by the founding fathers of the Constitution in the Constituent Assembly. It would also be noteworthy that this provision was introduced and incorporated as an insignificant provision which would never be called into operation and that “remains a dead letter or iss rarely used”. But gradually this has transformed itself into an established, integral and highly controversial provision of the Constitution that no established political party of the country which
has come to power at the Centre either as a majority party or as a partner of a coalition unequivocally or wholly opposed.

Impositions of central rule in a province were an imperial power introduced by the British colonialists. That is, the seeds of the Article can very well be traced back to the pre-independence days, when the Government of India Act of 1909 or Minto Morley Reforms were introduced. Before the introduction of the Act, the native people had no role in administration and legislation. The affairs of the Provinces were carried on by the Governor-General through his Executive Councillors. However, the Act marked the beginning of a new phase in the constitutional history of India by inaugurating a new era characterized by the growths of responsible governments by delegating some powers to the Indian Legislatures, Indian politicians and the Indian people. As the projected legislative bodies under the reforms had no real powers, the Britishers did not care to devise ways and means to keep these legislatures under their control in the true sense of the term. The changes introduced by the Act were, however, one of degree and not of kind. Even Lord Moreley himself emphatically repudiated that the measures were in no sense a step towards parliamentary government. There was disappointment, and frustration among Indian leaders who was initially hailed Moreley-Minto Reforms. In response to their agitations and demand for more changes, the Government of India Act of 1919 or Montague-Chelmsford Reforms were enacted. The Act introduced dyarchy in the provinces. Under this system, the provinces were mere administrative units having no independent status of their own. Though the ultimate responsibility still rested with the British Parliament yet, this phase witnessed the introduction of a modicum of responsibility in the working of government which was made possible by the constitutional
arrangement of dyarachy. The Act aimed at the gradual development of self-governing institutions in India with a view to the progressive realization of responsible government. The reforms of 1919 fell far short of satisfying the Indians who had been struggling for self government. The Indian National Congress condemned it as "inadequate, unsatisfactory and disappointing." The failure of reforms was due to external circumstances as well as some inherent defects of the system of dyarachy. It was just an experiment carried out by the Britishers in Constitution making process. In theory also, dyarachy was unsound and India continued to be unilaterally governed. No occasion arose for the takeover of the provincial governments. When India's struggle for independence was at its peak a Commission headed by John Simon, a leading constitutional lawyer of Britain and members of the British Parliament was appointed to look into the question of constitutional reforms for India and to make suitable recommendations. The Commission discussed at length several vital issues like the breakdown of law and order in Bombay, Madras, United Provinces and Punjab and the exercise of special powers vested in the Governors. The Commissions realized that Governors interfered a fair bit in provincial matters especially at the instance of political instability. The most important recommendation of the Commission was the special provision for a State of emergency. All political parties in India rejected its report outright, the Government of India Act of 1935 was based on the recommendations of the Simon report⁴. The Act contained an emergency provision, the spirit of which subsequently found its way into the present Indian Constitution. This is the origin of the concept of Emergency provision in the States. It was ironic that similar provisions were not enacted in the case
of Ireland within the United Kingdom in the Government of Ireland Act, 1920. This special power appears to have been reserved for meeting the Indian situation in the spirit that "the King's government must go on".

The Indian National Congress as a mark of protest passes several resolutions against the Simon Commission, White Paper and Joint Committee recommendations and demanded the setting up of a Constituent Assembly. However, the British government went ahead with the enactment of the Government of Indian Act of 1935. The Act aimed at completion of the process of devolution. It introduced certain new principles federal principles along with its corollary of provincial autonomy and the principle of popular responsible government in the provinces subject to certain "safeguard" as they were "called in political parlance in India". The scheme of provincial autonomy as envisaged in the Act was accompanied by a constitutional delimitation of legislative and executive jurisdiction between the federation and the units. With the creation of autonomous provinces, two questions arose; first, how to enable the Centre to direct and control provincial policies and act in an emergency such as war or internal disturbance. The second, how to make provision for carrying on the administration if the machinery of ministerial government failed to function. In this context, the recommendations of the Statutory Commission manifested themselves in clause 45 and 93 of the Act. These provisions were highly significant since they became the forerunners to the
These provisions made it clear that the Britishers experimented with a federal system in India by the 1935 Act, they were not ready to forgo their control over the provinces under their jurisdiction. They were equally apprehensive of a possible 'collapse' of the new experimental system of parliamentary democracy either at the Centre or in the provinces. Hence they incorporated many provisions like section 93 in the Act which would enable the Governors to resume and to take back the very few powers entrusted to the elected governments in the provinces as and when, in their opinion, the government of the province could not be carried on in accordance with the provisions of the Act. As far as the British colonialists were concerned, it was incumbent on them to include a provision of this sort because the British Parliament was not prepared to trust the political parties in India. Many of them were opposed to the British rule and some of the parties like the Indian National Congress had declared openly that they would enter the legislatures and the government with a view to wrecking the system from within by using constitutional and extra-constitutional means. This kind of check envisaged by section 93 of the Act was applied in the provinces during freedom struggle. The motive of self preservation of the British Raj appears to be very dominant in these invocations. Also the socio-political climate was highly disturbed, which further accentuated the imperial instincts of oppressive dominance over
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The Indian representative institutions. These provisions were not introduced in the Indian (provincial Constitution) order, 1947. The Independence of India Act of 1947 virtually ended the British Rule in India and enabled the Constituent Assembly to frame and adopt a new Constitution and to supersede the Indian Independence Act without any further legislation from the British Parliament.

Federal Spirit and Article 356 in Action:

The Article 356 of the Indian Constitution has acquired quite some notoriety due to its alleged misuse. The essence of the Article is that upon the breach of a certain defined State of affairs, as ascertained and reported by the Governor of the State concerned (or otherwise), the President concludes that the 'constitutional machinery' in the State has failed. Thereupon the President makes a 'proclamation of emergency', dismissing the State Legislature and Executive. During a State of Emergency, the President is vested with tremendous discretionary powers. Any legislation or constitutional provision that abrogates any of the basic principles of democratic freedom in anathema to most people and the more so to the people of the largest democracy in the world. Having just gained independence after a long and continuous struggle, the people of India would naturally have the greatest interest in preserving all the freedoms envisioned in a democratic society. If the members of the Drafting Committee of the Constitution included a provision that permits a government dismiss a duly elected representative body of the
people and suspend that freedoms in violation of even the
crudest interpretation of a 'separation of powers', then common
sense suggests that it is only to deal with the direct of
circumstances and nothing less. But it seems that the remedial
nature of the Article has been perverted to impose the
domination of the Central government upon a state government
that does not subscribe to its views. Central control over regional
governments is essential for the integrity of nations that have
federal system of government, and Article 356 was designed to
preserve this integrity, but what remains to be seen is whether it
is being used at the cost of sacrificing the interest of democratic
freedom.

Federalism in India is at once similar and distinct from
other federation like that of America, distinct in that it is a group
of independent States coming together to form a federation by
conceding a portion of their rights of government, but a
distributed entity that derives its power from a single source the
Union. Sovereignty and the powers of governance and
distributed and shared by several entities and organs within the
Indian constitutional system. 7 Dr. Baba Saheb Ambedkar who
chaired the Drafting Committee of the Constituent Assembly,
stressed the importance of describing India as a 'Union of States'
rather than a 'Federation of States'. Though the country and the
people may be divided into different States for convenience of
administration, the country is one in integral whole its people a
single emporium derived from a single source. The similarity
between the systems of government in the two countries
however, is remarkable. Both governments exhibit a strong
Union control, which the individual States give up a significant
portion of their autonomous rights to the Central government in
return for security and pursuit of common interests, in contrast,
in a confederation the individual States retain most of their
sovereignty and are only loosely bound together. This is in
essence how one would describe Centre-States relations in India,
excepting provisions for certain emerging situations in the
Constitution of India, where the Union would exercise absolute
control within the State. A close scrutiny and analysis of clause
(1) of Article 356 suggests the following ingredients:

i. A report from the Governor of the State;
ii. "or otherwise" than the Governor's report;
iii. The President must be satisfied;
iv. Breakdown of constitutional machinery in a State.

A brief analysis of each ingredient is essential here:

1. **A report from the Governor:**

   The Constitution of India in its Article 355 casts an
obligation upon the government at the Centre to ensure that the
government of every State is carried on in accordance with the
provisions of the Constitution. It has no agency in the State
other than the Governor, to keep it informed of the happenings
and to see whether the government is being carried on as per the
directions of the Article. Here comes the role of the Governor in
the declaration of Article 356 in a State. He is duty bound to see
that the government of the State is being carried on in
accordance with the constitutional provisions and when he
discovers that the State government is not functioning in accordance with the Constitution, it is his duty to report the matter to the President of India. Thus the functions of the Governor in terms of Article 356 comes in only when he sends a report to this effect to the President. Normally, the first and foremost requirement of any action under Article 356 is the said report of the Governor. This practice is democratic, and of significance since it has transferred the responsibility back to the Governor from the President.

The Indian Constitution, which envisages the parliamentary system of government, makes it obligatory on the part of the Governor to exercise all his powers and functions in accordance with the advice of the Council of Ministers. The Constitution does not say that sending of the report by the Governor in this connection is a function to be exercised in his discretion. Nevertheless, it is obvious that the Governor has to act on his own judgment in sending his report to the President on the breakdown of constitutional machinery of the State concerned. This position is justified by the Governor's Committee report, which says, "occasion may arise when the Governor may find that in order to be faithful to the Constitution and the law and his oath of office, he has to take a particular decision independently".

Eminent constitutional authorities like D.D. Basu and H.M. Seervai seem to share this observation. "The reason is that" Basu justified, "as a result of such a report, if adverse, the State government itself would be suspended, so that the Governor's
Council of Ministers cannot be expected to sign their own death warrant.”\textsuperscript{11} H.M. Seervai is of the view that Governor will be justified in making such a report to the President even contrary to the advice of his ministry as such a report might show that the ministry itself was responsible for the breakdown of constitutional machinery in the State\textsuperscript{12}. This position is further endorsed by the Supreme Court in the following words: “Under Article 356, the Governor exercises real rather than formal powers, relating to the breakdown of the constitutional machinery in a State. When he makes a report in this regard, he has obviously to act in his discretion. The Chief Minister, who is to be affected by this report, cannot be expected to advice the Governor to recommend his own dismissal to the President.”\textsuperscript{13}

All these observations indicate that the Governor can do it in his discretion. By the very nature of the function, it cannot be exercised on the advice of his ministry for it may very often happen that the report itself may be a condemnation of the Council of Ministers that the government runs by the Council of Ministers is no longer capable of being conducted in accordance with the Constitution. However, these discretionary powers do not affect the normal position that like the President of India, the Governor must act on the advice of the Council of Ministers. However, the Article does not mention specifically whether the report should be “speaking one” or “non speaking one”. It is obvious that such report should be a speaking one, furnishing facts clear and specific and not vague so as to satisfy the President whether or not a situation contemplated in the Article
has arisen. It should essentially contain the material facts and circumstances which are relevant to assess the situation and leading to a particular satisfaction. As the Sarkaria Commission rightly observe that, we should emphasis that such a report of the Governor should be a speaking document containing a precise and clear statement of all material facts and the ground on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.\(^{14}\)

It is now a well settled principle that no satisfaction can reasonably be formed by an authority on vague facts or report. In his report, the Governor should act truthfully with a high degree of constitutional responsibility in terms of oath and inform the President that the government of the State cannot be carried on in accordance with the constitutional provisions. When challenged in the constitutional court, it gives an insight into the satisfaction reached by the President. The Governor therefore owes constitutional duty and responsibility in sending the report with necessary factual details.\(^{15}\) If the report is non-speaking one, it would amount to satisfaction of the Governor and not that of the President regarding the existence of a situation in a State. Therefore, the Governor should be very cautious in making the report. He is supposed to act fairly and honestly consistent with his oath. It is for this reason that Article 356 places such implicit faith in his report. If, however, in a given case, his report is vitiated by legal *malafides*, it is bound to vitiate the President's action as well. Therefore, the underlying
assumption of the Constitution is that the incumbent of the office of the Governor must not only be imbued with qualities of perception, judgment, fact and initiative, but also be objective and fair in making his report on the point whether President's rule should or should not be imposed.  

Thus, this shows that the power of the Governor under Article 356 assumes great significance. Being a man on the spot, he possesses direct and first hand knowledge of the functioning of the government. After 1967, the party in power at the Centre found itself in such a situation that for retaining power in different States, it had to misuse the constitutional provision with regard to the office and functions of the Governor. Quite naturally, only pliant persons were preferred as Governors. The Sarkaria Commission rightly observes: “In all the evidence before us, a common threat is that much of the criticisms against the Governors could have been avoided if their selection had been made on correct principles to ensure appointment of right types of persons as Governors. Even the most critical of the witnesses agree that if proper persons are chosen, there will be little cause of complaints.”

ii. **Clause, 'or otherwise' in Article 356:**

   Article 356 provides that the satisfaction of the President may derive either from the report of the Governor 'or otherwise'. The word 'or otherwise' has given rise to an idea that the President can even form his satisfaction in all cases without the report of the Governor also. This is justified in view of the obligation of Centre under Article 355. In view of the ultimate
responsibility of the State, the framing fathers of the Constitution thought that it was proper not to restrict and confine the action of the Centre merely to Governor's report. Sometimes the Governor might not make a report. The President can act even without the Governor's report, if he is satisfied that such events call for the exercise of special responsibility placed upon the Centre to maintain the State under the Constitution, have occurred in a State. The provision of the clause, however, makes even the report of the Governor unessential. The satisfaction of the President can be arrived at otherwise. It suggests that the President may get information from other sources or agencies as well. It is an extra precaution. However, it seem that the report of the Governor is almost binding and 'or otherwise' clause is subject to some specific contingencies making the Governor fail in his duty.

The words "or otherwise" can be interpreted in two ways. First, it may mean that even if the President does not receive a report from the Governor, he is competent enough to assess the situation himself. Secondly, it may also be interpreted to mean that even on receipt of a report from the Governor, the President is free to accept or reject the recommendations to promulgate the President's rule. In other words, the President may act 'otherwise' than the report of the Governor, in either of the two ways. Thus theoretically, the word 'otherwise' shifts the whole burden of responsibility from the Governor's shoulders to those of the President and the Governor's role appears to pale into insignificance. It is politically and constitutionally significant to
note that as the provision was originally drafted at the time of the framing of the Constitution, the Article merely provided that the President would act on the report made by the Governor. The words 'or otherwise' were not there. Subsequently, Ambedkar moved an amendment according to which, under Article 278, as the Article was then numbered, the President could, if he felt that his intervention was necessary, act even when there was no report for this purpose made by the Governor. It might be salutary to reproduce the words of Ambedkar here:

Now, it is felt in view of the fact that Article 277-A (now Article 355) imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the actions of the President, which would undoubtedly be taken in the fulfillment of his duty, to the report of the Governor of the province. It may be that the Governor does not make a report ... I think, as a necessary consequence to the introduction of Article 277-A, we must give liberty to the President to act even where there is no report by the Governor and when the President has got certain facts within his knowledge, on which he thinks he ought to act in the fulfillment of his duty. The width of the power is very wide. The satisfaction of the President must be based on relevant material.¹⁹

When this amendment was placed in the Constituent Assembly, there ensued a long and heated debate. H.V. Kamath and others took a serious objection since this would undermine the position of the Governor and also give the President wide powers. He described the action of the President even without
the report of the Governor as a constitutional crime. He condemned it in these words: what the ‘otherwise’ is, God only knows... I want that the President should be empowered to act only in case the Governor or the ruler of the State informs him that a situation has arisen or that an emergency has arisen etc., but not otherwise. What is this otherwise? Do we mean to say that the President, even granting that he is to act upon the advice of his Council of Ministers, can intervene solely on the strength of his own judgment, perhaps buttressed or reinforced by the advice of the Council of Ministers at the Centre but without a report from the State Governor or ruler. This is a foul transaction He warned that: We are laying ourselves upon the snare and traps in our path wherein we shall be caught beyond and rescue.20

Strong views were also expressed in favour of its inclusion. For instance, Thakur Das Bhargava observed that the clause ‘or otherwise’ denoted the affairs in which the Governor might not be doing his duties or might give a wrong report. If that premise is correct, he asked, whatever manner the President may come to know, it is the duty of the Centre to interfere. Arming the President with such power was, according to B.H. Zaidi, necessary in the light of our historic past and in the light of fissiparous tendencies on the part of units to break away from the Centre. He, therefore insisted that instead of being critical and putting the most unwarranted suspicion at the door of our would be Presidents of the future, we should take the historical tendencies into consideration. Raj Bahadur was also in favour of
granting liberty of the President to interfere in the affairs of the State without a report from the Governor, if there was breakdown of constitutional machinery in the State. He was of the view that there was no reason for us to distrust our Presidents, who were to be elected by us and were empowered to act under Article 278. Such power according to him, was necessary to safeguard democracy and freedom. In the same way, Alladi Krishna Swami Iyer could not find any justification in taking exception to the use of the words 'or otherwise' in Article 278.

A question arose whether the court may recommend to the President the recourse to Article 356 under the 'otherwise' clause. The Patna High Court held that the High Courts are competent to give advice to the President for the declaration of President's rule by virtue of 'or otherwise' clause. The court in its observation in the Sanyukt Nagrik Samiti case opined that the various irregularities committed in the employment programmes under Jawarhar Rozgar Yojna in Sahabganj district of Bihar, as point out by the Comptroller and Auditor General (CAG) of India, made it appear that it was appropriate for the President to invoke Article 356 of the Constitution and dismiss the State government on the ground of a breakdown of the constitutional machinery in the State. B.M. Lal Chief Justice and A.K. Singh Justice declared that recommendation of the Governor was not conclusive regarding the invocation of Article 356 and the High Court was also competent to report to the President on the situation in the State.
In 1987, the Andhra Pradesh High Court had to deal with a similar situation, a writ petition containing serious allegations against the Chief Minister N.T. Rama Rao, and alleging a breakdown of the constitutional machinery was filed. The court was called upon to decide whether Article 356 should be invoked. The full bench observed that, the question concerning the imposition of President's rule is a matter entirely within the jurisdiction of the President of India, who may act upon the advice tendered to him by the Union government. There are no grounds to think that the Union government is unaware of what has been happening in the State or that the Union government failed to take any action even though it is satisfied that conditions existing in the State justifies the imposition of President's rule. While we refuse to give any directions to the Union government in the terms prayed for by the petitioner, we have no doubt that the representation filed by the petitioner as well as the details set out in this judgment will receive consideration of the Union government and an appropriate decision will be taken. This is exactly what the Patna High Court has done. It was acting in the course of public interest litigation petition. It is obvious that the judiciary should neither recommend nor report because such acts are neither expected from the courts nor within their jurisdiction. Further, the law courts can sit in judgment after the proclamation has been made and therefore, they should refrain from being instrumental thereto in any manner. "If a judgment contains a recital of certain facts which the Union government would be interested to
be acquainted with, copy of judgment may be forwarded to the government. There stops the role of courts."

So far the President has acted independently of the Governor's report i.e. or 'otherwise' a clause on many occasions. These acts were not only highly controversial but also against the spirit of parliamentary democracy and federalism. For the first time, President's rule was imposed under this clause, without the report of the Governor in as many as nine States on April 1977, when the Janata Party, the first non-congress government, was in power at the Centre. Similarly, when Congress returned to power, President's rule was imposed by taking shelter under this clause on 13 February 1980 in nine States. This clause was invoked for the third time on 13 February 1991, when Karunanidhi's Dravida Munnetra Kazhagam (D.M.K) government in Tamilnadu was thrown out by the minority government of Chandra Shekhar.

Thus, we have seen that this clause "or otherwise" not only carries with it some inherent dangers but also certain constitutional inconsistencies. It fails to take into account the realities of power politics and the consequent perils. An unsavoury aspect of invoking this clause is that it neglects and ignores outright the office of Governor. It is constitutionally abnormal and unethical that the President while arriving at the satisfaction as to the fact that the government in a State cannot be carried on in accordance with the provisions of the Constitution ignores or overlooks, even by implication; the Governor of the State concerned, who is the constitutional head
of the State and happens to be an agent of the President under the Constitution. Moreover, it is the Governor who would normally act as the President's agent during the President's rule to perform the functions which otherwise would have been performed by the State government. It would not be constitutionally fair that and just that the office of the Governor is bypassed while proclaiming the President's rule in the States.\(^{26}\) The constitutional relevance of the act lies in a situation where in the Centre is in conflict with the Governor due to the fact that the Governor sends a wrong report or fails to make a report at all despite the Centre's staunch conviction that an inevitable action under Article 356 is warranted. The Bhagavati, Justice conceded that the inclusion of the words 'or otherwise' in Article 356 gave the President a very drastic power which if misused and abused destroys the constitutional equilibrium between the Union and the States.\(^{27}\)

The possibility of abuse of power is there and toward off this possibility, our constitutional wisdom requires that the orbit of the operation of the clause be restricted. Its operation should be restricted to major breakdown of law and order or failure to maintain law and order and the State government shows no political will or administrative ability to cope with the situation. In this context, the Central government must place before the President full evidence and relevant papers revealing the circumstances which require action and he is in turn should place them before the Parliament when the matter is being deliberated on in the House and if necessary, before the courts.
It is only by this reasonable and transparent process that the objectivity of the Central government's decision could be established. In this regard, the important decision given by the Supreme Court is a welcome development. The Court said that, if the Union of India does not indicate or state that any other information or material was available to the President or Union Council of Ministers other than the report of the Governor much less disclose it, the court must hold that there was no other information before the President except the report of the Governor and that the words 'and other information received by me' were put in the proclamation mechanically.

**iii. Satisfaction of the President:**

Article 356 also stipulates that the President has to satisfy himself as to the existence of the situation contemplated in the Article. How can he be satisfied? That satisfaction of the President derives either from the report of the Governor 'or otherwise' or both ways. If the President's act is based on 'or otherwise' and not on the report of the Governor, the satisfaction is based on the disclosed facts in the Presidential proclamation. Whether he gets information from the Governor or otherwise, the President has to become satisfied that the situation contemplated by the Constitution has actually arisen. Therefore, he is not expected to act mechanically on the report of the Governor. He can call for further information, if necessary, from any other source. Thus, the existence of objective material showing that the government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition
precedent. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question. “However, if there is a no objective material before the President, or the material before him cannot reasonably suggest that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the proclamation issued to open to challenge”.28 This shows that the power so vested in the President is of widest amplitude. So the material before the President must be sufficient to indicate that unless a proclamation is issued, it is not possible to carry on the affairs of the State as per the provisions of the Constitution. It is not ordinary situation arising in the State but a situation which shows that the constitutional government has become an impossibility, which alone will entitle the President to issue the proclamation. It has to be further remembered that the Article requires that the President has to be satisfied that the situation in question has arisen. Hence, the material in question has to be such as would induce a reasonable man to come to the conclusion in question. The expression used in the Article is “if the President is satisfied”. The word ‘satisfied’ is understood in different context as: To furnish with sufficient proof or information, to set free from doubt or uncertainty; to convince; to answer sufficiently (an objection question); to fulfill or comply with (a request); to solve (a doubt, difficulty); to answer the requirement of (a State of thing hypothesis etc.) to accord with (condition).
In the State of Rajasthan V. Union of India, the Supreme Court observed: If the satisfaction is *malafide* or is based on wholly extraneous or irrelevant ground, the court would have jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied.\(^{29}\)

In this context, it is to be noted that since the President acts on the aid and advice of the Central cabinet, the satisfaction of the former means the satisfaction of latter. In other words, the satisfaction mentioned in the clause is that of the Central government. Thus, the President under our Constitution, being who may be called a constitutional President, is obliged to act upon the aid and advice of the Council of Ministers headed by the Prime Minister. Here one should particularly refer to Article 53, 74 and 75 of our Constitution. Article 53 provides that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution. The Article 74(1) reads, there shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President who shall in the exercise of his function, act in accordance with such advice, provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. Further, Article 75 lays down that the Council of Ministers shall be collectively responsible to the Lok Sabha. There is no provision in our
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Constitution which makes the President answerable to the Legislature. Hence, one may reasonably think that as the ministers are so answerable for the policy and administration of the Union, it is implied that they are recognized as possessing the authority to finally decide the affairs of the government. Therefore, the real ruler is the Council of Ministers and more particularly the cabinet and not the President. Thus, our Constitution embodies generally the parliamentary or the cabinet system of government of the British model both for the Centre and the States. Under this system the President is the constitutional or formal head of the Centre and he exercises his powers and functions conferred on him by or under the Constitution, on the aid and advice of the Council of Ministers. In this connection, the Supreme Court observed that, whenever the Constitution requires the satisfaction of the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor in the constitutional sense in the cabinet system of government, that is satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions, the decision of any minister or officer under rules of business made under any of the two Articles 77 (3) and 166 (3) is the decision of the President or the Governor respectively. These Articles do not provide for any delegation. Therefore, the decision of the minister or any officer under the rules of business is the decision of the President or the Governor.30
However, it is quite clear that the President cannot exercise his powers under the Constitution as he thinks fit. He has to have facts, circumstances which can lead a person of his status to form an intelligent opinion requiring exercise of his discretion of such a grave nature that the representatives of the people who are primarily entrusted with the duty of running the affairs of the State are removed with a stroke of the pen. His action must appear to be called fair and justifiable under the Constitution if challenged in a court of law.\textsuperscript{31}

In this context, it is worthwhile to analyse the "constitutional activism" displayed by K.R. Narayanan in the case of Uttar Pradesh in 1997\textsuperscript{32} and Bihar in 1998.\textsuperscript{33} Here, the President was able to stall the undemocratic decision of the cabinet, but it cannot be regarded as constitutional activism in the true sense of the term. What made it possible for the President to stall this was the favourable political climate prevailing then. It is not Narayanan alone but two former Presidents also had expressed strong displeasure against the cabinet decisions to impose President’s rule in the States. The first of its kinds was in 1977 during the Janata regime.\textsuperscript{34} Assuming power after emergency, the Desai government decided to dismiss nine Congress ruled State governments on the ground that the State governments no longer represented the will of the people and accordingly, the cabinet decided to advice the then acting President B.D. Jatti to dissolve the nine Assemblies. He refused. He told his secretary (K.Bal Chandran); "I want time to consider the recommendation". After another cabinet meeting
Desai sent a strong letter to the President through cabinet secretary N.K. Mukherji. It reminded Jatti of his duties and responsibilities as the constitutional head of the State. Following this, Jatti signed the order promulgating the Central rule in the nine States, bringing a twenty four hour-long constitutional crisis to an end with the cabinet having its own way. Now it is exactly the reverse, with the President having his own way. Similarly, it was reported (in the press) that President Shankar Dayal Sharma was reluctant to sign the proclamation under Article 356 with respect to the States of Madhya Pradesh, Rajasthan and Himachal Pradesh in 1992, in the aftermath of the demolition of the Babari Masjid. He was right in expressing his disapproval. But it appears that he ultimately agreed to sign as he had no other option in the Constitution. What is to be derived from all these? In the latest cases, the President was able to correct the wrong decision of the cabinet because of the existence of the coalition government in which the Prime Minister's position was rather weak. The Prime Minister of a coalition system cannot be treated at par with a Prime Minister in a single party majority rule. Had they been the leader of the single majority party as in the case of 1977 or 1992, they would not have accepted the instruction of the President to reconsider the decision. Further, there was no unanimity among the coalition partners and a few of them strongly recorded their displeasure against taking such a decision. Besides, the smooth relationship between the Prime Ministers and their colleagues on the other, came to the help of K.R. Narayanan. Had that not
been the case, the respective cabinets would perhaps have stuck to their decision, leaving no option for the President but to sign the proclamation. Above also many in the cabinet realized the untenability of their earlier stand and were conscious of the probability of its reversal by the Supreme Court. Whatever may be the fact, Narayanan’s decision constitutes a landmark and could mark a decisive transformation of the much abused power of the Central government to end the rule of their political opponents in the States.

iv. Failure of Constitutional Machinery:

Failure of constitutional machinery was a clever political innovation of the British colonialists. It is an essential precondition for the exercise of power under Article 356, which is to be declared by the President when he is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. However, the Constitution does not specifically State what amounts to and what does not amount to such a failure. The ambiguity about the constitutional crisis is creating obstacles to an objective political approach. But we should also recognize the almost impossibility in defining constitutional crisis. The impossibility lies in the difficulty in defining the problems of a society which is in the process of evolution. It is by exploiting (misusing) the loopholes (ambiguity) in the constitutional provision that the Centre is exaggerating the smallest crisis in States where the opposition reigns and simplifying even the gravest constitutional crises in States where its own party is in
power. Therefore, it has become a subject of perennial concern and is widely debated.

To understand the meaning of the expression and to comprehend the intentions of the founding fathers, we should go through the debates in the Constituent Assembly. Needless to say, this phrase evoked strong criticism and argument in the Assembly. The 'plurosignative' nature of the phrase became very clear when several members of the Constituent Assembly came up with divergent interpretations. The extreme vagueness and uncertainty of the phrase was highlighted by the members of the Constituent Assembly itself. T.D. Bhargava described the question-what constitutes the failure of machinery as 'the question of questions'. Several members also stressed the necessity to lay down precisely the situations contemplated in the phase.

While speaking on this Article Ambedkar observed that, it would take me very long to go into a detailed examination of the whole thing and referring to each Article, say this is the principle which is established in it and say, if any government, any legislature of the province does not act in accordance with it, that would act as the failure of the machinery. The expression failure of the machinery, I find, has been used in the Government of India Act, 1935. Everybody must be quite familiar, therefore, with its de facto and de jure meaning. I do not think any further explanation is necessary. Further, he also stated that we would “reply only to those amendments
which he though had any substance and that he could not go on discussing every amendment that was moved."

The above statement of Ambedkar indicates that he himself was not fully convinced with his own answer. Significantly, he has never replied to the objections. It is true that this expression has been borrowed from the Act of 1935, but it would be difficult to agree with him that the phrase has the same meaning in the present Constitution which it had in the Act since Article 356 is not the exact copy of section 93 of the Act. Further, one can also find difficulty in agreeing with him that “everybody must be quite familiar with its de facto and de jure meaning” and it does not need any further explanation about the meaning of the phrase, Ambedkar intended to keep it “vague”. In sum, the Constituent Assembly has pin-pointed four circumstances responsible for the breakdown of the constitutional machinery. Even though these are not incorporated in the Constitution they are relevant and deserved to be considered. They are:

- When there is a breakdown of Constitution due to internal violence.
- When there is a breakdown owing to majority party refusing to function at all.
- When the breakdown occurs due to the ministry in the State refusing to follow the directions of the Centre.
- The party alignment in the State is such that no stable government could be formed.40

However, the views of the framers do not explain fully the meaning of the expression “failure of constitutional machinery”.

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The expression and its implication have also been the subject of elaborate discussion in the report of Sarkaria Commission on Centre-State relations. The Commission report says that a failure of constitutional machinery may occur in a number of ways. It is difficult to give an exhaustive list of all such situations. Nevertheless, it discusses instances of what does and what does not constitute a constitutional failure under the following heads:

- Political crisis
- Internal subversion
- Physical breakdown, and
- Non-compliance and constitutional directions of the Union executive.

A constitutional breakdown may be outcome of a political crisis or deadlock. This may occur where, after a general elections, no party or coalition of parties or groups is able to secure an absolute majority in the Legislative Assembly, and, despite exploration of all possible alternatives by the Governor, a situation emerges in which there is complete and demonstrated inability to form a government commanding confidence of the Legislative Assembly, or a ministry resigns or is dismissed on loss of its majority support in the assembly and no alternative government commanding the confidence of the assembly can be formed or the party having a majority in the legislature refuses to form or continue the ministry and all possible alternatives
explored by the government to find a coalition ministry commanding a majority in the assembly have failed.

Internal subversion may occur where the government of a State, although carried on by a ministry enjoying majority support in the assembly, has been deliberately showing for a period of time, disregard of the Constitution and the law or where a government deliberately creates a deadlock or pursues a policy bringing the system of responsible government to a standstill or where the government in the guise of acting within constitutional arms flouts purposefully principles and conventions of responsible government to pursue dictatorship.

Physical breakdown occurs where a ministry although properly constituted, either refuses to discharge its responsibilities to deal with such a situation of internal disturbance, or is unable to deal with such a situation that paralyses the administration and endangers the security of the State or where natural calamity such as an earthquake, cyclone epidemic, flood etc., of unprecedented magnitude and severity completely paralyses the administration and endangers the security of the State and the government is unwilling or unable to exercise its governmental power to relieve it.

Where a direction issued by the Union in the exercise of its executive power under any provision of the Constitution such as Articles 256, and 257 and 339 (2), or, during the emergency under Article 353, is not complied with by the State government in spite of adequate warning the President may holds that a situation has arisen which is contemplated under Article 356. If
public disorder of any magnitude endangering the security of the State has taken place, it is the duty of the State to keep the Union informed and if the State fails to do so, such failure will amount to impeding the exercise of the executive power of the Union and justify the latter giving appropriate directions under Article 257(1). If such a direction given by the Union to the State under Article 257(1) is not complied with inspite of adequate warning, the President may hold that a situation has arisen, which is contemplated under Article 356.\(^4\)

Thus the Commission’s categorization is comprehensive and quite illuminating. The discussion shows clearly that the failure of constitutional machinery may occur in a number of ways, contributing factors being determined by the dynamics of political process and the level of political development in the States concerned. It is very clear that Article 356 itself is vague and gray in terms of the definition of the breakdown of the constitutional machinery in a State. It is silent and has not provided any remedy. This constitutional lacuna was being exploited by the parties in power at the Centre. Thus the power given under Article 356 is not the offshoot of a right, but a compliance with a duty. It is the performance of this duty which justifies the total invasion of the States field. This shows that action under Article 356 is to be taken not out of liking, but out of compulsion when the circumstances are so grave as it cannot be dispensed with. Therefore, the orbit of operation of the powers of the President in this connection must be determined in the light of the provision of Article 355 and for all practical purposes,
they have to be read together, when they are so read, it is amply clear that the power of the President under Article 356 of the Constitution implies that the Union government has the obligation to do whatever in its power to help the States in its endeavour to conform to the Constitution. Only when the Union fails in its attempt or finds it impossible to do any thing, that it should think of the next step, namely action under Article 356.

**Parliamentary Control Mechanism of Article 356:**

The proclamation of President’s rule under Article 356 is a very serious matter as it not only disturbs the federal equilibrium but also adversely affects the rights of the people, their elected representatives and responsible ministries. Any abuse or misuse of this highly potential power will play havoc with our constitutional system. As such it is essential to have a machinery of control against the abuse of this power. A question arises, how the abuse of the power conferred under the Article can be warded off and a check can be placed on the exercise of this power.

The framers of the Constitution, in this context relied upon the Parliament as a primary safeguard against the abuse of power and provided in the Constitution that the Parliament should endorse the application of Article 356. This is conceived both as a check upon the power and as a vindication of the principles of Parliamentary and popular sovereignty over the executive. Parliament’s power of endorsement is held to be more democratic and more flexible than the system in which the
The role of the judiciary is Supreme. Furthermore, the Parliamentary check makes the government accountable to the people.

The control of the Parliament in this context is to be found in clause (3) of Article 356. It provides that every such proclamation shall be laid before each House of Parliament and shall, except where it is a proclamation revoking a previous proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by the resolution of both Houses of Parliament. The provision amounts in substance to a requirement that the two Houses of the Parliament shall be informed of the proclamation of emergency made by the executive and that unless the approval by resolutions of both Houses is obtained within two months the declaration of emergency shall lapse. Provision is also made in the clause for the contingency of the Lok Sabha having been dissolved at the time of the proclamation or the dissolution of the House taking place within a period of two months provided in the clause for the approval of both the Houses. The Constitution says that if any proclamation is issued at a time when the Lok Sabha has been dissolved or dissolution of the House of people takes place during the period of two months, the ratification shall be done by the Rajya Sabha. However, the duration so extended by the Council of State runs at the most till the expiration of thirty days from the date on which the Lok Sabha first sits after its re-constitution unless before the expiration of the said period a resolution approving the proclamation has also been passed by the House of the people. Therefore, the role of
Parliament, in continuing emergency beyond two months is crucial. Without such approval of Parliament, the Presidential proclamation under this Article would cease to exist after two months. Thus, the power of proclaiming the emergency is vested solely in the executive, the crucial decision about it is to be taken by the Parliament by its approval or disapproval within two months. The President’s decision is only temporary, destined to lapse unless Parliament wills otherwise. This position has been justified in the Bommai case. This is an important safeguard in the Constitution against an arbitrary exercise of Presidential powers. The scrutiny of the proclamation is, therefore, designed to test the validity or propriety of the proclamation of emergency. If the Parliament finds that the declaration is not proper or is not called for, it can refuse its approval. Parliament is also closely and intimately involved in the extension of Presidents rule in the State. Once approved by the Parliament, it shall remain in force for a period of six months. If the government desires to extend it further, the executive is bound to bring the matter again before the Parliament and get an extension for a further period of six months. The maximum period for which the President’s rule in any State may continue is three years. However, as a result of the 44th amendment Act, continuation of such rule beyond the period of one year from the date of the issue of the proclamation is dependent on two factors:

- A proclamation of emergency under Article 352 is in
operation at the time of passing such proclamation; and

- The Election Commission certifies that the continuance in force of the proclamation is necessary on account of difficulties in holding election to the Assemblies of the State concerned. As a result of this amendment, ordinarily the duration of President’s rule in any State will be only one year. Under exceptional circumstances, the period may be extended. Only in rare cases, both the conditions would be fulfilled.

It was also because of these and thus conditions the 48th, 63rd, 64th, 67th, and 68th Amendment, Acts were passed to continue President’s rule in Punjab beyond the period of one year to face the challenges opened up by the Akali agitation. The Sarkaria Commission also recommended that in clause (5) of Article 356, the word “and” occurring between sub clause (a) and (b) should be substituted by “or” so that if either condition is satisfied, the proclamation can continue in force beyond one year. The envisaged role of Parliament introduces a very important constitutional and safeguard against the abuse of power. The virtual suppression of the State government and State legislature, which results from a declaration under this Article, beyond the initial time limit can be operative only after the approval of both House of Parliament. Rajya Sabha being a representative of the State and the Lok sabha being also
The efficacy of this Parliamentary safeguard to prevent the abuse and misuse of this “tremendous power” with immense potential was discussed and debated by the founding fathers in the Constituent Assembly. Ultimately, however, the framers in their collective wisdom were immensely satisfied with the Parliamentary “check” mechanism devised by them and as such did not provide for any alternative safeguard of direct nature.

The safeguards associated with Article 356 seems to be fairly ineffective, a close perusal of the actual working of the Parliamentary control mechanism for the last fifty years has clearly shown that the Parliament is quite ineffective in controlling the arbitrary exercise of this power. The provision has often become edentate in the hands of unscrupulous politicians. The constitutional fathers while providing for the mechanism of control could not have thought of such a contingency. If the Indian Parliament appears to have failed to act as a powerful restraint upon the arbitrary exercise of this power, then what are the reasons for it? It is mainly on account of two factors. These are as:-
Constitutional Lacunae in Article 356:

The constitutional provisions bring to light the fact that the provisions itself gives room for the executive to bypass the Parliamentary control. First of all, unlike some other democratic countries of the world the prior approval of the Parliament or any of its Houses is not required for the issuance of a proclamation under Article 356 of the Constitution. The President is given the full liberty and authority to issue a proclamation even when the Parliament is in session. The constitutional provision in Article 356 (3) is very clear in that respect. What the Constitution requires is that as a matter of course both Houses of Parliament should approve it within two months. In the same way there is no obligation on the Union government under the Constitution to lay the proclamation on the table of the House on the very first day provided the Parliament is in session. Since the decision to invoke Article 356 in a State has got for reaching consequence and puts in abeyance the democratic rights of the people even if it is only for a short period, it is submitted that the Parliament should be appraised of it at the very earliest possible opportunity. Our governments have often been guilty of wilfully withholding this vital information from the Parliament with ulterior motives. Therefore, it should be made statutory that the report on the introduction of President's rule in a State should be tabled in Parliament on the very first day itself if the Parliament is in session, or on the first day of the next session, if it is not in session.
Another weakness is that the constitutional provisions conferring power of approval on Parliament do not confer power to invalidate a proclamation if the Parliament wills otherwise. The proclamation in any case, is valid for an initial period of two months as per the constitutional provisions and it is so irrespective of its approval or disapproval by the two Houses of Parliament. Its life for a period of two months cannot be cut short by the Parliament. The approval of Parliament merely gives the proclamation further lease of life for six months. 48

The third reason why political control by Parliament can become ineffective is that disapproval of proclamation does not make it unconstitutional since its inception. Article 356 (3) makes it clear that/the only effect of either House failing or refusing to approve the proclamation is that it ceases to operate after two months. This clearly means that it has been operative up to that time. Consequently, every act done, order made and laws passed by the government till the time the proclamation is disapproval will be quite legal and proper. That is, it cannot question, what has been done in the interim between the time when President’s rule is declared and when Parliament refuses to ratify the proclamation. They are, however, subject to review, repeal or modification by the government /Legislative Assembly or other competent authority. This is a lot more significant than it would appear. This constitutional provision has been used by the Union government on many occasions since the inception of the Constitution for some short-term purpose, politically
significant and vital for the ruling party at the Centre and its counterparts in the State and unfavourable to the opposition⁴⁹.

Furthermore, Parliamentary control has also been overcome by way of reissuing of the proclamation. The Central government which becomes shy of facing the Parliament on the issue of President’s rule revokes the proclamation within the stipulated time of two months and issues a fresh one in its place. This may happen when the proclamation issued is revoked within two months and during that period the Parliament may not be in session. Another strategy is to allow the proclamation to lapse under Article 356 (3) by not placing it on the table of Parliament and issue a fresh one. Besides this, in some case when the proclamation was about to expire after six months of Parliamentary approval, they were revoked and fresh proclamations were issued.

The strategy applied by the Centre to circumvent the constitutional provision testifies to the fact that the Parliamentary approval can be conveniently avoided. In reissuing the proclamation the government has used this power in the same way as it has issued and reissued ordinances. This practice indicates the fact that this controlling mechanism as envisaged by the Constitution becomes either meaningless or redundant.
The limitation imposed by the working of the Parliamentary system:

Closely allied with these constitutional loopholes are other factors inherent in the theory and practice of Parliamentary democracy which enable the Union executive to lighten or even nullify Parliamentary safeguards as envisaged in the Constitution. The major fact is that in a Parliamentary system any government is normally drawn from the political party or parties which have secured a majority of seats in the Lok Sabha. Our electoral system also ensures that the leading party in the Lok Sabha gets a majority of seats even on a minority of popular votes. This majority of seats in the Lok Sabha comes to the help of the Central government in garnering enough support for the proclamation. Under such circumstances, it is “unrealistic to rely on the government controlled majority in the Legislature to exercise effective supervision over that same government in its use of emergency power”.50

The most important occasion when the Legislature can exercise its power of control over the executive is when it is placed for discussion and approval. Unfortunately, as the imposition of Article 356 is a political move, the discussion in the Houses also is, understandably, charged with political overtones, being on party lines. Since the ruling party being safe behind its majority in the House, the debate which generally continues for a day or two or only minutes ends with the expected endorsement of government’s action. The legislators of the party
in power, even if they do not agree with the government, do not oppose it in Parliament because of the fear of the party Whip. It might, therefore, be argued that Parliamentary control over the executive has, for all practical purpose, come to mean control by political parties. Thus Parliament in general and Member of Parliaments (MPs) in particular are powerless in the party machine, and the government control of the Parliament is absolute. Further, the debate usually suffers from serious drawbacks regarding fairness, reasoning and objectivity. Conclusions on a particular proclamation are drawn well in advance on known party lines, and to support such conclusions arguments are put forth. In other words, participants and people are well aware of what a particular member is going to speak. In fact, such party positions are made clear to the media even before the actual debates start in Parliament.

The legislature is charged with final authority to decide the validity or otherwise of the proclamation under Article 356, the executive branch is supported in the Legislature by a solid and disciplined party majority. In such instances, it is hardly practicable to look to the legislature for an independent check.

The absence of a strong opposition further aggravates the issues. The dominating position of the Congress party in both Houses of Parliament in the first five Lok Sabha made the opposition totally irrelevant in the Parliamentary process. Today the nature and strength of the opposition groups in the Indian Parliament is such that they cannot play on all occasions an effective role of controlling the executive in this regard. This is
particularly so because the opposition consists of diametrically opposite political trends. When highly important matters with far reaching implications are brought before Parliament, some parties seek to build pressure on the government to move rightward, some seek to exert the same on the government to move leftward. Thus the major reason for the indiscriminate, arbitrary use of Article 356 by the ruling party at the Centre in its favour has been the weak position of the parties in the opposition and their inability to mobilize cross sectional support so as to prevail upon the Central government to go slow in imposing President’s rule. Another important reason why Parliament is much weaker and much less effective in exercising control is that the Parliament is being denied vital information about a particular President’s rule. In the absence of the relevant information how can Parliament approve or disapprove of the action of the President? It is essential that the Parliament should be fully apprised of the reasons and circumstances which influenced the President’s decision to impose President’s rule in a State.

**The positive aspects of Parliamentary check:**

The various factors are at work in Indian polity to minimize effective Parliamentary control over the proclamation of emergency under Article 356. Nonetheless, the Parliament can still act as a brake on the wheels of the government. The Parliament’s contribution in this regard may be discussed under three heads, firstly, symbolic action consisting of individual members using various methods to express their disapproval,
secondly, analytical assessment consisting of Parliament exposing the root cause for the successive imposition of President's rule and finally, institutionalization of mechanisms of control consisting of creation of procedures and institutional methods by which Parliament can control the governance of the State during President's rule.53

With regard to the first method, ministers can be interrogated during question hours and information can be extracted through questions about the reasons for the proclamation of President's rule. A skilful and determined member can use Parliamentary questions to extract much information or to conduct a campaign in favour or against a particular proclamation, as did Somnath Chatterjee over the Tamilnadu debate in 1991, and the George Fernandes in the Uttar Pradesh debate in 1996.

The second method of analytical assessment involves Parliament exposing the root cause for the successive imposition of President's rule. The debates in the Parliament also provide occasion and opportunities to consider what exactly is wrong with the political system designed by the Constitution. In this context, several suggestions have come forth. In the Andhra Pradesh debate in 1954, A.K. Gopalan's opinion on what constitutes a 'constitutional crisis' was a valuable analysis54. Similarly, in the Tamilnadu debate in 1991, Jaswant Singh's argument that before taking the "most extreme step of invoking Article 356", the Centre should take recourse to Article 256 which empowered it to issue directive to "errant or defaulting
government not acting in consonance with the interest of the
security of State or on an issue relating to national security was also an argument which could be accepted. By describing
the Centre action in Tamilnadu in 1991 as "nothing but a
travesty of constitutional morality, a blatant abuse of power, and
deliberate decimation of the fundamental principles of
federalism", Somnath Chatterjee, in a way summed up the
feeling of major opposition parties. He said: The history of
Article 356 in this country is a history of political and
constitutional aberrations, and it is replete with instances of
gross misuse by successive Congress governments. What is
astounding is the brazen-facedness and the effrontery of this
misuse the marriage of convenience between the Congress and
this motley conglomerate called the Janata Dal (S) is producing
monsters. The continuing unabated story of the misuse of the
provision was pictured by George Fernandes in the Uttar
Pradesh debate in 1996 he observed that the position is that
starting from 1959 and during the great leadership of the
Congress, of Shastri, Indira Gandhi by machinations of Centre
and not because of any bonafide reasons, Aricle 356 had been
used for political reasons and not for any administrative reasons.
This is the experience of Article 356. It has been used
indiscriminately against political opponents in West Bengal. We
have been victims in Kerala, we have been victims in Orissa.
Then people have been victims in U.P., Haryana and what not. In
the Bihar debate in 1999, L.K. Advani, the Home Minister,
agreed to the opposition view that breakdown of the law and
order or mere incompetence could not be made the basis for dismissing a democratically elected government.57

A perusal of the old record shows that the issue has been debated in the Parliament, but it was not been successful so far in withholding approval to a proclamation, which is illegitimate or at least of doubtful legitimacy. This may be the product of Parliamentary helplessness in the face of strong, impregnable majorities in the Centre. However, an analytical assessment of this kind helps a responsible government to understand the public opinion in this regard.

The third, reason is the institutionalization of the mechanisms of control, a large number of suggestions have been made about how President’s rule can be avoided, and if imposed, controlled effectively. Parliament’s most effective contribution in this regard was the Constitution of Committees of Member of Parliaments (MPs) to monitor the working of the President’s rule in the State. The ideas was first mooted in the Punjab debate and it was incorporated in the PEPSU Legislation (delegation of powers) Act, 1953 when a Committee of Parliamentarians drawn from both the Houses and the State concerned was formed. Inevitability, the Constitution of the Committee was altered so as to include member of Parliaments, other than those from, the concerned State. During the Orissa proclamation, the mandatory inclusion of members from the State concerned was also dropped and a plea was made for a Committee of Parliament taken as a whole.58
The Committee now reflects the size and shape, the political complexion of the Parliament itself. It is composed of various parties, and helps to cool down party spirit by promoting a strong corporate sense. This helps consideration of questions on their merit rather than on party line.

The general trend of most debates was to treat institutional innovations with suspicion. This was understandable since various otherwise seemingly neutral institutions of the Constitution had, over the years been subjected to manipulative use. The Committee was a useful suggestion. Its utility and efficacy has been diluted by the presence of the majority party’s MPs and the fact that the Committee has been given a consultative role only. There is little that members can do. The affairs of the Parliament are stage managed by those who have comfortable majorities in the Parliament. Debates on President’s rule are not punctuated by a consistent intense concern. They merely fade in and fade out without any appreciable impact on the concerned State.

**Judicial Interpretation of Article 356:**

The Constitution of India right from its inauguration did not explicitly provide for not did it exclude judicial review of President’s power under Article 356. The 38th constitutional amendment enacted in the year 1975 placed the question of ‘satisfaction’ of the President in declaring emergency beyond judicial scrutiny. It added a new clause (clause 5) to Article 356 which read:
Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court of law.

Thus, the amendment wanted to make sure constitutionally that the issue of legality of the proclamation of emergency was a political question and non-justifiable and hence beyond the purview of judicial scrutiny. The 1975 finality clause was done away with in the year 1978 through the 44th amendment by the Janata government under the Prime Ministership of Morarji Desai. So, after the 44th amendment the original position continues as regards the jurisdiction of the Court to judicially review this extraordinary power granted to the President under Article 356 of the Constitution of India. In State of Rajasthan V. Union of India the Supreme Court held: President's satisfaction would be open to judicial review only in those exceptional cases where on facts admitted or disclosed, it is manifest that it is malafide or is based on wholly extraneous or irrelevant grounds.

In Sunderlal Patwa V. Union of India the Jabalpur bench of the Madhya Pradesh High Court struck down the imposition of President's rule in Madhya Pradesh in 1992 on the ground of malafide and ordered to revival of dissolved Assembly and reinstatement of the dismissed ministry. The appeal by the Union of India against the Madhya Pradesh High Court judgment had led to the Constitution of a nine member constitutional bench to dispose the case. This constitutional bench of the Supreme Court in a unanimous judgment upheld the imposition
of President's rule in the three Bhartiya Janata Party ruled States of Madhya Pradesh, Himachal Pradesh and Rajasthan. The Court did not, however, hold that the findings of the Madhya Pradesh High Court was erroneous. The Court referred three previous instances of President's rule in Nagaland (1988), in Karnataka (1989) and Meghalaya (1991) where the action taken by the President was unconstitutional but nothing could be done to undo what had already taken place. Thus the position is that the court declared in unequivocal terms that the satisfaction of the President under Article 356 is open to judicial review if it is malafide. The view that exercise of power under Article 356 is open to judicial review was first laid down by the Supreme Court in 1977 followed by the Madhya Pradesh High Court in 1993 and reaffirmed by the Supreme Court in 1994 and the Allahabad High Court in 1997. The judiciary in India has, thus, adopted the substantive review approach rather than total ouster approach or jurisdiction approach on this issue.

The power to issue President's rule in the States has been challenged several times and the question of justifiability arose for consideration on many occasions: in the Kerala High Court (1965), in Punjab High Court (1968), in the Andhra Pradesh High Court (1974), in the Orissa High Court (1974) in the Supreme Court of India (1977), in Karnataka High Court (1989), in Guwahati High Court (1988 and 1991), in Madhya Pradesh High Court (1993), in the Supreme Court (1994), in the Allahabad High Court of Uttar Pradesh (1997). Some of the important and significant cases is given below briefly:
**K.K. Aboo Vs Union of India:**

The first case on the issue of President's rule in State was decided by the Kerala High Court a member of the newly elected Assembly i.e. K.A. Aboo challenged the 1965 imposition of President's rule in the High Court. His main contentions were, first, that the Governor was not empowered to make recommendation for the imposition of President's rule when the State was already under the rule of the President. His second argument was that Assembly could only be dissolved after it was assembled. This could have given Assembly an opportunity to find a solution to the problem. Thirdly, he argued that Governor's action was malafide.

Justice M. Madavan Nair adopted the first and second approached as discussed above and refused to go into the question of validity of the Presidential proclamation. The learned judge did not think that the Governor acted malafide because of the constitutional crisis was not created due to continuation of President's rule but as a result of absence of clear mandate. The argument of availability of new Assembly also did not find favour with the Court and the Court observed that Article 356 does not prescribe any condition for the exercise of powers there under by the President, except his satisfaction.

**State of Rajasthan Vs Union of India:**

In the Parliamentary elections of March 1977 the ruling Congress party suffered a massive defeat in nine States viz, Bihar, Uttar Pradesh, Himachal Pradesh, Madhya Pradesh,
Haryana, Orissa, Punjab, Rajasthan and West Bengal. After the elections the Janata Party came to power at the Centre. On 17th April 1977 the Union Home Minister wrote a letter to the Chief Ministers of nine States asking them to advise their Governors to dissolve the respective Assemblies and seek fresh mandate. Further, the Union Law Minister in a broadcast said that the governments in the nine Congress ruled States had forfeited confidence of the electorate and that they seek the dissolution of the State Legislature and obtains a fresh mandate. Six of these nine States viz. Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa in their writ petition to the Supreme Court submitted that the Home Minister’s letter and radio broadcast of the Law Minister constituted a clear threat of dissolution of the Assemblies and disclosed grounds which are prima facie outside the purview of Article 356 of the Constitution. The Court rejected the objections and held that the defeat of the ruling party in a State at the Lok Sabha elections cannot by itself, without anything more, support the interference that government of the State cannot be carried on in accordance with provisions of the Constitution. But the present situation was wholly different. It was not a case where just an ordinary defeat had been suffered by the ruling party in a State at the elections to the Lok Sabha but there has been a total rout of its candidates which reflected a will of estrangement and resentment and antipathy in the hearts of people against the government which may lead to instability and even the
administration may be paralyzed. Therefore, this ground was held to be clearly a relevant one.

The Court rejected the contention that judicial review of Presidential proclamation was totally barred. Bhagwati and Gupta, J.J. held that: “merely because a question of political complexion, that by itself is no ground why the court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination......” merely because a question has a political colour, the Court cannot fold its hand in despair and declare “judicial hand off”. Further they formulated the scope of judicial review as follows. But one thing is certain that if the satisfaction is malafide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it. The Court was of the view that the case did not fall within this exception. The observations made by the Court are of immense significance now. The above observations of the Supreme Court are of great importance. This case is significance not because the Court’s verdict was any different from the earlier line of cases. Infact, the Court dismissed the case unanimously, but what is significant is the assertion of all the judges that a Presidential proclamation could be challenged if the exercise of power was “malafide” or on “constitutionally or legally prohibited” ground or for “extraneous or collateral purposes.”

In A.K. Roy V Union of India a Constitution bench of the Supreme Court observed that after the deletion of clause (5) by the 44th Constitutional Amendment, which was in existence
when the Rajasthan case was decided “any observations made in the Rajasthan case on the basis of the clause cannot any longer hold good”.

After the Rajasthan case the question of judicial review of Presidential proclamation under Article 356 arose for consideration in the Gauhati and Karnataka High Courts. President’s rule was imposed in Nagaland on 7th August 1988 when eight month old Congress ministry headed by Hokisha Sema was reduced to a minority due to defections. There was a difference of opinion between Chief justice Raghaur and Justice Hansaria. The former held that the Union of India cannot be compelled to tender any information to the Court because of Article 74 of the Constitution. On the other hand, Justice Hansaria held that as the material which formed part of “other information” was not before the Court and as the same did not form part of the advice tendered by the Council of Ministers under Article 74(1), Union of India should be given an opportunity to disclose the information to the Court. Justice Hansaria ruled that should the Union of India fail to give the “other information” the Court would have no alternative but to decide the matter on the basis of the matter placed before it.

**Sunderlal Patwa Vs Union of India**

After the demolition of the Babri Masjid at Ayodhya, President’s rule was imposed in Uttar Pradesh, Madhya Pradesh, Himachal Pradesh and Rajasthan. Imposition of President’s rule in Madhya Pradesh, Himachal Pradesh and Rajasthan was
challenged in the respective High Courts. The High Court of Madhya Pradesh departed from the earlier decisions and held that the Presidential proclamation is open to judicial review on the ground of illegality, irrationality, impropriety or *malafide* or in short, on the ground of abuse of power. The Court has clearly held in the instant case that there was no material to infer that the State government could not be carried on in accordance with the provisions of the Constitution or that the constitutional machinery had failed. Therefore the Court ordered to restore the dismissed ministry as also the dissolve Assembly. The judgment of Madhya Pradesh High Court is a "*significant milestone in legal history*" since it is the first case where the Court struck down a Presidential proclamation as unconstitutional.70

**S.R. Bommai Vs Union of India:** 71

In the Supreme Court the Bommai case was heard by a nine members constitutional bench. The conclusions of the judgment are as follows:

- The validity of proclamation issued by the President under Article 356 (1) is judicially reviewable to the extent of examining whether it was issued on the basis of any material at all or whether the material was relevant or whether the proclamation was issued in the *malafide* exercise of the power. When a *prime facie* case is made out in the challenge to the Proclamation, the burden is on the Union government
to prove that the relevant material did in fact exist. Such material may be either the report of the Governor or other than the report.

- Article 72(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.

- When the President issues proclamation under Article 356 (1), he may exercise all or any of the powers under sub-clauses (a), (b) and (c) thereof. It is for him to decide which of the said powers he will exercise, and at what stage, taking into consideration the exigencies of the situation.

- Since the provisions contained in clause (3) of Article 356 are intended to be a check on the powers of the President under clause (1) thereof, it will not be permissible for the President to exercise powers under sub-clause (a) ,(b) and (c) of the latter clause, to take irreversible actions till at least both of the Houses of Parliament have approved of the proclamation. It is for this reason that the President will not be justified in dissolving the Legislative Assembly by using the powers of the Governor under Article 356 (1) (a) till at least both the Houses of Parliament approve of the proclamation.

- If the proclamation is issued is held invalid then notwithstanding the fact that it is approved by both
Houses of Parliament, It will be open to the Court to restore the *status quo ante* to the issuance of the proclamation and hence to restore the Legislative Assembly and the ministry.

- In appropriate cases, the Court will have power by an interim injunction, to restrain the holding of fresh elections to the Legislative Assembly pending the final disposal of the challenge to the validity of the proclamation to avoid the fait accompli and the remedy of judicial review being rendered fruitless. However, the Court will not interdict the issuance of the proclamation or the exercise of any other power under the proclamation.

- While restoring the *status quo ante*, it will be open for the Court to mould the relief suitably and declare as valid actions taken by the President till that date. It will also be open for the Parliament and the Legislature of the State to validate the said actions of the President.

- Secularism is a part of the basic structure of the Constitution. The acts of a State government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.
Thus to conclude it may be said that the general principles and guidelines which have been laid down by the Supreme Court in this case will help to strengthen national unity and integrity, to sharply limit the constitutional power vested in the Central government to dismiss state governments and to prevent the arbitrary and whimsical use of power of the Governors in the name of exercising their discretionary powers conferred by the Constitution and conventions. The most remarkable contribution of the verdict is the affirmation that secularism being one of the basic features of the Constitution, any State government pursuing unsecular policies would be acting contrary to the constitutional mandate rendering itself amenable to action under Article 356. No doubt, it sets an example and warning to the religion oriented political parties to go slow in introducing religious fundamentalist tendencies in politics for going ground. It is, indeed a new precedent set by the Supreme Court which could checkmate the ugly fundamentalist tendencies in the country. The verdict is, thus, strong, sound, well founded, cogent and pays due regard to the principles of federalism and secularism as enshrined in the Constitution.

In 1996 when elections were held to the Uttar Pradesh (U.P.) Legislative Assembly no party secured a majority to form the government. So President’s rule was imposed in the State and this proclamation was subsequently approved by the Parliament. Against this imposition of President’s rule five petitions were filed in the Allahabad High
Court. A two member bench delivered a split verdict on 11 November 1996 necessitating the referring of the matter to a three member bench. The Court unanimously held that the impugned presidential proclamation dated 17th October 1996 reimposing President's rule in U.P and subsequently approved by Parliament was unconstitutional, issued in colorable exercise of power and was based on wholly irrelevant and extraneous grounds and therefore, could not be allowed to stand. Consequently the proclamation was quashed.72. However, to avoid any crisis as a result to the quashing of the aforesaid proclamation, the Court, by applying the doctrine of prospective overruling, directed that the judgment shall come into operation only after the pronounced date for the resumption of political process in the State.

Even though the verdict quashing the Presidential proclamation was unanimous, the three judges cited different reasons in their respective judgments. B. M. Lal, J. observed that the Governor of U.P. was constitutionally not bound to invite the single largest party to form a government, in case; it did not have the confidence of the House. But at the same time he was constitutionally bound and obliged to explore all possibilities.73.

B. Brajesh Kumar J. ruled that there is neither any convention, nor any constitutional provision under which the leader of largest single party, not in majority, must be called to form the government except where the Governor was satisfied that it would have the support of any other party in minority
and would enjoy the confidence of the House. He said that the period of President’s rule could not be extended beyond one year except in the situation prevailing under Article 356 (5) of the Constitution and concluded that the re-imposition of President’s rule on 19th October 1996 was not a fresh proclamation but rather an extension of a proclamation that was already a year old. The Supreme Court on December 20th, 1996 stayed the High Court ruling and directed the Union government and the Governor to take measures that would enable the continuity of political process in the State. The Allahabad High Court verdict generated enormous political interest and constitutional debate in the country. The verdict had drawn attention to certain fundamental questions involving the nature and functioning of federal system in India and its constitutional basis, in view of the exercise of Article 356 and the power of the Governor and the union government to use it in what way. No doubt the judgment would pave the way for more cordial and fruitful relationship between the Centre and the States.

Recently, in 2005 when elections were held to the Bihar Legislative Assembly no party secured a majority to form the government. So, President’s rule was imposed in the State and this proclamation was subsequently approved by the Parliament.
The positions of the parties were as given below:

<table>
<thead>
<tr>
<th>Parties</th>
<th>Total seats (243)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janta Dal (U) +</td>
<td>93</td>
</tr>
<tr>
<td>Janta Dal (U)</td>
<td>54</td>
</tr>
<tr>
<td>Bhartiya Janta Party (B.J.P.)</td>
<td>39</td>
</tr>
<tr>
<td>Rashtriya Janta Dal (R.J.D.)+</td>
<td>77</td>
</tr>
<tr>
<td>Rashtriya Janta Dal R.J.D.</td>
<td>73</td>
</tr>
<tr>
<td>Communist Party of India CPI, CPM</td>
<td>4</td>
</tr>
<tr>
<td>Lok Janshakti Party (LJP)</td>
<td>40</td>
</tr>
<tr>
<td>Congress</td>
<td>10</td>
</tr>
<tr>
<td>Others</td>
<td>33</td>
</tr>
</tbody>
</table>

The reason for imposition of President's rule was no party or coalition has the numbers to form government. This is despite JD (U) claiming enough support to form the government. The Governor defends dissolution says the State was witnessing, "horse trading of the worst kind". Therefore no stable government possible. Parties like Laloo's RJD support him while National Democratic Alliance (NDA) takes the issue to the President. The Supreme Court seeks the appearance of Attorney-General or any Law officer nominated by the Attorney General.
for a petition filed by former legislators of Bihar challenging the
decision to dissolve the State Assembly. The Supreme Court on
January 2006, indicated that the Bihar Governor Buta Singh
has mislead the Centre in recommending the dissolution of the
Bihar Assembly in May 2005 and said the Union Council of
Ministers should have verified his report before accepting it is
gospel truth.74

The Court, which in its October 7, 2005 interim order has
said the dissolution was unconstitutional, and said that the
Governor acted in "undue haste" in sending his report and his
motive was to prevent the JD (U) from staking claim to form a
government in Bihar after a fractured assembly polls verdicts.75

Giving reason why the dissolution was unconstitutional, a five
judge bench, in a 3:2 judgment said the Governor misled the
Council of Ministers by sending a report curtaining
"unascertained facts". The majority judgment was passed by
Chief Justice Y.K. Sabharwal and two other judges, Justice B.N.
Agarwal and Ashok Bhan. The minority view was taken by
Justice K.G. Balakrishnan and Justice Arijit Passayat. The
bench said the Governor's report contained "fanciful
assumptions", which could be destructive to democracy. Terming
is action as "drastic and extreme", the bench said the Court
cannot be a silent spectator to such subversion of the
Constitution".76

The Court said time has come to consider a national policy
outlining common norms for appointment of Governors, which
would be acceptable to all political parties. It held that the
Governor enjoyed complete immunity and is not answerable in exercise of constitutional power but Article 361 does not take away from the Court the power to deal with the validity of his action. The Governor had recommended the dissolution amid allegation that he prevented the NDA, which was on the verge of cobbling a majority with a breakaway group of Ram Vilas Paswan's LJP and few independents from forming the government. The bench said the provisions of the 10 schedule of the Constitution were not relevant at the time when the Governor had sent his report to the Centre. That was fully an unconstitutional act. The issue of defection has to be dealt in accordance with the law as no such power is given to the Governor. If such a power is given to a Governor, it would be horrendous.

The Supreme Court reiterated the recommendation of the Sarkaria Commission regarding the appointment of the Governors according to which only an eminent person free from political affiliation should be appointed to the constitutional post. Thus, the cases given above it comes onto broad relief that inspite of constitutional stipulations and the Supreme Court judgment imposing many curbs against misuse of the power yet the same game of running with the hare and hunting with the hound is going on.
References:


4. It may not be out of place to recall that the genesis of Article 356 goes back to the Simon Commission Report wherein both the phrases viz., “breakdown of constitutional system” and the “government of a province cannot be carried on in accordance with the provisions of the statute” were used together as though they were linked to one another. Also cited, K. Suryaprasad, *Article 356 of the Constitution of India: Promise and Performance*, Kanishka Publishers, New Delhi, p. 9.


29. AIR 1977 SC 1361.


33. The Bharatiya Janta Party led government recommended to the President that Bihar be brought under President’s Rule. The President K.R. Narayanan sent back the recommendation for reconsideration and the Union cabinet decided that not to press any further.

34. Rajesh Rama Chandan, *op. cit.*, p.35.


39. Ibid., p. 177.


42. In the original Article a period of six months was provided as the period of duration of the proclamation.


49. In 1967, President's Rule was impose in Uttar Pradesh for eighteen days. In 1990, President’s Rule was imposed in Karnataka for just eight days.


52. The success of Parliamentary democracy depends on the effectiveness of Parliamentary opposition to the party in power. That is to say in a Parliamentary system the opposition is as important as the government.

53. Rajeev Dhavan, *op.cit.*, pp. 165-175.


59. The Constitution of India, Article 356 (5) which has been deleted by the 44th Constitutional Amendment Act of 1978.


61. AIR 1977 SC 1361. This decision was given before the 44th Amendment Act.


64. Rajeev Dhavan, *op.cit.*, pp.126-158.

65. AIR 1965 Kerala 229.

67. AIR 1977 SC1361.


69. AIR 1993 Madhya Pradesh 214.


73. *Ibid*.


75. *Ibid*.

76. *Ibid*.