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ARTICLE 356 OF THE INDIAN CONSTITUTION: BOON OR A CURSE FOR THE FEDERAL SETUP?

The Constitution of India follows a federal setup. There are clearly elaborated roles, when it comes to the legislative powers of the Central and state governments, which have been stated in the seventh schedule of the Constitution. Article 356 is a device through which, in exceptional and emergency circumstances, the Central government can take over the legislative and executive roles of a state government for a limited time. In India, there exists a multi-party system and there are different parties in states and center. The abuse of Article 356 by the political party at the center is not a shocking event and instances of the same have been observed at various times in India. Because of the ambiguity and subjectivity of the language of the said Article, the misuse becomes possible. This work is a doctrinal research based on case analysis of the Supreme Court of India about the said misuse.

Keywords: *Article 356 of the Indian Constitution, Center states relations, Indian Constitution, President's rule, State emergency.*

1. INTRODUCTION

Article 356[1] states that "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 the provisions of this Constitution, the President may Proclaim emergency in a state". When the emergency is proclaimed under the said article, the elected government is dismissed for that time being, the legislature also goes in suspended animation, and all the governance roles are taken up by the Central government

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[1] Article 356, The Constitution of India, 1950, provisions in case of failure of constitutional machinery in the state.

through the President. In practice, the President of India is nominally the head of state, and the real power lies with the central government headed by the Prime Minister (Desta 1993, 16). The administration really is done as per his or her vision.

The words such as 'otherwise' and 'failure of constitutional machinery' have a very broad interpretation and therefore become the means of misapplication. The Article does not define the true meaning of the term failure of constitutional machinery as to what will be such a failure that the jurisdiction of the State can be encroached.[2] Hence, it leaves an area to be interpreted by the Government in the center. Such an unclear use of expression under Article 356, becomes the subject of chief misuse by many political parties and leaves a room for gratification of their own political interests which are cited as the reasons to impose emergency in a State though.

It cannot be ignored that there have been several cases of the unnecessary use of Article 356 since its incorporation. Also, there is the need to implement it with utmost care (Seervai 2008, 286). The research work with the adoption of the doctrinal methodology will embark on to find the real intentions of the makers of the Indian Constitution regarding the usages of Article 356 as discussed in the Constituent Assembly during framing the constitutional provisions and the recent political situations which arose due to misuses. It will also conduct the case analysis of the judgments given by the Supreme Court of India related to the misuse of the mentioned Article.

2. ARTICLE 356 AND IT'S NEED TO ACCOMMODATE THE FEDERAL IDEA

2.1. Purpose of incorporating Article 356

The main aim of the Article 356 was to preserve the status of the state by protecting it from any breakdown of law and order in case of some grave constitutional violation which leads to the ill functioning of the state's mechanism. Due to the liberal interpretation of the Article, which is left to the union government, this fundamental utility of the article is disturbed (Kumar 2012, 12). Some scholars believe that the Article 356 must be scrapped out of the Indian Constitution, but they

[2] This model is used in: Gautham 2019, 28.

fail to realize that deleting the said article will make the states more autonomous which will lead to disturbance in the federal setup suited for the Country. The probable remedy can be the amendment in the text of Article 356 and creation of a specific definition of phrases: 'otherwise' and 'failure of constitutional machinery', so that its scope is fixed.

The phenomenon that was supposed to be used in the oddest cases has become a mechanism to infringe upon the domain of state governments. It has become one of the shadowy sides of Indian politics (Heywood 2007, 167). President's rule must always be the last refuge and prior warnings must be issued. Although, there is a central tilt in the Indian style of federalism still the Central as well as the State governments are kept supreme in their respective area, and none can claim dominance over the other as held in *K. Lakshminarayanan v. Union of India*[3].

Ever since Article 356 has come into existence, it has been a matter of much discussion in India. The roots of this provision go back to the Government of India Act of 1935, Section 93. When the provision was discussed in the Constituent Assembly, many members were against its incorporation in the text of the Indian Constitution. They were of the opinion that, the said Article may result in the union government having undue dominance on the state and it will be able to encroach upon the law-making power of the state mainly due to the term 'otherwise' in the text of the Article. (The model used in Hussain 2012, 109). Shri Bhimrao Ambedkar, who headed the drafting committee of the Constitution of India, on the other hand, stated that "merely because this provision can be misused, it doesn't mean that it is not needed for the wellbeing of the citizens."[4] Although, it is true that it can be subjected to misuse, it is still important for it to be incorporated, and the idea is it must be used in the rarest of the rare cases.

2.2. Text of Article 356 and 365 of the Indian Constitution

"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 ac-*

[3] WP No. 28890 of 2017.

[4] Constitutional Assembly Debates 1949, Vol IX, p. 87, Lok Sabha Secretariat, Govt. of India.

cordance with the provisions of this Constitution, the President may by 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 anybody 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 anybody or authority in the State Provided that nothing in this clause shall authorize 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."

Text of Article 365: "Effect of failure to comply with, or to give effect to, directions given by the Union: Where any State has failed to comply with or to give effect to any directions given in the exercise of the executive power of the under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution."

Article 365 of the Constitution of India operates as a supplementary Article of 356, as it clarifies at least one condition of imposition of emergency in the state. It says that if there is a failure in complying with the directions given by the central government to the state, the President can make an opinion that the situation of the failure of constitutional machinery has arisen. One example can be: If a political party in the state of West Bengal, which is in opposition to the union government is elected in the state. The opinion of the leaders of that political party is such that the internal disturbances have not escalated enough to call for an emergency. The will of the center to enforce emergency can still be imposed upon that state (Dua 1979, 42).

2.3. Indian Federal setup and the requirement of the Article

After a year of the enforcement of the Constitution, for the first time, the Article was implemented, and it was a great example of misuse in 1951. Prime Minister Jawahar Lal Nehru led congress government in the union dismissed the government in the state of Punjab which was in majority and there was no real failure of the constitutional machinery (The model used in Daniyal 2016, 18). In the year 1954, in Andhra Pradesh, a communist government was formed and overthrown by the central government using Article 356. Therefore, it is quite evident that, since the inception, this article has been a tool in the hands of central government to overthrow the unfavorable governments in the states. Shrimati Indira Gandhi has also used the provisions of National emergency and state emergencies for political gains many times (Chandra 2017, 29). The Indian Federal set-up has been such that there exists a relationship of cooperation between the state and the union government, the reason is to maintain a good governance. In the case of '*Keshvananda Bharti v. State of Kerala*'[5] it was held by the Honorable Supreme Court of India that the Federal structure is part of the basic structure of the Indian Constitution, which is unamendable.

The makers of the Constitution intended for the federal setup where there is no supremacy of the union. Although, there exists a central tilt in the Indian style of federal setup due to which this setup has been termed to be quasi federal, but that is so to transfer the legislative and executive roles to the union in difficult times (Wheare 1945, 72). The union government should always have the best interests of the citizens in mind. In the Constituent Assembly – the chairman of the Drafting Committee – Shri Bhimrao Ambedkar commented that "It will be noticed that the committee has used the term union instead of federation."[6] This language has been picked up by the British North America Act of 1867.[7] It was thought that it is better to call India a federation, instead of a union. India on the other hand, in a true sense, is a federation.

[5] AIR 1973 SC 1461 para 16.

[6] Constitutional Assembly Debates 1949, Vol I, p. 121, Lok Sabha Secretariat, Govt. of India.

[7] British North America Act, 1867, ss 1867, c. 3 (U.K.)

3. ESSENTIAL ATTRIBUTES OF THE ARTICLE

A particular wing of the government or a political party cannot dominate over others in India. The separation of powers as well as distribution of powers exists. The central government has supremacy over just a few matters, which shows that the Indian federal structure has a central tilt, e.g. the residuary power of law making is vested with the Parliament at the center.[8]

The matters enumerated in the third list of the seventh schedule of the Indian Constitution has the provision that both the state as well as union government can make laws regarding the entries mentioned in that lists. In case of any repugnancy between the laws made by the union and the state, the laws made by the union shall prevail.[9] Apart from this, in the case of emergency, whether national[10], financial[11] or due to the failure of constitutional machinery[12], the union government takes over the state's machinery, but there is no justification to use these powers arbitrarily.

The purpose of incorporation of Article 356 and 365 was that the central government is able to guard the states because in a culturally diversified country such as India, as some tensions, where the intervention of the central government is required, are bound to rise. The goal is also not to overthrow the elected government, but to support it. As stated in *Keshvananda Bharti's Case* since India is a federation, sabotaging the federal government would be an infringement of the basic structure of the constitution.

There are two vital components of the said Article; the first one is that the President of India can impose emergency in a particular state by placing reliance over the report of the Governor of that state and secondly, he can do that also if in the opinion of Council of Ministers, it is important to do so for the protection of that state. The interpreted meaning of the term 'failure of constitutional machinery' is that the state government has become incapable of carrying out the assigned functions in accordance with the Indian Constitution. The scope of the Article has not been, until now, defined entirely and pre-

[8] Article 248, The Constitution of India, 1950.
[9] Article 254, The Constitution of India, 1950.
[10] Article 354, The Constitution of India, 1950.
[11] Article 360, The Constitution of India, 1950.
[12] Article 356, The Constitution of India, 1950.

cisely – which makes it very wide and susceptible to subjective interpretations, depending on the facts of a particular situation (The model used in Siwach 1985, 161).

4. DOCTRINE OF PLEASURE IN RELATION TO THE ARTICLE

It must be noted that the Governor is the executive head of a State in India. He is appointed by the President by warrant under his hand and seal.[13] The executive power in a state shall be exercised by the Governor and the officers subordinate to him.[14] The powers of the Governor are similar to the powers of the Indian President. The Governor is also a constitutional post just as the President. He/she has a variety of duties which can broadly be classified as executive, legislative, financial, and judicial.

Some of these powers are discretionary under Article 163(1), where the Governor has to exercise his own prudence, which is absent in the case of the President. The discretionary powers of the Governor in a state are broader, in comparison to the powers of the President at the center. Article 164 provides that, "there shall be a Council of Ministers in each state with the Chief Minister as the head, to aid and advise the Governor in exercise his functions and the Governor should act on such aid and advice". However, wherever the Governor is needed to exercise the discretion, it will fall under the exception to the rule under Article 164. Also, the question of whether a matter falls within the Governor's discretion or not falls outside the purview of the power of judicial review of the higher courts. Under Article 356 the Governor also has the power to exercise his discretion regarding recommendation through a report to the President about the failure of the constitutional machinery in the state.

In each state a Governor holds his office by the pleasure of the President, even though he has a fixed term of five years. The pleasure of the President means that the President can also remove or transfer the Governor before his/her five-year term ends. The Doctrine of Pleasure has its origin in the English Law and first got recognized in

[13] Article 155, The Constitution of India, 1950.

[14] Article 154, The Constitution of India, 1950.

the case of *Dunn v. Queen.*[15] It was held that the public servants under the crown do not have any tenure but serve on the pleasure of the crown. The doctrine was also extended to India in the case of *Union of India v. Tulsiram Patel*[16], stating that all public servants hold the office *durante bene placito,* i.e. at the good pleasure of the Crown. If a person is a public servant his appointment can be canceled without giving of any reason if deemed fit.

There was a clear difference indicated between the colonial doctrine and the doctrine that was incorporated into the text of the Constitution, under Article 310, after India became independent. The distinction was drawn in the case of *B. P. Singhal v. Union of India.*[17] The Court observed that the nineteenth century was feudal, therefore the crown had unconstrained powers. Now in the democratic era, everything is governed by the rule of law, so the doctrine of pleasure shall not be taken as an authorization to act on one's own whims.

The judicial power to review the decision of the President in case of removal of the Governor is also limited. It was also settled by the bench in the *B. P. Singhal's* case that "As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, mala fide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or mala fide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient."

So, the term of the Governor under the Indian Constitution depends on the pleasure of the President who works on the aid and advise of the Council of Ministers (as per the mandate under Article 74). The council of ministers belongs to the party in power. This suggests that, even the report of the Governor can be a means to establish the agendas of the party which is in power at the center, and it is quite easy to ensure that. Most of emergencies were imposed during the tenure of

[15] 1896 (1) QB 116.
[16] 1985 3 SCC 398.
[17] 2010 6 SCC 331.

Shrimati Indira Gandhi as the Prime Minister and ninety out of one hundred times, it was implemented over those states where the opposition government was in power.[18]

In the Twenty-first century, with numerous parties having distinct ideologies, the Governors are compelled to act more as an agent of the center. Particularly when the party in power at center and state are of opposite ideologies. They are forced to dance accordingly to the center's tune. They overlook their role as an impartial referee and misuse their powers to please their masters in the center. Due to all these ill happenings, in the case of *S. R. Bommai v. Union of India*, the Supreme Court has held that the courts have the authority to examine the report presented by the Governors.

5. JUDICIAL THOUGHT

In the case of *S.R. Bommai v. Union of India*, a very serious question was posed before the Supreme Court relating to the misuse of the provisions of Article 356 of the Constitution of India. The facts were that the Chief Minister of the state of Karnataka was dismissed, he was not given a chance to prove his majority in the house through the floor test. Later on, the President's rule was imposed. The Supreme Court stated the following: "generally the president's satisfaction is not questionable, but the governor's report can be examined to ascertain the grounds for the President's satisfaction." The court further held that "the President's satisfaction has to be based on objective material, that material may be available in the report sent to him by the Governor or otherwise or both from the report and other sources. Further, the objective material so available must indicate that the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus, the existence of the objective material showing that the government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition precedent before the President issues the proclamation. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question."[19] Also, "The power conferred by article 356 is a conditioned power; it is not an absolute power to be exercised in the discre-

[18] This model is used in: Venkath 2016, 5.

[19] 1994 3 SCC para 32.

tion of the President. The condition is the formation of satisfaction – subjective, no doubt, that a situation of the type contemplated by the clause has arisen. This satisfaction may be formed on the basis of the report of the Governor or on the basis of other information received by him, or both. The existence of relevant material is a pre-condition to the formation of satisfaction. The use of the word "may" indicates not only discretion but an obligation to consider the advisability and necessity of the action" which suggests the court's intention to declare that the power of the President under Article 356 is not an absolute power, it is subject to the provisions of the Indian Constitution. The position a President holds is a constitutional one, and he must adhere to the principles of the constitution and act accordingly.

It was further held that the Proclamation under clause (1) of Article356 is not immune to judicial review and the higher courts can strike down the Proclamation if it is found to be based on wholly irrelevant grounds or mala fide. The deletion of clause (5) [which was introduced by 38th (Amendment) Act, 1975] by the 44th (Amendment) Act, in 1978, clears the doubts on the reviewability of the decision of the President. When called upon, the Union of India has to produce the material on the basis of which the decision was taken. The court will not go into the adequacy or correctness of such material, but rather limit its enquiry to the relevance of the material to the decision. The court cannot interfere if there is some material which is relevant to the action taken, even though part of the material is irrelevant. If the court strikes down the proclamation, then it has the power to restore the dismissed government and revive the dissolved or suspended Legislative Assembly. In such a case, the court will have the power to declare the acts done, orders passed and laws made, during the period the Proclamation was in effect, to remain unaffected and be treated as completely valid. Such declaration, however, shall not preclude the Legislative Assembly of the state to repeal, review or modify such acts, orders or laws, as the case may be.

The same was reiterated in the case of *Rameshwar Prasad v. State of Bihar.*[20] In this case the court disqualified the proclamation by the President and held it to be unconstitutional after the due examination of the report of the Governor. It was also pointed out that there was no substantial objectivity in the report which would have led to the satisfaction of the President. So, when the decision of the President

[20] AIR 2006 SC 980 para 43.

lacks sensible grounds, it can be questioned in the court. The objectivity in the report means providing the access of those circumstances which resulted in obstructing the swift working of the constitutional machinery. It must also be shown that without the interference of the Union government the swift working of the constitutional machinery cannot be resorted (had appeared in *Ncrwc* 2001). It was further said that the proclamation of emergency by the President should be kept as the very last means and before that, the Governor must have resorted to all the other means to safeguard the smooth working of the constitutional machinery in that state.

It can be clearly understood that the extraordinary power which is granted to the President is only meant for the crisis of a serious kind and even after the judgement given in the *S. R. Bommai case* and the courts reviewing the reports presented by the Governors of respective states, the misuse of this provision still continues. This is due to its wide scope, which is provided to the Article. Until now, there has been no specific definition as to what situations will be included by the term 'failure of constitutional machinery' and 'otherwise'.

6. RECENT CASES OF IMPOSITION OF PRESIDENT'S RULE UNDER ARTICLE 356 IN INDIA

6.1. President's rule in the state of Arunachal Pradesh

In 2016, political turmoil in Arunachal Pradesh arose when fourteen members of the legislative assembly from the ruling party joined the Bhartiya Janata Party and two independent MLAs revolted against the Chief Minister Nabam Tuki. Those fourteen MLAs claimed to have the majority in the legislative assembly of the state and thereupon, the Governor, without giving any information to the Chief Minister, called for a session in the legislative Assembly and removed the speaker of the Assembly. The speaker, then, disqualified those rebel MLAs due to defection. Although, the High Court of Guwahati stayed the mentioned order of the Governor. This was the official opinion in the case of *Nabam Rebia v. Deputy Speaker Arunachal Pradesh Legislative Assembly*[21]. Meanwhile, Governor Rajkhowa gave a report to the president stating that a situation has arisen where it is impossible

[21] 2017 13 SCC 326 para 18.

for the state government to carry out the functionalities in accordance with the provisions of the Constitution of India. After receiving such a report, the president fired the government and also suspended the Assembly. After this, the Congress party filed a petition before the Supreme Court which challenged the imposing of the president's rule in the state of Arunachal Pradesh. The Supreme Court rejected Congress's plea to stop the swearing-in ceremony of the new Chief Minister and also upheld the High Court's staying of disqualification of those rebel Congress Members of Legislative Assembly. The President's rule lifted in the state on 19th February 2016 and the new government was formed under the Chief Minister 'Kalikho Pul', prior to the decision of the Supreme Court.

The first question that comes to mind is whether there is the real failure of constitutional machinery in the state and, if so, whether the Governor Rajkhowa has taken all other effective measures before sending the report to the President which resulted in an emergency. After reviewing the report of the Governor, the court observed that the primary reason for the failure of the constitutional machinery in the state was the cow slaughter. Although, in India, cows are religiously significant for Hindus, but the paradox is that the violation of animal rights is a very small issue generally. Citing cow slaughter as a reason for the breakdown of law and order to impose president's rule cannot be considered to be a valid reason. It must also be noted that slaughter of cows has not been outlawed in the state of Arunachal Pradesh and therefore emphasizing such an issue in the report is a strong example of the misuse of article 356 of the Constitution of India.

Another major reason which has been cited by the Governor is that due to the defection of certain members, the ruling party lost. This reason cannot be admitted because, even before sending the report, the Governor must definitely have requested the ruling party to prove its majority through the floor test. As stated in the S. R. Bommai's *case "the president's rule should be the last resort and it can only be imposed after resorting to all other effective remedies*." The defection of fourteen MLAs is an intra-party issue and is not a case of failure of the constitutional machinery in the state.

On 13th July 2016, the constitutional bench of the Supreme Court of India held that the governor's order is unconstitutional, as the reasons for concluding is the failure of constitutional machinery in the state were not sufficient. The court observed that "the activities within

a political party confirming turbulence or unrest within its ranks are beyond the concern of the Governor." Therefore, even if there is a presumption that the ruling party has lost its majority, a floor test is mandatory before resorting to the option imposing an emergency. A floor test is a mechanism under which an appointed Chief Minister can be asked by the Governor to prove the majority on the floor of the legislative Assembly. It is basically to know whether the government still enjoys the confidence in the assembly or not. The test is conducted by passing of Confidence motion by the Chief Minister where all the Members of legislative Assembly vote in for or against. The Chief Minister has to resign if he fails to pass the confidence motion.[22] After perusing all these things, the Supreme Court of India had struck down the ongoing President's rule and restored the Nabam Tuki lead Congress government in the state.

6.2. Crisis in the state of Uttarakhand

In 2016, nine members of legislative Assembly of the ruling Congress Party defected from the party and joined the Bhartiya Janata Party. As a result of which the majority of the Harish Rawat government was challenged and thereupon, Governor K.K. Paul asked him to prove his majority through the floor test. Meanwhile, the President at that time, Pranab Mukherjee, imposed the President's rule in the state on the receipt of the report of Governor regarding the failure of the constitutional machinery in the state and consequently, the government was terminated, and the Legislative Assembly suspended. This was the case of *Harish Chandra Rawat v. Union of India*.[23]

In this case the central issue was whether the order of the President to impose the emergency, without even awaiting the floor test, is constitutional or not. The floor test is said to be the cornucopia and a solution of all the political turmoil but the same was prevented to be conducted by the President. The ruling party challenged the President rule before the Uttarakhand High Court and the Court struck down the president's rule and ordered the floor test. The Honorable Chief Justice of the Uttarakhand High Court observed that "even though the President is a constitutional post, the imposition of the President rule is not an absolute power". It also seemed to him that the Centre is act-

[22] Article 175(2), The Constitution of India, 1950.

[23] 2016 AIR CC 2455 para 58.

ing like a "private party" i.e., acting for its own political interest. Time and again it has been reiterated that the president's rule should be the final resort and its imposition without the floor test done should not be allowed without any other reasonable ground.

6.3. President's rule in the state of Delhi after resignation of the Chief Minister

Chief Minister of Delhi Arvind Kejriwal resigned along with all of his members of the Council of Ministers because they were not able to pass the Lokpal Bill intended for battling corruption. No other party was in a position to form the government, so the Lt. Governor prepared a report for the President to take over and bring stability. The government that resigned was kept in suspended animation, meaning that the party still had the chance to undergo the floor test, prove majority and form the government. This was the situation where the imposition of President's rule was quite justified, as it was imposed on reasonable grounds.

This case is an example of all the steps being adopted. Before the President's rule was imposed the parties were called to form government, and it couldn't happen. Due to this situation the failure of constitutional machinery became quite clear. Here, the Lt. Governor took the necessary steps for avoiding unnecessary imposition of the President's rule (had appeared in *The Hindu* 2014).

6.4. President's rule in the state of Jammu and Kashmir

The Governor of Jammu and Kashmir issued a proclamation on 20th June 2018 under Section 92 of the Constitution of Jammu and Kashmir. The proclamation was issued with the concurrence of the President of India which granted the power related to the functions of the Government and the Legislature of the State to the Governor of the state. This occurred after the split between coalition government of Peoples Democratic Party and Bhartiya Janata Party and as no other political party had the majority to form an alternative government in the state, there was failure of the constitutional machinery in the state and resultantly, the President's rule was imposed in the state on 3rd January 2019 (The model used in Dhawan 2018, 9).

Until that moment everything seemed normal, but the problem had arisen when the president's rule was extended for a further period of six months, even though the political parties claimed their majority

in the legislative Assembly of the state. On the one hand, the Peoples Democratic Party along with the National Conference and Indian National Congress claimed their majority, and on the other hand, Sajjad Lone of the People's conference along with Bhartiya Janata Party and others also claimed to have majority. Ideally, the Governor Satya Pal Malik should have called either Mehbooba Mufti or Sajjad Lone to prove their majority through the floor test in accordance with the *S. R. Bommai case* and the one who can show their majority should have been allowed to form the state government. However, the Governor dismissed the claim of Mehbooba Mufti to form the government citing two reasons: she won't be able to form a responsive Government and horse trading would hamper Indian democracy. Both of these reasons were unjustifiable. The main reason to keep the assembly in suspended animation is to form a new government so that it can carry out its functions and when such an option is available, the Governor arbitrarily rejected it which is not in consonance with the Constitution. In this case, even though, initially, the imposition of the emergency seems valid, the extension of the president's rule before allowing the floor test is unacceptable and unlawful.

6.5. Political Crisis in the state of Maharashtra

There was a struggle for the post of Chief Minister among the Bhartiya Janata Party, Shiv Sena and Nationalist Congress Party along with Congress. No political party could prove majority and the President's rule was imposed. The Governor did not resort to all the steps which he must have before asking to impose emergency. In the case of *H. S. Jain v. Union of India*[24] it was held that the Governor before calling for emergency must resort to all steps including calling all the political parties to the house and to ask them to solve the political crises on their own reasonably as (had appeared in *The Hindu* 2019).

7. CONCLUSION

Countries like India where a multi-party system exists, are bound to have different governments in the center as well as in the states. The reason of misuse is always the motive of the government in center who wish to gain control over the states ruled by the opposition

[24] 1997 1 UPLBEC 594.

government, in most of the cases. Although, it cannot be denied that the mechanism has proved to be helpful and has served in crisises as well. The major reason of misuse is seen to be the subjective nature of the Article 356. The terms 'otherwise' and 'failure of constitutional machinery' are extremely broad that it tends to include a variety of reasons into it as held in the case of "*Reddi Govinda Rao v. State of Andhra Pradesh*."[25]

The Article fails to define the said phrases, which leaves the space for the political parties to impose emergency, even on very petty grounds. An understanding needs to be developed about the Article and the scope of its usage must be well determined because misuse of it has a direct implication over the federal structure of India. Also, the provision cannot be completely repealed as the situation will turn worse, the states will start to exercise indiscriminate autonomy and development of secessionist ideologies can take place. So, the need of the hour is to fix the scope of the Article and a clear determination of what will constitute to be 'the failure of constitutional machinery' and that of the term 'otherwise' must be made. This is the task of the legislature to define the said terms and to fix justifiable grounds for the same.

By the *Sarkaria Commission Report* of 1990 and in the case of '*S.R. Bommai v. Union of India*'[26] it was recommended that the said Article must be amended in order to protect the Constitution of India, but no ruling party seems to be interested in implementation of these recommendations. The argument is that, even if the Article is amended, it will still depend on the efficacy of the implementation by the governments. Therefore, if the President's rule is being opted, it must be kept in mind that it is used in the rarest of the rare cases and is implemented '*stricto sensu*', keeping the spirit of federalism intact.

For a multicultural and multilingual society, it is assumed that an asymmetrical federal setup is the most ideal one. The premise is that the people locally best realize what is suitable for them in the fields of resources, power, administration, policing, criminal justice etc, and how to manage it. Both the states and the union government have supremacy over their respective domain and the subjects which are enumerated in the state as well as union lists under the seventh schedule[27]

[25] 2020 SCC AP 961.

[26] 1994 SCC (3) Para 28.

[27] The Seventh Schedule to the Constitution of India defines and specifies allocation of powers and functions between Union & States in order to make law. It contains three lists; i.e. 1) Union List, 2) State List and 3) Concurrent List.

of the Indian Constitution. It is against the federal system, if the union government encroaches upon the state government's domain, without any just and reasonable cause. On the other hand, the Indian federal system, unlike the USA, has a tendency towards the union government, since India has remained united as "*Akhand Bharat*"[28], ever since the ancient times. Therefore, the Indian federal structure was bound to have the element of a central tilt, which is very evident in the Constitution of India. But this cannot be the justification of an unacceptable political agenda which is exploited with Article 356.

Hence, to protect the federal structure of the country, it is needed for the Article 356 to be duly amended in line with the recommendations posed by the *S.R. Bommai's cas*e as well as by the *Sarkaria Commission Report of 1990*. The few recommendations by the Commission regarded the appointment and removal of the Governor as well. The Commission stated that "The Vice President of India and the Speaker of the Lok Sabha should be consulted by the prime minister in the selection of Governor. Such consultation, the commission felt, will greatly enhance the credibility of the selection process. Also, his tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed." This is due to the dependence on the pleasure of President which makes him a puppet in the hands of central government.

The commission also suggested that the Governor must be appointed with the consultation of the Chief Minister of that state and there must be a harmonious relationship between them so that work is conducted smoothly. This is so that the possible threat to the stability of the government can be avoided. Also, Governors should not be removed before their five-year tenure, except in rare and compelling circumstances. The commission had the opinion that the procedure of removal must allow the Governors to have an opportunity to explain their conduct, and the central government must give fair consideration to such explanations. It was further also recommended that Governors should be informed about the grounds of their removal. The warnings must also be given to the state government that there are indications that the state government is not working as per the constitutional mandate, and a timeframe must be set for them to correct the default.

[28] Refers to the idea of one undivided India.

Even after the amendment, it is needed that the implementation of the Article is properly carried out. If it is not properly implemented, there can be chances of abuse of the provision. Also, the spirit of cooperative federation should be maintained.

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