**ANALYSIS OF ARTICLE 356 OF THE CONSTITUTION OF INDIA – A DEAD LETTER OF LAW OR MISUSED?**

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**ABSTRACT**

Article 356 has been one of the most contentious provisions whenever a debate on Emergency provisions under the Indian Constitution is initiated. It is an argument provoking provision of the Constitution because its misuse and abuse directly acts in consonance with the murder of the democratic fabric of the Indian polity.

The paper has been arranged in such a manner to assist the reader to read and retain the information not just at the surface level, but to inculcate a deeper conceptual knowledge of Article 356 of the Indian Constitution, which is one of the cardinal legal provisions under the Constitution related to not only the subject of ‘Emergency’ but also Union and State relations in the federal structure of the Indian polity. The paper briefly focuses on the concept of emergency provisions as they exist in the Indian political and legal system, and majorly focuses on the constitutional dynamics surrounding Article 356 – which is infamously known as the *“President’s Rule”* or *“State Emergency”.*The said constitutional dynamic includes the conceptual analysis of Article 356 along with the literal construction or interpretation; whereas rhetorically questioning the status of Article 356 in the current scenario – namely, does Article 356 of the Constitution of India still act as a dead letter of law (as it was intended to be sparingly used) or is it a misused provision abused to settle political scores or quench superiority thirsts in politics. The author attempts to prepare a doctrinal research paper purely for the use of academic purposes. The aim of this paper is to curate and contribute a conceptual analysis of Article 356 via analyzing the two main contributors to the formation of the legal perspectives and interpretations existing on Article 356 of the constitution of India i.e. (i) the recommendations under the Chapter VI of the Report of Sarkaria Commission (1988) and (ii) the landmark case of S.R. Bommai v. Union of India (1994). In order to curate this paper, the author has not subscribed to any political approach but has only resorted and subscribed to rational approach on the basis of legal interpretation – which in author’s opinion has helped her render a paper that is free from any biases and consists only of reasonable arguments, facts and logical conclusions.

**KEY WORDS:**

*Article 356 – President’s Rule – S.R. Bommai Case Law – Sarkaria Commission Report – a dead letter of law or a misused provision*

**INTRODUCTION:**

The constitution of India envisages two tiers of Government, one at the level of the Union, and the other at the level of the Sates. From the functional standpoint, such a Constitution is not a static format, but a dynamic process. Within this process, the interplay of centrifugal and centripetal forces influenced by a changing social, economic and political environment, constantly strives to find a new adjustment of the balance between unity and diversity.[[1]](#footnote-2)

The framers of the Constitution were conscious that, in a country of sub-continental dimensions, immense diversities, socio-economic disparities and “multitudinous people, with possibly divided loyalties,"security of the nation and stability of its polity could not be taken for granted. The framers, therefore, recognised that, in a grave emergency, the Union must have adequate powers to deal quickly and effectively with a threat to the very existence of the nation, on account of external aggression or internal disruption. They took care to provide that, in a situation of such emergency, the Union shall have overriding powers to control and direct all aspects of administration and legislation throughout the country. A violent disturbance, paralysing the administration of a State, could pose a serious danger to the unity and integrity of the country. Coping with such a situation of violent upheaval and domestic chaos, may be beyond the capacity or resources of the State Intervention and aid by the Union will be necessary. A duty has, therefore, been imposed by the Constitution on the Union to protect every State against external aggression and internal disturbance. [[2]](#footnote-3)

In other words, the ‘*Emergency’* or ‘*crisis-government’* is not entirely an imperial notion – the concept of the same has existed since ages and the thus, the provisions to incorporate a solution in the Constitution or the law of the law itself as a mechanism that shall help govern the nation under any crisis has always been an agenda for the governments and thus, has a mention via legal provisions entrusting rights and duties on the government heads for the activation of the same.

**Historical Background:** The concept of emergency provisions has been adapted from the time when India was a colony under the British Raj. They were the ones who incorporated the idea of emergency provisions in the Government of India Act 1935 – their point of view being that they wanted to establish a minimal federal structure and wanted to take back even the minimal powers as and when needed.

But, the constitutional framers of the Constitution of India introduced the emergency provisions to provide solution to a solely different category of problem. The makers of the Indian Constitution wholeheartedly believed in establishing federalism as the pillar to the Indian constitution – but, they were not oblivious of the fact that, in future some exigencies may occur (be it natural or man-made) that may call for swift actions and would leave no time for solutions to be deliberated upon by State legislatures and then passed on to Executive for implementation. Realizing that the working of the established mechanism – they incorporated the emergency provisions as a recourse meant purely for emergencies itself.

Thus, historically, the proximate origin of these 'emergency' powers can be traced back to the Government of India Act, 1935. Section 93 of the Act provided that if the Governor of a Province was satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation assume to himself all or any of the powers vested in or exercisable by a Provincial body or authority, including the Ministry and the Legislature, and to discharge the functions thus assumed in his discretion. The only exception was that he could not encroach upon the powers of the High Court. Similar powers were conferred on the Governor- General under Section 45, which was a part of the Federal Scheme. However, this Part never came into operation. [[3]](#footnote-4) Later on, during the making of the Indian Constitution it was discussed and debated whether exactly like Section 98 of the Government of India Act 1935, Governor be given the sole power to exercise or discretion or the President of India – or shall it be entrusted upon both of them. Even though, the idea of entrusting the Governors with such wide powers was considered for a reasonable amount of time but eventually it was decided that only the President of India shall have the sole power to exercise discretion and discharge orders in lieu to maintain peace and security of the nation.

**EMERGENCY PROVISIONS IN INDIA – Brief:**

The nine articles of the Constitution of India from Article 352-360 form the provisions entitled as the ‘*emergency provisions’*. This paper solely focuses upon the practical aspect of the State Emergency that is briefly and entirely entailed under Article 355 and Article 356 of the Indian Constitution respectively.

The Indian Constitution gives President the authority to declare three types of emergencies: national emergency, state emergency, and financial emergency. Emergency provisions in india are borrowed from Weimar Constitution of Germany. The Constitution of India envisages emergency of three types under: Article 352 (National Emergency), Article 356 (Emergency in State/ President’s Rule) and Article 360 (Financial Emergency).[[4]](#footnote-5)

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| **TYPES OF EMERGENCIES IN INDIA** |

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| --- | --- | --- |
| **TYPE 1** | **TYPE 2** | **TYPE 3** |
| **Main Provision: Article 352**  **National Emergency**  Trigger: Security and Integrity of India at stake, threatened by external aggression/ armed rebellion or war.  Ancillary Articles:Articles 352, 353, 358 & 359  Has been invoked in past. | **Main Provision: Article 356**  **State Emergency**  (President’s Rule)  Trigger: Breakdown or violation of constitutional machinery in the State.  Has been invoked in past. | **Main Provision: Article 360**  **Financial Emergency**  Trigger: Financial or credit instability in India.  Never been invoked in India. |

**Differences between National Emergency and State Emergency:**

1. **Impact of these Emergencies on Fundamental Rights:**

During National Emergency, all fundamental rights in India shall remain suspended vide Article 358 and 359 except Article 20 (Protection in respect of conviction for offences) and Article 21(Right to life and liberty). Whereas, during State Emergency, no fundamental rights are suspended.

1. **Grounds:**

The National Emergency is imposed on the grounds of War, External Aggression or Armed Rebellion (which is stated vide Article 352). Whereas, the State Emergency is imposed on the grounds stated vide Articles 356 and 365 i.e. External Aggression, Internal Disturbance, breakdown of constitutional machinery or when States do not comply with the orders and mandate of the Centre Government.

1. **Approval System:**

The commonality lies in the fact that both National as well as State Emergencies are proclaimed by the President of India only. But, the National Emergency after one (1) month of proclamation needs to be approved/ passed via a resolution of the Parliament with Special Majority. Whereas, the State Emergency after two (2) months of proclamation needs to be approved/ passed via a resolution of the Parliament with Simple Majority.

1. **Time Duration:**

Both the emergencies are for the duration of six (6) months with need of approval of the Parliament for renewal every six (6) months. But, the National Emergency can be extended indefinitely. Whereas, the State Emergency can not be extended beyond three (3) years.

1. **Revocation System:**

The National Emergency can be revoked or suspended by either the President of India himself or by the resolution of the Lok Sabha. Whereas, the State Emergency can be revoked or suspended only by the President of India himself.

1. **Effect:**

During the imposition of the National Emergency, neither the State executive nor the State Legislative are suspended or dissolved but, the Parliament gets additional powers to intervene in the State matters as they can pass directions in lieu of the State Executive and have the power to make laws in lieu of the State Legislature. Whereas, during the imposition of the State Emergency, both the State Executive as well as the State Legislature stand suspended or dissolved – in such scenario, the functions of the State Executive are assumed by the President of India himself or he may further delegate the same power to the Governor of the said State (who may take decisions with the assistance of the Chief Secretary of the said State) and the functions of the State Legislature are performed by the Parliament. The commonality lies that in either case scenario related to these two types of emergencies, the judicial power is never transferred – the judiciary works as an independent organ.

**BARE TEXT OF ARTICLE 355 & 356:**

***“355. Duty of the Union to protect States against external aggression and internal disturbance:***

*It shall be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.”[[5]](#footnote-6)*

***“356. Provisions in case of failure of constitutional machinery in State:***

*(1) If the President, on receipt of report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with he provisions of this Constitution, the President may be Proclamation*

*(a) assume to himself all or any of the functions of the Government of the State and 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 Parliament;*

*(c) make such incidental and 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 provisions of this constitution relating to any body or authority in the State Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts*

*(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation*

*(3) Every Proclamation issued under this article 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 resolutions of both Houses of Parliament Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation Shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People*

*(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation: Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operating, but no such Proclamation shall in any case remain in force for more than three years: Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People*

*(5) Notwithstanding anything contained in clause (4 ), a resolution with respect to the continuance in force of a Proclamation approved under clause ( 3 ) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless*

*(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and*

*(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause ( 3 ) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned: Provided that in the case of the Proclamation issued under clause ( 1 ) on the 6th day of October, 1985 with respect to the State of Punjab, the reference in this clause to any period beyond the expiration of two years.”[[6]](#footnote-7)*

**Amendments:**

* Forty-Second (42nd) Constitution Amendment Act, 1976 extended the period of state emergency from 6 months to 1 year.
* Forty-fourth (44th) Constitution Amendment Act, 1978 reverted back the operation of state emergency to 6 months. Further it divided the maximum period of 3 years of operation into 1 year under ordinary circumstances and 2 years under extra ordinary circumstances, for which the stipulated conditions shall have to be satisfied.[[7]](#footnote-8)

**CONCEPTUAL ANALYSIS OF ARTICLE 356:**

There lies a sound reason behind the structure India chose to adapt for its administrative functioning – i.e. of its government. India chose the ‘*federalism’* pattern but some scholars believe that India has rather opted for a flexible pattern which allows it to be federal and turn into unitary as and when needed (*e.g. in times of emergency or crisis*). Thus, the label India associates its administrative or governmental structure with is – “*cooperative federalism*”.

It can be considered federal because of the distribution of powers between the Centre and States and it may be considered unitary because of the retention of Union control over certain State matters, and also because of the constitutional provisions relating to emergencies when all powers of a State would revert to the Centre. India has a vast and diverse population, with a large number of people living in abject poverty. [[8]](#footnote-9)

Dr. 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.' He said: '. . . what is important is that the use of the word “Union” is deliberate . . . Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.[[9]](#footnote-10) Hence, it is believed that this should be adopted in letter as well as in spirit to strike a healthy balance between the Centre-State relations in the Indian political system and thus, it reflects in the emergency provisions of India.

On the basis of a study of similar systems in ancient times, like the Achaean League or the Lycian Confederacy, it is revealed that the danger of usurpation of authority by the Federal power would be smaller than the danger of degeneration of the federation into smaller factions that would not be able to defend themselves against external aggression. [[10]](#footnote-11)

Article 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are essentially and reasonably necessary for the effective performance of that duty. However, it may be noted that the Constitution does not, under Article 355, permit suspension of fundamental rights or change in the scheme of distribution of mutually exclusive powers with respect to matters in List I and List II. Except to the extent of the use of the forces of the Union in a situation of violent upheaval or disturbance in a State, the other constitutional provisions governing Union-State relationships continue as before. Unless a National Emergency is proclaimed under Article 352 or powers of the State Government are suspended under Article 356, the Union Government cannot assume sole responsibility for quelling such an internal disturbance in a State to the exclusion of the State authorities charged with the maintenance of public order. [[11]](#footnote-12)

‘Internal Disturbance’ in a State are not equivalent to just violation of public peace or mere law and order in the State – it goes beyond this and goes upto the extent of endangering the security of the said State. In such circumstances, most commonly that respective State shall seek help of the Centre/Union on its own accord but, if for some reason it does not then vide Article 355, the duty is cast upon the Centre/Union government to effectively tackle the situation and thus, gives the right to the Union to takeover the State and remedy the collapse of the constitutional machinery in the said State by assuming powers only limited to the executive and legislative wings of the that State. Therefore, the powers vested on the High Court of that State remain untouched and untapped even post emergency imposition.

A failure of constitutional machinery may occur in a number of ways. Factors which contribute to such a situation are diverse and imponderable. It is, therefore, difficult to give an exhaustive catalogue of all situations which would fall within the sweep of the phase, “the government of the State cannot be carried on in accordance with the provisions of this Constitution”. Even so, some instances of what does and what does not constitute a constitutional failure within the contemplation of this Article, may be grouped and discussed under the following hands:

1. Political Crisis
2. Internal Subversion
3. Physical break-down
4. Non-compliance with constitutional directions of the Union Executive

It is compartmentalisation, as many situations of constitutional failure will have elements of more than one type. Nonetheless, it will help determine whether or not, in a given situation it will be proper to invoke this last-resort power under Article 356. [[12]](#footnote-13)

**Direct Effect of Article 356:** Article 356 provides for a Proclamation by the President if he is satisfied [[13]](#footnote-14)that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. This satisfaction of the President is a condition precedent to the exercise of this power. Such a Proclamation may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. By virtue of Article 357, Parliament may confer that legislative power on the President and authorise him to further delegate it to any other authority. By the Proclamation, the President may assume to himself all or any of the functions of the Government of the State and 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. In the result, the executive power of the State which is normally exercisable by the Governor with the aid and advice of his Council of Ministers, becomes exercisable by the Union Government, and the legislative power of the State by or under the authority of *Parliament.* The Proclamation may make consequential provisions including suspension of the operation of Constitutional provisions relating to any body or authority of the State. The administration of the State, for all practical purposes, is taken over by the Union Government. [[14]](#footnote-15)

**Concept of Article 356 as a Dead Letter of Law:**

The immortal words of BhimraoAmbedkar (mentioned in the “Concept of Article 356 as a Misused Provision” and “Conclusion” sections ahead in this paper) signify that Article 356 was one of those articles that were incorporated as a safety net to be sparingly used only in the rare occasions of emergency, hence “dead letter of law”. The sections pertinent to the case law and Sarakaria Commission Report elaborately delve of this tangent.

**Concept of Article 356 as a Misused Provision:**

Extraordinary situations are not novel to the Indian political scene. Therefore, extraordinary powers to deal with these situations become necessary. The power contained in Article 356 is both extraordinary and arbitrary, but it is an uncanny trait of extraordinary power that it tends to corrupt the wielder. A close scrutiny of the history of its application would reveal that Article 356 is no exception. [[15]](#footnote-16)

The Indian Constitution lays down provisions of imposing emergency if they qualify the set requirements i.e. the situation must fall under either ‘external aggression’, ‘internal disturbance’ and ‘situation where the government of the State breaches the mandate of the constitutional machinery’ – the makers of the Indian Constitution intelligently used the word ‘and’ while laying down the emergency provisions – suggesting that the word ‘and’ amidst the conditions can be used both conjunctively as well as disjunctively. Thus, the situation prevailing in the State may either qualify one or more (a combination) or all requirements to qualify for the lawful imposition of the emergency provisions.

When it was suggested in the Drafting Committee to confer similar powers of emergency as had been held by the Governor-General under the Government of India Act, 1935, upon the President, many members of that eminent committee vociferously opposed that idea. The Constituent Assembly debates disclose these sentiments. They also disclose that several members strongly opposed the incorporation of article 356 (draft article 278) precisely for the reason that it purported to reincarnate an imperial legacy. However, these objections were overridden by Dr. Ambedkar with the argument that no provision of any Constitution is immune from abuse as such and that mere possibility of abuse cannot be a ground for not incorporating it. He stated:[[16]](#footnote-17)

*“In fact I share the sentiments expressed by my Hon'ble friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain as dead letters. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces.”* [[17]](#footnote-18)

**Effect of President’s Rule (or State Emergency):**

* On Executive- State government is dismissed and the executive power of the state is exercised by the centre.
* On Legislature- State legislature does not function to legislate; state legislative assembly is either suspended or dissolved.
* On Financial relation- There is no impact on the distribution of financial resources between centre and the state.[[18]](#footnote-19)

**SIGNIFICANCE OF REPORT OF SARKARIA COMMISSION (1988):**

The main **Recommendations** of the Sarkaria Commission were mentioned from paras 6.8.01 to 6.8.12 of the Report. The following is an attempt to reduce the elaborate recommendations into brief pointers:

* First attempt should always be made to remedy the breakdown with the help of State administration at the State level only.
* It is mandatory for a warning to be released by the Central Government, asking the State Government to comply with the constitutional provisions. However, this step in the process would not be required if the crisis is of ultra-urgent character and delay in decision-making would lead to disastrous results.
* Any and all other alternatives should be exhausted before resorting to the President’s Rule.
* It is the responsibility as well as the duty of the Governor of the errant State to explore and look for all possibilities to sort the situation (be it political breakdown or constitutional machinery’s breakdown) at the State level itself. If all alternatives signify or lead to failure, then the Governor can report to the Centre and should recommend proclamation of State Emergency or President’s Rule without dissolving the said State’s Assembly.
* Every proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two (2) months’ period contemplated in clause (3) of article 356.[[19]](#footnote-20)
* The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.[[20]](#footnote-21)
* Safeguards corresponding, in principle, to clauses (7) and (8) of article 352 should be incorporated in article 356 to enable Parliament to review continuance in force of a proclamation.[[21]](#footnote-22)
* To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of article 74 of the Constitution, the material facts and grounds on which article 356(1) is invoked should be made an integral part of the proclamation issued under that article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.[[22]](#footnote-23)
* Normally, the President is moved to action under article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in article 356. [[23]](#footnote-24)
* The Governor's report, on the basis of which a proclamation under article 356(1) is issued, should be given wide publicity in all the media and in full.[[24]](#footnote-25)
* Normally, President's rule in a State should be proclaimed on the basis of the Governor's report under article 356(1). [[25]](#footnote-26)
* In clause (5) of article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or'. [[26]](#footnote-27)

**Working of Article 356 (post Sarkaria Commission Report):**

Union Government ascertains that the State is violating the Constitutional Machineries

Sends direction to the said State to comply with the constitutional provisions as a first warning under Article 256 and Article 257(1)

[Not possible in situations where actions are required immediately]



If, even after the direction the State does not comply with the constitutional provisions – the President vide Article 365 renders the State incapable of being run on its own administration



Thus, Article 356 is effectuated (subject to limitations as mentioned in the article itself)

**SIGNIFICANCE OF S.R. BOMMAI V. UNION OF INDIA (1994):[[27]](#footnote-28)**

***S.R. Bommai v. Union of India (1994)*** is a landmark judgment of the Supreme Court of India, where the Court discussed at length provisions of Article 356 of the Constitution of India and related issues. This case had a huge impact on Centre-State relations. The judgment attempted to curb blatant misuse of Article 356 of the Constitution of India which allowed President’s Rule to be imposed over State Governments.[[28]](#footnote-29)

**Facts:**S.R. Bommai was the Chief Minister of the Janata Dal government in Karnataka between August 13, 1988 and April 21, 1989. His government was dismissed on April 21, 1989 under Article 356 of the Constitution and President’s Rule was imposed, in what was then a mostly common mode to keep Opposition parties at bay. The dismissal was on grounds that the Bommai government had lost majority following large-scale defections engineered by several party leaders of the day. Then Governor P. Venkatasubbaiah refused to give Bommai an opportunity to test his majority in the Assembly despite the latter presenting him with a copy of the resolution passed by the Janata Dal Legislature Party.[[29]](#footnote-30)After Bommai’s Case from Karnataka in 1989, the cases of the use of Article 356 grew as well became dubious – thus, the Supreme Court decided to conjointly hear all the cases in 1993. Thus, it included cases coming from Karnataka, Meghalaya, Nagaland, and the president’s rule in three states (Himachal Pradesh, Madhya Pradesh and Rajasthan) after the Babri Masjid demolition.

**Contentions:**

* Question of Law relating to the validity of President’s Rule under Article 356 of C.O.I.
* To determine whether this power of the President was justiciable.
* To determine the extent of the discretionary power of the President vide Article 356 of C.O.I.

**Principles Laid/ Judgment:**

1. The majority enjoyed by the Council of Ministers shall be tested on the floor of the House.
2. Centre should give a warning to the state and a time period of one week to reply.
3. The court cannot question the advice tendered by the COMs to the President but it can question the material behind the satisfaction of the President. Hence, Judicial Review will involve three questions only;
4. is there any material behind the proclamation?
5. is the material relevant?
6. was there any abuse of power?
7. If there is improper use of Article 356 then the court will provide remedy.
8. Under Article 356(3) it is the limitation on the powers of the President. Hence, the president shall not take any irreversible action until the proclamation is approved by the Parliament i.e. he shall not dissolve the assembly.
9. Article 356 is justified only when there is a breakdown of constitutional machinery and not administrative machinery

Based on the report of the Sarkaria Commission on Centre–State Relations (1988), the Supreme Court in Bommai case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper.

**Imposition of President’s Rule in a state would be proper in the following situations:**

* Where after general elections to the assembly, no party secures a majority (Hung Assembly).
* Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
* Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
* Where a constitutional direction of the Central government is disregarded by the state government.
* Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
* Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

**The imposition of President’s Rule in a state would be improper under the following situations:**

* Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President’s Rule without probing the possibility of forming an alternative ministry.
* Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President’s Rule without allowing the ministry to prove its majority on the floor of the Assembly.
* Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
* Internal disturbances not amounting to internal subversion or physical breakdown.
* Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
* Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
* Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.[[30]](#footnote-31)

**CONCLUSION:**

The inclusion of Article 356 i.e. the State Emergency/ President’s Rule serves a purpose that the fathers of our constitution intentionally catered to – Article 356 is meant to be a dead letter of the law and not a regular practice or a tool to abuse power.

This provision seeks to find applicability in situation concerning or involving exercise of state executive power and state legislative power only. However the power vested in and exercisable by the High Court shall not be assumed by the president nor he can suspend in whole or in part any provision of the constitution in relation to the high court.[[31]](#footnote-32)The judicial control over administrative action is devised by the constitution as necessary for authoritative correction of the errors of administration. The appreciation of these provisions to justify its retention or to canvass its repeal or modification would involve a critical analysis of the power structuring that is required by article 356. Necessarily this would involve the look into when the provision can be invoked, where it can be invoked, the consequences of its application and the merits and demerits of the provision with a view to forming an opinion about it. [[32]](#footnote-33)

Upto the end of 1967, it had been invoked only twelve times. However, in the next eighteen years, it was resorted to on as many as sixty-two occasions. The very first occasion of its use (Punjab-1951) for resolving an internal crisis in the ruling party, contained the seeds for future misapplication. It rose to a crescendo in 1977 (again in 1980) when, in nine States, President's Rule was imposed at the same time. [[33]](#footnote-34) Till date (i.e. 2020) over one hundred and thirty (130) president’s rule via emergency provisions have been imposed.

Dr. B.R. Ambedkar, Chairman of the Drafting Committee, explained the purpose and nature of these provisions. Emphasising the need for caution and restraint in their application, he observed: —

“I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact, I share the sentiments......that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope 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 that he would resort to this article”. [[34]](#footnote-35)

In sum, the Constitution-framers conceived these provisions as more than a mere grant of over- riding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, Article 356 has been brought into action not less than 75 times. [[35]](#footnote-36)Chattisgarh and Telangana are the only states where the President’s Rule has not been imposed so far.

**Latest during COVID-19:**On April 20, 2020, six inter-ministerial teams were formed by the Ministry of Home Affairs, violations of lock down were reported in Madhya Pradesh, Rajasthan, West Bengal and Maharashtra. The teams formed are to submit a report to the central government after examining social distancing, lock down violations and attacks on medical professionals in the state. The teams are to issue directions to state authorities by making on-spot assessment of the situation. The Team has been formed under Disaster Management Act, 2005.[[36]](#footnote-37)

**REFERENCES**

* *The Constitution of India (1949).*
* *Report of the Sarkaria Commission (1988) (especially, Chapter VI – Emergency Provisions);* [*http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/*](http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/)*.*
* *“Emergency Provision in Indian Constitution”, Jagran Josh;* [*https://www.jagranjosh.com/general-knowledge/emergency-provisions-in-indian-constitution-1437625665-1*](https://www.jagranjosh.com/general-knowledge/emergency-provisions-in-indian-constitution-1437625665-1)*.*
* *Constituent Assembly Debates*

*Akhilesh Patel, “Constitutional Dynamics of Article 356 in India”, (SSRN, 10th Nov. 2011),* [*https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1957588*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957588)*.*

*GKToday, “G.O.I.: Six Inter-Ministerial Teams formed after violations of Lockdown in the States” (20thApril, 2020)*[*https://currentaffairs.gktoday.in/tags/article-356*](https://currentaffairs.gktoday.in/tags/article-356)

*State of Rajasthan v. Union of India, AIR 1977 SC 1361.*

*James Madison, “The Alleged Danger from the Powers of the Union to the State Governments Considered”, Independent Journal (Jan. 1978).*

*National Commission to Review the Working of Constitution, Report I, 8.1.2 (2002).*

*S.R. Bommai v. Union of India [(1994) 2 SCR 644: AIR 1994 SC 1918: (1994) 3 SCC 1].*

*The Hindu Net Desk, “What is the S.R. Bommai Case and why is it quoted often?”, The Hindu (18th May 2018)* [*https://www.thehindu.com/news/national/what-is-the-sr-bommai-case-and-why-is-it-quoted-often/article23929119.ece*](https://www.thehindu.com/news/national/what-is-the-sr-bommai-case-and-why-is-it-quoted-often/article23929119.ece) *.*

Jaimin. R. Dave, “A Key to Presidential proclamation under Article 356 of Constitution of India”, <http://www.legalserviceindia.com/article/l324-S.-R.-Bommai-v.-Union-of-India.html>

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1. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter 0 – Introduction <http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> accessed on 8th May 2020. [↑](#footnote-ref-2)
2. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.1.01<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> accessed on 8th May 2020. [↑](#footnote-ref-3)
3. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.2.01<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> accessed on 8th May 2020. [↑](#footnote-ref-4)
4. Jagran Josh, “Emergency Provisions in India Constitution”; <https://www.jagranjosh.com/general-knowledge/emergency-provisions-in-indian-constitution-1437625665-> accessed on 10th May 2020. [↑](#footnote-ref-5)
5. The Constitution of India (1949), Article 355, https://indiankanoon.org/doc/490234/; accessed on 7th May 2020. [↑](#footnote-ref-6)
6. The Constitution of India (1949), Article 356, https://indiankanoon.org/doc/8019/; accessed on 7th May 2020. [↑](#footnote-ref-7)
7. Jagran Josh, “Emergency Provisions in India Constitution”; < https://www.jagranjosh.com/general-knowledge/emergency-provisions-in-indian-constitution-1437625665-1 > accessed on 10th May 2020. [↑](#footnote-ref-8)
8. Akhilesh Patel, “Constitutional Dynamics of Article 356 in India”, (SSRN, 10th Nov. 2011), < https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1957588 > accessed on 10th May 2020. [↑](#footnote-ref-9)
9. National Commission to Review the Working of Constitution, Report I, 8.1.2 (2002). [↑](#footnote-ref-10)
10. James Madison, “The Alleged Danger from the Powers of the Union to the State Governments Considered”, Independent Journal (Jan. 1978). [↑](#footnote-ref-11)
11. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.3.10 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 8th May 2020. [↑](#footnote-ref-12)
12. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.4.01 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 10th May 2020. [↑](#footnote-ref-13)
13. Note: the word ‘satisfaction’ in Art. 356(1) does not mean the personal satisfaction of the Governor but it is the satisfaction of the cabinet. The satisfaction of the President can, however, be challenged on two grounds that (1) it has been exercised mala fide (2) based on wholly extraneous and irrelevant grounds, because in that case it would be no satisfaction of the President. **State of Rajasthan v. Union of India, AIR 1977 SC 136.** [↑](#footnote-ref-14)
14. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.3.19 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 9th May 2020. [↑](#footnote-ref-15)
15. Akhilesh Patel, “Constitutional Dynamics of Article 356 in India”, (SSRN, 10th Nov. 2011), < https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1957588 > accessed on 12th May 2020. [↑](#footnote-ref-16)
16. Akhilesh Patel, “Constitutional Dynamics of Article 356 in India”, (SSRN, 10th Nov. 2011), < https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1957588 > accessed on 12th May 2020. [↑](#footnote-ref-17)
17. Constituent Assembly Debates, Vol.IX, p.177. [↑](#footnote-ref-18)
18. Jagran Josh, “Emergency Provisions in India Constitution”; < https://www.jagranjosh.com/general-knowledge/emergency-provisions-in-indian-constitution-1437625665-1 > accessed on 10th May 2020. [↑](#footnote-ref-19)
19. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.05 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-20)
20. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.06 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-21)
21. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.07 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-22)
22. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.08 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-23)
23. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.09 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-24)
24. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.10 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-25)
25. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.11 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-26)
26. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.8.12 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 11th May 2020. [↑](#footnote-ref-27)
27. S.R. Bommai v. Union of India [(1994) 2 SCR 644: AIR 1994 SC 1918: (1994) 3 SCC 1]. [↑](#footnote-ref-28)
28. Prasad, R.J. Rajendra, “Bommai Verdict has checked misuse of Article 356” (July 1998). [↑](#footnote-ref-29)
29. The Hindu Net Desk, “What is the S.R. Bommai Case and why is it quoted often?”, The Hindu (18th May 2018) <https://www.thehindu.com/news/national/what-is-the-sr-bommai-case-and-why-is-it-quoted-often/article23929119.ece > accessed on 14th May 2020. [↑](#footnote-ref-30)
30. Jaimin. R. Dave, “A Key to Presidential proclamation under Article 356 of Constitution of India”, <http://www.legalserviceindia.com/article/l324-S.-R.-Bommai-v.-Union-of-India.html> accessed on 11th May 2020. [↑](#footnote-ref-31)
31. The Constitution of India (1949), Article 356(1)(c). [↑](#footnote-ref-32)
32. Akhilesh Patel, “Constitutional Dynamics of Article 356 in India”, (SSRN, 10th Nov. 2011), < https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1957588 > accessed on 12th May 2020.

    Constituent Assembly Debates, Vol.IX, p.177. [↑](#footnote-ref-33)
33. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.1.03<http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/> accessed on 10th May 2020. [↑](#footnote-ref-34)
34. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.2.13 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 13th May 2020. [↑](#footnote-ref-35)
35. Ministry of Home Affairs (G.O.I.), Inter-State Council Secretariat, “Report of the Sarkaria Commission” (January 1988), Chapter VI – Emergency Provisions, Para 6.2.14 < http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ > accessed on 13th May 2020. [↑](#footnote-ref-36)
36. GKToday, “G.O.I.: Six Inter-Ministerial Teams formed after violations of Lockdown in the States” (20th April, 2020) < https://currentaffairs.gktoday.in/tags/article-356 > accessed on 13th May 2020. [↑](#footnote-ref-37)