CHAPTER – VI

PRESIDENT’S RULE : MISUSE OF ARTICLE 356

Article 356 of the Constitution, which provides for the imposition of President’s Rule when there is a “failure of constitutional machinery in the State”, has been most controversial. The ambiguity of the expression “if a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of Constitution” had led to the Article’s persistent misuse by all governments.

The provision under which the Central government can supercede a State government and take over the entire government of the State including the powers of the Legislature have made some people to believe that federalism in India has been either modified or has lost its original meaning.¹

During the debate in the Constituent Assembly, B.M.Gupta said, “It appeared that under the Constitution India would be ‘not a federal State’ but a decentralised unitary State”.² Loknath Mishra saw in the Constitution, “a complete distrust of the provinces”.³ Shyamnandam Sahay felt the Constitution created, “a sort of federal unitary system”.

³ Ibid., p. 799.
under which the constituent units would be perpetual words of the Centre.  

The power to dislodge a State government at the free will of the Centre is the product of the provisions contained in the Article 356 of the Constitution which reads: “If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation;

a. Assume to himself all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State,

b. Declare that the powers of the Legislature of the State shall be exercisable by or under the authority of the Parliament, and

c. Make such incidental or consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any of the provisions of the Constitution relating to anybody or authority in the State, save those vested in or exercisable by the High Court.”

A highly sensitive and explosive constitutional controversy centres around this Article. The scope for prejudice was anticipated by K. Santhanam when he spoke in the Constituent Assembly. He observed, “Of course a difficult case may happen, when some States are governed

by political parties which are different from the political party which is governed at the Centre and the majority of the other States. Then, it is possible through political prejudice that some unnecessary or intolerant action may be taken under Article 278 and 278 A (Corresponding to Art. 356 and 357 of the Constitution).

The Constitution lists three situations where resort to “emergency provision” could be made. First, to protect every State against external aggression or internal disturbances and to ensure that the government of the State is carried on in accordance with the Constitution. (Art. 355 ... usually referred to as breakdown of law and order); secondly, when the constitutional machinery in the State fails (Art. 356); and lastly when any State fails to comply with or give effect to any directions given in the exercise of the executive power of the Union (Art. 365).

The assessment of the situation that necessitates Central intervention is primarily a task of the Governor. In the context, he is President’s advisor on the spot, and its inevitable outcome is a changed position of the Governor from the independent head of the State that of an agent of the Centre. However, if the Governor fails in his duty to report to the President, the President is competent to act “otherwise” also and impose his Rule on the State. Under the Draft Constitution, Article 188 merely provided that the President should act on the report.

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5  Ibid., Vol. IX, p. 154.
of the Governor. The word ‘otherwise’ was not there. While moving a motion to delete Article 188 in toto, B.R. Ambedkar observed in the Constituent Assembly that, “no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the provincial field in order to sustain the Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that, that is the correct approach to the situation, namely that if the responsibility is of the President the President from the very beginning should come into the field, it is obvious that Article 188 is a futility and is not required at all”.

However, there was a strong opposition in the Constituent Assembly on the inclusion of the word “otherwise”, H.V. Kamath. while commenting said, “It is a constitutional crime to empower the President to interfere not merely on the report of the Governor or ruler of a State but “otherwise”. “Otherwise” is a mischievous word. It is a diabolical word in this context and I pray to God that will be deleted from this Article. If God does not intervene today, I am sure at no distant date. He will intervene when things will take more serious turn and the eyes of every one of us will be more awake than they are

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Chief Justice P. N. Bhagwati also conceded that the inclusion of the word ‘otherwise’ in Article 356 gave the President very drastic powers which, if misused or abused can destroy the constitutional equilibrium between the Union and the States. He said, “Indeed, the usual practice is that the President acts under Article 356(1) of the Constitution only on Governor’s report. But, the use of the word ‘otherwise’ (in Art. 356) shows that President’s satisfaction could be based on other material as well. This feature of our constitution indicates most strikingly the extent to which inroads have been made by it on the federal principle of Government.

The word ‘otherwise’ can be interpreted in two ways. First, it may mean, even if the President does not receive a Report from the Governor, he is competent enough to assess the situation himself perhaps the Union Ministry could appraise him of the situation, but not necessarily – and act under Article 356. Second, 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 recommendation to promulgate 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 Governor’s shoulder to that of the President.

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8 Ibid., p. 140.
10 Nalini Pant, op. cit., p. 314.
Thus, the only responsibility of the Governor is to make a report to the President of India that the government of the State concerned cannot be carried on in accordance with the Constitution and to recommend the imposition of President’s rule in the province. In making such a report, the Governor is, however, not bound to act on the advice of his Council of Ministers. He will perform this task as the representative of the President, and as the representative of the President he will inform to ensure that the government of the State being carried on in accordance with the provisions of this Constitution. The Governor, therefore, can independently of his Council of Ministers make such a report to the President. So the scope of independent power of the Governor under Article 356 is very limited.

Basu D.D. while discussing Article 356, has commented, “such a report (report of a Governor recommending President’s Rule) may sometimes be against a ministry in power, for instance, if it attempts to misuse its power to subvert the Constitution. It is obvious that in such cases the report cannot be made according to ministerial advice. No such advice, again, will be available where one ministry has resigned and another alternative ministry cannot be formed. The making of report under Article 356, thus, must be regarded as a function to be exercised by the Governor in exercise of his discretion.” This view is also shared by H.M. Seervai, “It is submitted that the Governor would

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be justified in making such a report contrary to the advice of the Council of Ministers, because such a report might show that the failure of the constitutional machinery is due to the conduct of the Council of Ministers itself.\textsuperscript{12} Soli Sorabjee opined, “In this situation it is evident that the Governor acts directly. He is not expected to act on the advice of the Council of Ministers, in as much as the effect of the acceptance of his report would certainly be adverse to them. In making a report under Article 356, the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers.\textsuperscript{13}

A cursory glance at Article 356 makes it quite clear that the Governor can only report and nothing more. After receiving the report it is the President who is to decide whether the government can be carried on in accordance with the provisions of the constitution or not. Beyond sending the report, the Governor goes out of his way. Since the narration of facts in a particular situation comes first, and since the question of recommending something arises at a later stage, Governor’s action cannot be said to be in consonance with the letters of the constitution.\textsuperscript{14} Therefore, the Governor should not recommend anything because he is not required to do so. His only function is to report.

\textsuperscript{14} Dahiya, M.S., \textit{Office of the Governor in India – A Critical Commentary}, Sundeep Prakashan, Delhi, 1979, p. 233.
Before we proceed to examine the pros and cons of the application of Article 356, it seems desirable to make the meaning of the phrase "the Government cannot be carried on in accordance with the provisions of the Constitution", clear and to suggest its guiding principles. It is so because, Governors in various States in the same situation interpreted and applied Article 356 in different ways.

When Pandit Kunzru asked in the Constituent Assembly this question; what was his (Ambedkar) idea of the meaning of the phrase, "In accordance with the provisions of the Constitution?" B.R. Ambedkar as usual, gave a very evasive reply and said, "When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely, that the form of the Constitution must be maintained".¹⁵

If this was to be the only meaning of this phrase, perhaps, there would have been, no controversy because a provision exists even in the Constitution of America.¹⁶ But unfortunately, Ambedkar, while speaking again on this Article gave altogether a different meaning of this phrase. He for example said, "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 or any Legislature of a province does not act in accordance

¹⁵  C.A.D., Vol. IX, pp. 175-76.
¹⁶  Article 4(4) says the States must maintain the Republic Character
with it that would act as a failure of the machinery. The expression 'failure of the machinery', I find it 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".\textsuperscript{17}

This is, of course, true that this expression has been used in the Government of India Act, 1935. But, however, there is clear cut difference between the phraseology used in Section 93 of the Government of India Act, 1935, and Article 356, of the Indian Constitution. It was laid down in Section 93 that "the functions of the Governor under this Section shall be exercised by him in his discretion". But in Article 356 there is no reference to discretion. The Draft Article 278 used the term "discretion" which was deleted at a later stage. In view of this position, it may safely be said that under the Act of 1935, the Governor could declare the failure of constitutional machinery according to his sweet will. But such is not the case under the present Constitution, which speaks of responsible Council of Ministers to aid and advise the Governor in the exercise of his functions. He reports to the President when he is unable to find responsible Council of Ministers. As such he can resort to this mechanism when there is no possibility of formation of a ministry. Under these circumstances it can be said that the constitutional machinery has failed.

\textsuperscript{17} C.A.D., Vol. IX, p. 177.
The failure of a constitutional machinery may also be declared when the President is satisfied either on the basis of a report of the Governor or otherwise that the government of a State is not being carried on in accordance with the provisions of the Constitution. This may happen when the State government exercises its power in the manner as not to secure compliance with the laws passed by Parliament (Art. 365).

But before imposing the President's Rule on this ground, "The President, who is endowed with these powers, will take proper precaution before actually suspending the administration of the province. The first thing he will do would be to issue a mere warning to a province that has erred that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail he should resort to this Article". 18

A doubt still exists whether the Central government can issue a proclamation on the ground of maladministration and charges of corruption against the Ministry of a State. For instance, when H.N.Kunzru asked, "is it the purpose of Article 278 and 278A (Arts 355 and 356 of the present Constitution) to enable the Central

18 Ibid, p. 177.
government to intervene in the provincial affairs for the good government. Ambedkar replied, "No, No, the Central is not given that authority ... Whether there is good government or not in the province is not the Centre to determine." Hence, it seems that the Article does not give any discretion to the President or the Government of India to consider whether the government was good or bad. That is the inherent problem of democracy ... The only thing that in a democracy we would examine under Article 356 is whether it was not possible to carry on the government under constitutional provision.

The phrase "in accordance with the provisions of this Constitution" implies that the Governor should exhaust all the other provisions before submitting a report to the President under Article 356. Thakurdas Bhargava tried to explain when he said, "No Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted. In my humble opinion as soon as such situation arises the first duty that the Governor will perform will be to dissolve the House under Section 153 (Draft Constitution). I cannot conceive of a situation in which the Governor first of all, shall not exercise the powers given to him by law to arrange in such a way that the Constitution is worked". This was also the opinion of K. Santhanam. He said, "it is necessary to evolve the convention that before these Articles (Arts. 278 and 278 A of Draft

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19 Ibid., p. 176.
20 Ibid.
21 Ibid., p. 176.
22 Ibid., p. 161.
Constitution) are resorted to on account of political breakdown, there should first be a dissolution of the Lower House of the State Legislature. Without dissolution the Centre should not step in and that be one of the conventions which we shall have to evolve".23

However, the dissolution of the Legislature Assembly by the Governor does not by itself amount to a failure of the constitutional machinery in the State. Sometimes, the Governor may dissolve the Legislative Assembly on the advice of the Out-voted Chief Minister or he may, also, dissolve the Assembly, even before the expiry of its normal term on the advice of the Chief Minister in office. Hence, mid-term election must be held at least once by exercising the power of dissolution given to the Governor under Article 174(2)(b) before recommending the failure of constitutional machinery.24

Besides the circumstances visualised by the framers, the failure of the constitutional machinery may also be declared when;

1 A Ministry, although properly constituted violates the provisions of the Constitution or seek to use its constitutional powers for purposes not authorised by the Constitution and other correctives and warning fails;25

2 A subversion of the Constitution by the State government while processing to work under the Constitution or create disunity or disaffection among the people to disintegrate the democratic

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23 Ibid., pp. 153-54.
social fabric or to subvert its "basic feature" such as federation, democracy and secularism;\(^{26}\)

3 A political party seeking to subvert the principle of responsible government;\(^{27}\)

4 A threat to the security of the State owing to external aggression or armed rebellion which would have attracted Article 352(1) or such external aggression or internal disturbance as would have justified action under Article 353. In short, a danger to national integration or security of the State or aiding or abetting national disintegration or a claim for independent sovereign status;\(^{28}\) and

5 Where the Minister, although having the confidence of the majority in the Legislature fails to meet an extraordinary situation, e.g., on outbreak of unprecedented violence; a great natural calamity such as severe earthquake, a flood, or large epidemic, which failure amounts to an addictions of its government power.\(^{29}\)

Whatever may be the meaning of the phrase, "in accordance with the provisions of the Constitution", one thing is quite clear that there must be a government in office and then it may be said that the same cannot be carried on in accordance with the provisions of the Constitution. As such the imposition of President's Rule before the formation of a ministry after the General Election seems illegal and unconstitutional.\(^{30}\)

\(^{26}\) Bommai vs. Union of India, AIR, 1994, SC, 1918.
\(^{27}\) Ibid.
\(^{28}\) Ibid.
\(^{30}\) Dahiya, M.S., op. cit., p. 229.
The mere non-confidence in the Council of Ministers cannot be termed as a failure of the constitutional machinery. Under a Parliamentary democracy the defeat of the government on any issue is not uncommon. Besides, there might be the possibility of the formation of an alternative government.

Where in response to the prior warning or notice to an informor formal direction under Articles 256, 257, etc., the State government either applies the correctives and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that “a situation has arisen in which government of the State cannot be carried on in accordance with the provisions of this Constitution”. Hence, in such a situation also Article 356 cannot be properly invoked.31

The use of this power to sort out internal difference of intra-party problems of the ruling party would not be constitutionally correct.32

The Union government cannot dismiss a duly elected State government, on the sole ground that the ruling party in the State suffered an overwhelming defeat in the election to the Lok Sabha.33

Where the Governor declines the request of a Ministry which has not been defeated on the floor of the House and recommends its

31 Sarkaria Commission Report, op. cit., Paras 6.5.01.
32 Ibid.
33 Bommai vs. Union of India, op. cit.
suppression, without giving the Ministry an opportunity to demonstrate its majority support through the 'floor test' and acting solely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly. The floor test may be dispensed with only in exceptional circumstances, such as an atmosphere of violence, it was not possible to convince a sitting the Assembly for the purpose.34

When there is a party in a clear majority and no agreement is reached to form a coalition government, the Governor should not attach any importance to the stability or instability of the government because the application of Article 356 is a undemocratic step, whereas the formation of unstable government is a democratic process. As Jennings quotes, “a good government cannot be a substitute for a self government”.35

In the light of the principle laid down above, if the application of Article 356 is critically analysed, it will be found that there was some justification in the fears which were expressed in the Constituent Assembly about the possibility of its misuse. In spite of the assurance given by Ambedkar that this Article would be used most sparingly and that too in quite exceptional cases, it has been used over a hundred times, overwhelmingly for mala fide political purposes, since the Republican Constitution was adopted in 1950.

34 Ibid.
President's Rule was imposed six times when Pandit Jawaharlal Nehru was Prime Minister, twice during Lal Bahadur Shastri's regime, nine times when Morarji Desai was the Prime Minister, five times during Charan Singh's regime and forty-seven times during Indira Gandhi's rule as a Prime Minister, i.e., between 1966-77 and 1980-84.

During the Nehru era (up to 1964) President's Rule was imposed in Punjab 1951, Pepsu in 1953, Andhra Pradesh in 1954, Travancore-Cochin in 1956, Kerala in 1959 and Orissa in 1961. It is important to note that on each of these occasions the imposition of President's Rule was controversial. These occasions established certain patterns which were subsequently followed. The example of Pepsu in 1953, Andhra in 1954, Travancore-Cochin in 1956 and Orissa in 1961 shows that to some extent even during the Nehru period, non-Congress ministers were not encouraged by their Governors. Nor were non-Congress Opposition encouraged to form the ministries.36

Application of Article 356 became habit-forming with Indira Gandhi. She used it to get rid of parties opposed to her from holding charge of State governments even when they continue to enjoy an indisputable majority in the State Assemblies. Even Congress Chief Ministers whose faces or manners were not to her liking received the treatment under Article 356 and found themselves without any occupation. No prior notice was served in any of the instances.

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Siwach in his article\textsuperscript{37} aptly described how Article 356 was used frequently by the Centre for its partisan interests.

Firstly, the Centre dismissed the State governments, keeping in view the party interests. The State governments have been dismissed so far under this Article when they not only had majority but were also prepared to prove the majority on the floor of the House at a very short notice. Most of them were dismissed on unconvincing grounds. For example, Gian Singh Rarewale in Pepsu (1953), Namboodiripad in Keral (1959), Rao Birendra Singh in Haryana (1967), Charan Singh in Uttar Pradesh (1970), Karunanidhi in Tamil Nadu (1976), Devaraj Urs in Karnataka and P. K. Das in Tripura (1977), Ramaswami in Pondicherry (1978), and Y. Shaiza in Manipur and J. N. Hazarika in Assam (1979). All of them which were dismissed were the non-Congress (I) governments.

Secondly, opposition was not given a chance to form the government on the plea that stable government is not possible. This happened when the electoral verdict was indecisive, but the combination of the opposition parties were prepared to form the government and to prove its majority on the floor of the House even when it proved its majority in the Raj Bhavan when the Governor made his assessment. This happened in Kerala in 1965 and in Rajasthan in 1957.

Thirdly, when ministry resigned anticipating its defeat on the floor of the House, the Opposition was not given a chance to form the government. In all the occasions the Assemblies were dissolved on the ground that stable government was not possible. For example, Pondicherry in 1968, Orissa in 1973, Nagaland in 1975, Mizoram in 1982, Kerala in 1982.

Fourthly, after the defeat of Ministry on the floor of the House Opposition was not allowed to form the government. Ordinarily in a Parliamentary democracy whenever, the Ministry resigns after its defeat on the floor of the House, the Opposition is given a chance to form the government but this has not been done in some cases in the States on the ground that a stable government was not possible and the Assemblies were dissolved. For example, Andhra 1954, Manipur 1969, Assam 1981.

In 1977, this Article really proved itself alarmingly unfedera. Dissolution of State Legislature in a group was unprecedented till this time. The Janata Party at the Centre by a Presidential proclamation dismissed nine democratically formed State governments and the Centre assumed to itself all the powers exercisable by the State Legislatures. It requires no mention that these nine States were run by Opposition political parties and as such the Janata Party with its advantageous position in the Centre chose to spread its influence to those areas, applying this short cut method available in Article 356. Their argument was that the overwhelming victory of the Janata Party in these States in
the Parliamentary election proved that these State governments run by other political parties had no moral right to rule.

The legitimacy of the Central action was widely suspected and the political system put to severe strains. The Congress leaders then described the Union government’s decision to dissolve the nine Assemblies as politically motivated unconstitutional and an attempt to distort the basis of our federal polity.38

Surprisingly, the same Congress (I) Party in the Centre, after their victory in the mid-term Parliamentary poll of 1980, wilfully used the same tactics and toppled down same number (nine) of State governments where they were not in power.

The possibility of different political parties being in power at the Centre and in the States was never overlooked while the Constitution was framed and it cannot be argued with any modicum of political morality that the party that is in power at the Centre should also be in power in the States.

On 26th April, 1977, six out of nine States filed suits in the Supreme Court under Article 131 of the Constitution. They were heard expeditiously and dismissed on April 29, 1977.39 Though all the seven Judges of the Bench agreed that the writ petitions and suits be

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dismissed, their reasoning was not uniform. However, on the question of judicial review of the Presidential Proclamation under Article 356, there is broad consensus among five of the seven Judges that the Court can interfere if it is satisfied that the power has been exercised *mala fides* or on wholly extraneous or irrelevant grounds. None of the single learned Judge held that the proclamation is immune from judicial scrutiny. It must be remembered that at that time Clause (5)⁴⁰ of Article 356 was there barring judicial review of the Proclamation and yet they said that the Court can interfere on the ground of *mala fides* where it is based wholly on extraneous or irrelevant grounds.

In the course of his judgement Justice Beg observed that “The language of Article 356 and the practice since 1950 shows that the Central government can enforce its will against the State governments with respect to the question how the State governments should function and who should hold reigns of power.

“By virtue of Article 356(5) and Article 74(2), it is impossible for the Court to question the satisfaction of the President. It has to decide the case on the basis of only those facts as may have been admitted by or placed by the President before the Court.”

“The language of Article 356(1) is very wide. It is desirable that conventions developed channellising the exercise of this power. The

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⁴⁰ Clause (5), introduced by 38th Amendment Act, 1975 reads “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 on any ground, deleted by 44th Amendment Act, 1978.
Court can interfere only when the power is used in a grossly perverse and unreasonable manner so as to constitute patent misuse of the provision or to an abuse of power.”

Justice P.N. Bhagwati observed that “The action under Article 356 has to be taken on the subjective satisfaction of the President. The satisfaction is not objective. There are no judicially discoverable and manageable standards by which the Court can examine the correctness of the satisfaction of the President. The satisfaction to be arrived at is largely political in nature, based on an assessment of various and varied facts and factors besides several imponderable and fast changing situations. The Court is not fit body to enquire into or determine the correctness of the said satisfaction or assessment, as it may be called. However, if the power is exercised malafides or is based upon wholly extraneous or irrelevant grounds, the Court would have jurisdiction to examine it. Even Clause (5) (then existed) is not a bar when the contention is that there was no satisfaction at all.”

S.R. Bommai’s is the leading case in which Article 356 has been discussed elaborately by the Supreme Court. This case was heard by Constitutional Bench of nine Judges.

Karnataka:

On April 17, 1989, a Legislator Kalyan Rao Molakery, defected from the party and presented a letter to the Governor withdrawing his support to the Janata Dal government headed by S.R. Bommai. On the
next day, he met the Governor and presented nineteen letters signed by seventeen Janata Dal Legislators and one BJP Legislator withdrawing their support to the government. On April 19, 1989, the Governor sent a report to the President stating that the Council of Ministers headed by Bommai did not command a majority in the House and that, therefore, "it is not appropriate under the Constitution to have the State administered by an executive consisting of Council of Ministers who did not command the majority in the House". He opined that no other party is in a position to form the government and recommended action under Article 356(1).

On April 20, 1989, seventeen Legislators, out of nineteen, in a letter to the Governor, complained that their signatures were obtained by misrepresentation and misleading to them and reaffirmed their support to the Bommai ministry. On the same day, the State Cabinet met and decided to convene the Assembly on April 27, 1989 and the same was informed to the Governor. It was also brought to the Governor's notice the recommendation of the Sarkaria Commission that the support and strength of the Chief Minister should be tested on the floor of the Assembly. Bommai offered to prove his majority on the floor of the House. He even expressed his readiness to advance the Assembly session if so desired by the Governor. In spite of all this, the Governor sent another report to the President of India on April 20, 1989 referring to the letters of seven members withdrawing their earlier letters and alleged that the said letters were obtained by Bommai by
pressurising those MLAs. He reported that “horse-trading is going on and atmosphere is getting vitiated. He reiterated that Bommai has lost the confidence of the majority in the State Assembly and requested action being taken on his previous letter.

On April 21, 1989, by a proclamation, the President dismissed the Government of Karnataka, dissolved the Legislative Assembly. The Proclamation did not contain any reason except barely reciting the satisfaction of the President. The satisfaction is stated to have been formed on a consideration of the report of the Governor and other information received by him.

A writ petition was filed by Bommai in the Karnataka High Court challenging the validity of the Proclamation. The petition was heard by a Special Bench of three Judges of High Court and dismissed the same on the ground that the subjective satisfaction arrived by the President is conclusive and cannot be faulted. The Proclamation, therefore, is unobjectionable.

An appeal was made in the Supreme Court against the High Court judgement which was heard by nine Judges. Finally, the Supreme Court struck down the Proclamation by setting aside the High Court judgement. The Supreme Court judgement, which delivered by Justice Jeevan Reddy, observed that, “The Governor’s report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report. Governor is a very
high constitutional functionary. He is supposed to act fairly and honestly consistent to his oath. He is actually reporting against his own government. 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 *mala fides*, it is bound to vitiate the President's action as well.

It further observed that, "The Constitution does not hold an obligation that the political party forming the Ministry should necessarily have a majority in the Legislature. Minority governments are not unknown. What is necessary is that government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor. Secondly and more importantly, whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. However, exceptional and rare situation may arise where because of all-pervading atmosphere of violence or other extraordinary reason, it may not be possible for the members of the Assembly to express their opinion.
freely. But no such situation has arisen here. No one suggested that any such violent atmosphere was obtaining at the relevant time.

"Stressing on the importance of the Legislative Assembly, it observed", if one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor. The position would be clear beyond any doubt. In this case it may be remembered that the Council of Ministers not only decided on April 20, 1989 to convene the Assembly on 27th of that very month, i.e., within seven days but also offered to prepone the Assembly if the Governor so desired. It pains us to note that the Governor did not choose to act upon the said offer. Indeed, it was his duty to summon the Assembly and call upon the Chief Minister to establish that he enjoyed the confidence of the House. Now only did he not do it but when the Council of Ministers offered to the same, he demurred and chose instead to submit the report to the President. In the circumstances, it cannot be said that the Governor’s report contained or was based upon relevant material.

Commenting on the satisfaction of the President, it observed though the Proclamation recites that the President’s satisfaction was based also on “other information received” but 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. The Governor’s reports and facts stated
therein appear to be the only basis of dismissing the government and
dissolving the Assembly under Article 356(1). The Proclamation must,
therefore, be held to be not warranted by Article 356. It is outside its
purview. It cannot be said, in the circumstances, that the President (or
Union Council of Ministers) was satisfied that the government of the
State couldn’t be carried on in accordance with the provisions of the
Constitution. The action was *mala fide* and unconstitutional.\(^{41}\)

**Gujarat – 1996**

In August 1995 Gujarat Assembly election was held. In the 182
member House, with two vacancies, the BJP had a strength of 120
members, Congress 44, and Independent 16. A split occurred in the
BJP Legislative party which was recognised by the Deputy Speaker
Chandubhai Dabhi. The Governor Krishna Pal Singh asked the Chief
Minister Suresh Mehta to prove his majority in the House by
September 13.

Unprecedented scenes of violence were witnessed in the State
Assembly when the entire Opposition, Congress, rebel BJP and
Independent members, were bundled out by the Marshals soon after the
Chief Minister moved a motion of confidence. Amidst this confusion
the resolution of the confidence was passed with 92 in support, none
against.\(^{42}\)

\(^{41}\) Bommai vs. Union of India, AIR, 1994, SC, 1918.
\(^{42}\) *Asian Recorder*, October 21-27, 1996.
Following the unprecedented violence in House, the Governor Krishna Pal Singh recommended President’s Rule citing the breakdown of the constitutional machinery in the State.

The Union Cabinet, at a meeting, September 19, ... discussed the Governor’s report and recommended the invocation of Article 356 of the Constitution.

President Shankar Dayal Sharma signed the papers later, bringing Gujarat under Central Rule dismissing the Council of Ministers head by Suresh Mehta. The Legislative Assembly was kept under suspended animation. It was the first occasion when the United Front Government imposed President’s Rule in State.

The action of the President was criticised on the following grounds:

1. Stalling the proceedings and acts of violence and intimidation inside the Assembly, cannot be equated with breakdown of constitutional machinery;

2. Since the BJP government had proved its majority in the House, the Governor cannot question its validity; and

3. President’s Rule was invoked in flagrant violation of the judgement in S.R. Bommai case and Sarkaria Commission recommendation which says that Article 356 is to be used as a last resort.

The later events show that the President’s Rule was imposed in order to clear the way for installing a non-BJP government in the State.
Shankar Singh Vaghela, leader of the breakaway group of BJP was sworn in as a Chief Minister in October, 1996. Congress, Janata Dal and some independents extended support to his government.43

Uttar Pradesh – 1998:

On October 19, 1997, Mayawati withdrew BSP support to BJP government in Uttar Pradesh headed by Kalyan Singh. She requested the Governor, Romesh Bhandari, to dismiss the government as it was reduced to minority. Leader of the Congress party, Samajwadi Party, Janata Dal and others also informed the Governor that they would not be supporting BJP government. Kalyan Singh requested the Governor to give him time to prove his majority on the floor of the House. Consequently, the Governor allowed Kalyan Singh to prove his majority on October 21, 1997.

The Governor sent a message to the Vidhan Sabha in respect of the procedure to be followed in the House. The message contained that on October 21, 1997 confidence motion shall be the only agenda and the House shall not be adjourned till the debate and resolution on confidence motion is passed. It was also indicated that the message that the voting shall be done through Lobby Division.

When the proceedings of the House were opened by the Speaker, nearly the entire Opposition was in the well of the House. There was

unprecedented violence. The security forces managed to lock out the Opposition and the Speaker took up the motion of confidence. At about 1.00 p.m. the Speaker declared the result of the voting and announced that 222 members voted in favour of the motion and no member voted against. Therefore, the confidence motion was declared as passed and the House was adjourned *sine die*.

The Governor sent a report stating that in view of the violence in the House, fair and free voting in the Assembly has been vitiated. therefore, President’s Rule under Article 356 would need to be proclaimed.

Accordingly, the United Front Government headed by Prime Minister I.K.Gujral sent the recommendation to the President K.R.Naryanan for the imposition of the President’s Rule in Uttar Pradesh.

After examining the constitutional provision and seeking views of Attorney General, the President, K.R.Narayanan withheld his assent and sent the Cabinet’s recommendation back.

The Cabinet after considering the President’s view dropped the proposal invoking President’s Rule in Uttar Pradesh. 44

Certain inferences can be deduced from the Uttar Pradesh episode.

Firstly, this was the first instance in the independent India’s history that a Cabinet recommendation for issuing constitutional proclamation under Article 356 was sent back by the President. If the similar precedent was followed by the then President in the case of Kerala in 1959, probably the history of Article 356 in India would have been quite different.  

Secondly, three factors played very significant role in returning the recommendation:

a. The S.R. Bommai judgement which held that President Rule is subject to judicial review;

b. Violence in the House could not be equated with the breakdown of the constitutional machinery; and

c. President’s Rule had to be ratified by the Parliament.

There is no doubt that right from the beginning the Governor Romesh Bhandari was hostile to the Kalyan Singh government and gave it less than 48 hours to prove its majority after the BSP pulled out of the ruling coalition in Uttar Pradesh. And his recommendation to the President’s Rule even after the government proved its majority in the House, not only atrocious but also grossly violative of our constitutional scheme.

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Unconstitutional practice of dismissing a government which enjoys the majority was set up for the first time in 1959 when the EMS Namboodiripad government was dismissed in Kerala. They wanted to bring in some important measures like educational reforms and land reforms. The then Central government should have appreciated these facts. But Article 356 was invoked and President’s Rule was imposed.
Bihar – 1998-99 :

In third week of September, 1998, Governor of Bihar, Sunder Singh Bhandari, submitted a report to the Central government for imposition of President’s Rule in the Bihar indicating rampant deterioration of law and order in the State.

On the basis of the Governor’s report, the Vajpayee government recommended to the President invocation of Article 356 of the Constitution against the RJD government headed by Rabri Devi on the ground that it had failed to protect the constitutional machinery.

Having considered the report of Governor and recommendation of the government, President K.R.Narayanan sent back the Cabinet resolution on September 25, 1998 making it clear that “the condition precedent for the invocation of Article 356 has not been adequately made out”.

Four grounds46 were listed in the minutes of the President for opposing the imposition of President’s Rule in Bihar.

1. The condition precedent for the invocation of Article 356, viz., that there has been failure of the constitutional machinery in the State, has not been adequately made out by the Governor. (He relied on Bommai case in which it strongly held that the precedent for the imposition of President’s Rule is a comprehensive breakdown of the Constitution, a situation of constitution impasse, in the State concerned.)

2. It is imprudent to take action under Article 356 in Bihar when preliminary steps under Article 256 such as warning, directives and eliciting explanation from the State have not been taken by the Union. It specifically pointed out that the absence of such warning can render the issue of proclamation under Article 356 in respect of Bihar fundamentally vulnerable in the Courts of Law.

3. The government headed by Rabri Devi enjoys majority support in the Legislative Assembly has to be borne in mind as per the Sarkaria Commission passage cited in the Bommai judgement.

4. While recommending an enactment such as this, the government would do well to take into account its passage in both the Houses of Parliament. (Clear indication about the Opposition to this move by Congress (I) which announced its decision to oppose in Parliament the proclamation for President’s Rule in Bihar.)

Meanwhile, the Union Cabinet, which met on September, 1998 to discuss President’s communiqué to the government to reconsider its recommendation to dismiss the Rabri Devi government, has decided "not to pursue the matter further for the moment". The Cabinet decision was a clear indication that the government had chosen to avoid a confrontation with the President. If it had endorsed its recommendation of September 22, 1998, and sent it back to Rashtrapati Bhavan, the President would be left with no option but to give his assent to it.

In between September 1998 to February 1999, Ranvir Sena massacred 11 Dalits in Jahanabad, Bihar. This caused a fresh move to invoke Article 356 in Bihar. Governor Sunder Singh Bhandari making
a pointed reference to the massacre had drawn the attention of the Centre towards the continuing slide in the law and order situation of the politically volatile State and submitted a report to the Central government.

An extraordinary Cabinet meeting was called at midnight. A note was prepared for the Prime Minister, who was in Jamaica – seeking his go ahead in recommending President’s Rule. Once the Prime Minister cleared the proposal, a special messenger was sent to the President, who was in Calcutta. President K.R.Narayanan signed the Proclamation around 9.00 p.m. on February 12, 1999.

The Rashtriya Janata Dal government was dismissed under Article 356 of the Constitution. The Assembly was, however, kept in suspended animation, in keeping with the Supreme Court Judgement in the Bommai case.

This time the following factors left the President with no choice but to sign the Proclamation.

1. Article 74 of the Constitution makes it imperative for the President to give assent to any advice given to him and reiterated thereafter by the Council of Ministers. Article 74, which gives the President the right to urge the Council of Ministers to reconsider any such advice, also ordains that he is bound to accept any advice “tendered after such reconsideration”. (The February 12, 1999 resolution of the Council of Ministers was technically a reiteration of the proposal made in September and
the President had constitutionally no alternative but to give his consent.)

2. He was satisfied this time around that warning had indeed been sent to the State government under Article 256 and that they were not heeded.

3. Rise in the number of caste clashes and massacres in the State during the last two months and the way the RJD government handled them, which justify administrative failure.

But, however, what overlooked the President this time was the two factors which mentioned earlier in his September Presidential minutes, viz., enjoyment of majority support in Assembly by Rabri government and the passage of the proclamation in both the Houses of the Parliament between September 1998 to February 1999 the above two factors remained unaltered.

The proclamation was later on approved by the Lok Sabha but have failed to secure the Congress support in the Rajya Sabha, where the BJP was in minority. The Central government decided to revoke the President’s rule on March 8, 1999. A recommendation to this effect was made to the President who revoked the President’s rule. Next day on March 9, Rabri Devi was again sworn in as Chief Minister of Bihar.

It is a blatant misuse of a constitutional provision. From day, on the BJP government had made no secret of its intention to dismiss the RJD Ministry.\(^{47}\) The Governor Sundar Lal Bhandari prepared the

\(^{47}\) *Frontline*. *A Dismissal Backfires*, March 12, 1999, p. 16.
ground to achieve this major political objective. The massacres by Ranvir Sena were used as a pretext. There are more glaring examples in Gujarat and Maharashtra. By no yardstick the use of Article 356 is tenable in Bihar. Thus, the imposition of President’s Rule in Bihar demonstrates that the Supreme Court’s emphatic majority judgement in the Bommai is no bar, or safeguard against Article 356 fraud.

The frequent dismissal of the State government on the above said grounds has primarily been an attempt on the part of the Centre to control partisan and political dissent at the State level, resulting in the fundamental transformation of the Indian federal system as established by the Constitution. Further, it takes away the right of a State government to continue in its own manner when such conduct is in conflict with the view and attitudes of the government at the Centre. This is clearly a negation of democracy.

In fact, this provision which was included as a life saving device by the framers of the constitution has become too poisonous for our political system and that is the reason why the Rajmannar Committee recommended its deletion. The Memorandum submitted by the West Bengal on Centre-State relation has also demanded the repeal of the Article 356.
Ever since Nehru quoted Article 356 and got rid in 1959 of the Namboodripad government in Kerala – the first elected Communist regime anywhere in the world – the Left have consistently veiled against what they have regarded as one of the most undemocratic provisions of the Constitution. The Left were even more convinced of the need to oppose the Article tooth and nail. In their pleadings with Sarkaria Commission appointed to review Centre-State relation, each of the Left parties asked in unambiguous term for its abrogation.52

The meeting of Opposition parties, which was held in Vijayawada and Srinagar,53 recommended that Articles 356 and 357 should be suitably amended in order to prevent their misuse. Therefore, it is essential that proper parameters and safeguards for the exercise of this extraordinary power should be devised and enforced.

On May 1977, the Standing Committee of Inter-State Council arrived at a broad consensus on the need to curb the misuse of this constitutional power. It suggested that it should be used very rarely. Among the safeguard, the Committee recommended that prior Parliamentary approval by a two-third majority before a State government was dismissed; a show cause notice, answerable within a week, giving the grounds on which the dismissal of a State government was sought; and no simultaneous dissolution of the Assembly.54

52 Mitra, Ashok, Unethical Resort to Article 356, Deccan Herald, November 12, 1997.
53 Indian Express, October 7, 1983.
The Government of India in February, 2000, appointed a National Commission to review the working of the Constitution, under the Chairmanship of a retired Judge of the Supreme Court Justice M.V. Venkatachaliah. The Commission submitted its report on March 31, 2002. In its report, the Commission recommended that Article 356 should be used in "difficult circumstances", like subversive activities are on the full swing in a State.

Despite bitter historical experience, the Sarkaria Commission\textsuperscript{55} has not recommended, and rightly in view of the present national context, deletion of Article 356. It has emphasised that Article 356 should be used very sparingly and as a measure of last resort in case of genuine breakdown of constitutional machinery in a State.

The real value of the report lies in recommendations to ensure proper application of Article 356. The first set of recommendations is to ensure greater Parliamentary control by providing that the State Legislative Assembly should not be dissolved before Parliament has had an opportunity to consider the Presidential Proclamation and that upon requisite notice given to the Speaker a special sitting of the House shall be held within the fourteen days from the date of receipt of the notice and President's Rule shall be revoked if the House passed a resolution disapproving it.

More significant invaluable are its recommendations to ensure effective judicial review of the proclamation imposing President’s Rule in a State. Firstly, that the report of the Governor on the basis of which Presidential action is taken should be a “Speaking document”, that is, it should contain a precise and clear statement of all material facts and grounds which form the basis of the President’s satisfaction as to existence or information received by the President and on which he can also act independently of the Governor’s report must not be vague or wholly irrelevant. In brief, the material facts and grounds on which President’s Rule is imposed should be made an integral part of the presidential proclamation.