ARTICLE 356: EMERGENCY OR TYRANNY?

Written by ***Utkarsh Jain* & Bhavya Sharma****

**2nd Year B.A LL.B Student, Institute of Law, Nirma University, Ahmedabad*

*** 2nd Year B.A LL.B Student, Institute of Law, Nirma University, Ahmedabad*

INTRODUCTION

Article 356 'The Proclamation of Emergency' empower the president of India to impose state emergency if the state is not functioning in the way it should be as was incorporated in the Constitution of India keeping in mind the fact that there may be situation arriving where the state government may not function in the manner it is designed ascertained and reported by the governor of the concerned state or if the President concludes that 'Constitutional machinery of the state has failed'. The president then can dismiss the State Legislature and Executive. Any provision which abrogates the basic principle on which the entire constitution depends that is the democratic freedom would create a doubt in the mind of people as to the government which is chosen by them is duly suspended. Having fought for the independence so long people of the country would have greatest interest in preserving all the freedom envisioned in a democratic society. Power contained in Article 356 are arbitrary and extraordinary, also a close scrutiny of the history of its application reveals that the article has no exception. At the time of incorporation clear guidelines were laid for the usage of the Article in the direst consequences but now a day's Article 356 is seen as a weapon by the central government to show its domination upon a state government that does not comply with the views of the central government. It has been seen since mid-1990's the proclamation of article 356 is been restricted as compared to the period prior to it. There may be a number of causes to explain the decrease in number. Although the number shows a positive effect of the guidelines given in *S R Bommai v. Union of India* but the misuse of the same is far from over. In the recent times there have been cases of Article 356 which were arbitrary and unconstitutional. Article 356 was designed to preserve the integrity, but is it being used at the cost of interest of democratic freedom.

HISTORY OF EVOLUTION

The thought which was emergent in the Constituent Assembly Debates was such that such emergency provisions are necessary for the protection of states when they are unable to maintain their constitutional machinery and will be used in the rarest of rare circumstances and in this manner we have made an attempt to trace its origin along with present provisions.

GOVERNMENT OF INDIA ACT, 1935

The concept was introduced by the name of 'Division of Powers' at the British India time. It was performed as an experiment in which the British government entrusted the provinces with limited powers over their provinces, but at that point of time the people of India were having a faded faith over the British man therefore the British took care and precaution to keep sufficient check on the powers given to the provinces. These powers were manifested under Section 45 and 93 of the Government of India act, where the Governor General and the Governor under certain circumstances can exercise nearly absolute power and control over the provinces.

DRAFTING COMMITTEE OF CONSTITUENT ASSEMBLY

A drafting committee was set up by the constituent assembly on August 29, 1947 under the chairmanship of Dr. B. R. Ambedkar, it was to prepare Constitution of India. when it was suggested that the similar power to be confer of emergency as held by the Governor General on Government of India Act, 1935, upon the president, there was an oppose to the idea then Dr. Ambedkar pacified them by Stating :

'In fact I share the sentiment expressed by my Hon'ble friend Mr. Gupta yesterday that the proper thing we ought to expect is that such articles will never be called into operation and they would remain a dead letter. If at all they are brought into operation, I hope the president who is endowed with those powers, will take proper precautions before actually suspending the administration of the provinces.

***He added : ' I hope the first thing he will do would be to issue a clear 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.'*[1]**

As it was clearly stated by Dr. Ambedkar that the application of the article was the last resort to be applied and used in rarest of the rare events, as a good constitution is one which would provide solution to all possible exigencies. Therefore this article is a valve in case of disruption of political machinery in the state.

Article 355[2] states: '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 provision of this constitution.' The word 'otherwise' in Article 356(1)[3] was not included while drafting, but has been incorporated through an amendment despite a vast protest of the original Drafting committee, stating it to be open invitation for the abuse the Article. This was justified by Dr, Ambedkar stating that Article 355 imposes a duty upon the Centre to ensure that the states are governed in accordance with the constitutional provisions and therefore it would not be good for the president to base his decision solely on the reports of Governor of the concerned state.

ARTICLE 356 OF CONSTITUTION OF INDIA AND SECTION 45 AND 93 OF GOVERNMENT OF INDIA ACT, 1935

There are certain distinction in the provision of the failure of constitutional machinery under the current Constitution and powers dealt under Section 45 and 93 of Government of India Act, 1935. The Act empowered the Governor-General to deal with failure of the constitutional machinery at the centre (Section 45). It also empowered the Governor General to deal in with the similar situation in a province. The current Constitution does not intend to suspend the Constitution of the concerned state, in spite has empowered the President to take measures in the regard, although he have to act on the report provided by the Governor of the concerned state. Secondly, under Section 93 of Government of India Act, 1935, the powers of Executive and Legislative could be assumed by the Governor whereas in current Constitutional Provision it has been separated that is the President assuming the Executive powers and the Union Parliament assuming Legislative powers[4].

[1] National commission to review the working of the constitution, *Sarkaria Commission Report*, pp 930.
[2] INDIA CONST. Art. 355.
[3] INDIA CONST. art. 356, cl. 1.
[4] S. R. Bommai v. Union of India, (1994) 2 SCR 644 : AIR 1994 SC 1918.

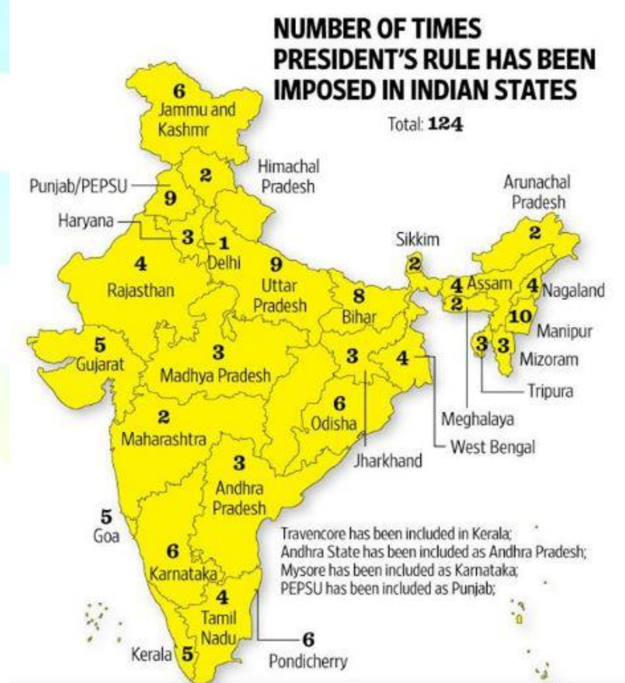
SARKARIA COMMISSION REPORT, 1987

In spite of such high benchmarks setup by the guidelines lay down in Art. 356 the article has been invoked more than 100 times after the independence which clearly signifies loophole in either the system or on the application of the article. It was only in the Sarkaria Commission submitted its report that the obscurity surrounding Article was cleared. The commission was headed by Justice R.S. Sarkaria. The commission took nearly 4 years to come up with the views for improving the centre-state relationship.

The commission recommended extremely rare use of Article 356. According to the commission Article 356 provides remedies for a situation where there is an actual breakdown of the constitutional machinery. Any misuse or abuse of the power would damage the democratic theme of the constitution. The commission after reviewing suggestions placed before by several institutions decided that Article 356 should be used as the last measure, when all available alternatives had failed to rectify or prevent the breakdown of constitution machinery in a state, all attempts should be made to resolve the crisis at the state level itself.[5]

According to the report submitted, these consequences must be used only in the cases of extreme situations, where failure of Union to take immediate action under Article 356 would lead to disastrous consequences. The report also recommended that a warning to be issued to the state, in specific terms that it is not carrying on the government of the state in accordance with the Constitution. Before taking action, explanation received from the concerned state should be taken into account. However this is not possible to apply in the situation in which not taking immediate action would lead to disastrous consequences.

President's rule in India



[5] Trisha Saxena, *Misuse of judicial provisions in India*, Legalindia.com, pg 4.

The map[6] shows the total number of time Article 356 had been invoked in India.

In a situation of political background, the Governor is obliged to explore every other possibility of government enjoying majority in the Assembly and if not possible at that moment of time and if fresh election can be held without delay then the outgoing ministry is requested to continue as a caretaker government, provided that it do not have allegation of maladministration or corruptive practices. The Governor than dissolves the legislative assembly, leaving the resolution of crisis to the electorate.

Every proclamation of emergency is to be presented and laid before each house of parliament at the earliest, in any case before the expiry of the two month period stated in Article 356(3).[7] It was recommended that the State Legislative Assembly should not be dissolved before a proclamation is issued under Article 356 has been laid before the parliament and latter has the opportunity to review it. The report also recommends using safeguard that would enable the parliament to review continuance in force of proclamation.

WHO IMPOSED PRESIDENT'S RULE

Prime Minister	Term as prime minister	President's Rule Imposed
Jawaharlal Nehru	August 1947 - May 1964	8
Lal Bahadur Shastri	June 1964 - January 1966	1
Indira Gandhi	January 1966 - March 1977	35
Morarji Desai	March 1977 - June 1979	16
Charan Singh	July 1979 - January 1980	4
Indira Gandhi	January 1980 - October 1984	15
Rajiv Gandhi	October 1984 - December 1989	6
VP Singh	December 1989 - November 1990	2
Chandrashekhar	November 1990 - June 1991	5
PV Narasimha Rao	June 1991 - May 1996	11
HD Deve Gowda	June 1996 - April 1997	1
Atal Behari Vajpayee	March 1999 - May 2004	5
Manmohan Singh	May 2004 - May 2014	12
Narendra Modi	May 2014 - present	3

The report should recommend appropriate facts and grounds over which the Article 356 can be imposed. Also this would make the remedy of judicial review on the grounds of malafide intention more meaningful and the check of parliament over the exercise of power of the Union Executive more effective. The governor report should be a 'speaking a document, containing clear and precise statement of all the material facts and the ground so that the president may satisfy himself as to existence or otherwise of the situation contemplated in Article 356.'

[6] http://www.livemint.com/Politics/SJ3mETZ7H1cjKNlodkcM8O/How-Presidents-Rule-in-India-has-been-imposed-over-the-year.html.
[7] INDIA CONST. art. 356, cl. 3.

PUNCHI COMMITTEE REPORT

The Government of India constituted a Commission on Centre-State Relations under the chairmanship of Justice Madan Mohan Punchhi, former Chief Justice of India on 27th April 2007 to look into the new issues of Centre-State relations keeping in view the changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.[8] The Commission examined and reviewed the working of the existing arrangements between the Union and States, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres including legislative relations, role of governors, emergency provisions, sharing of resources including inter-state river water etc. The Commission made 273 recommendations in its seven volume report presented to Government on 30 March 2010.

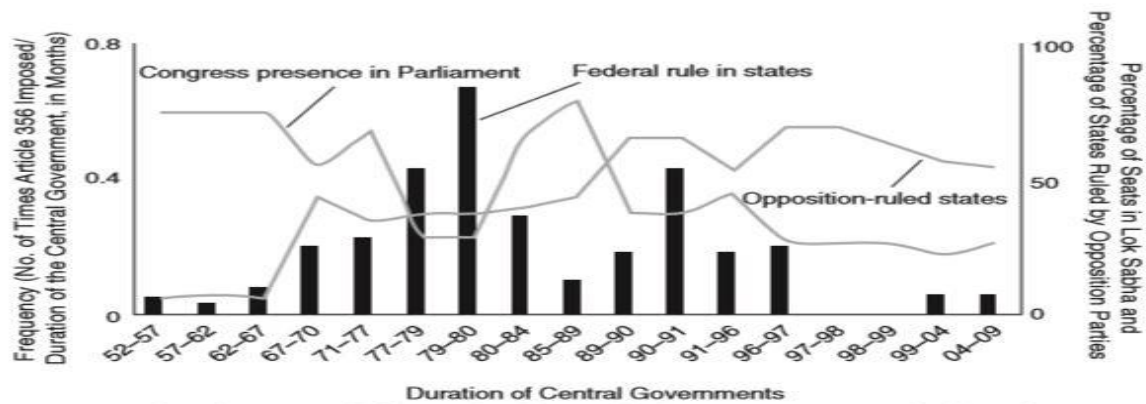
Main guidelines in relation with Article 356

To prevent the misuse done by the governments in the name of state emergency and to keep intact the sanctity of the post of Governor so that h does not merely remain a puppet, the committee has laid down certain guidelines –

- The commission has proposed "localizing emergency provisions" under Article 356 by suggesting that localized area can be defined as district or a certain part of district should be brought under the ambit of Governor's rule rather than the whole state.
  They recommended that even such provision should not be of duration of more than three months.
- Regarding qualifications for a governor, this commission suggest that the nominee must not have participated in active politics for minimum couple of years. It agrees with the Sarkaria commission that governor should not be posted to the place from where he belongs.
- This commission also criticizes arbitrary dismissal by saying"the practice of treating governors as political football must stop".
- There should be some major changes in the role of the governor - including fixed five-year tenure as well as their removal only through impeachment by the state Assembly. It even

[8] http://interstatecouncil.nic.in/iscs/punchhi-commission.

FIGURE 1. Imposition of Article 356 in the States



SOURCE: By the author, compiled from Lok Sabha records, Election Commission of India, and newspaper reports.

NOTES: The left vertical axis represents the frequency with which Article 356 was imposed, calculated by dividing the number of times a central government imposed its rule in states by the number of months the central government was in power. The right vertical axis represents in percentage the number of seats in the Lok Sabha (i.e., "Congress presence in Parliament") and the percentage of states ruled by opposition parties (i.e., "Opposition-ruled States"). The horizontal lists the terms of various central governments.

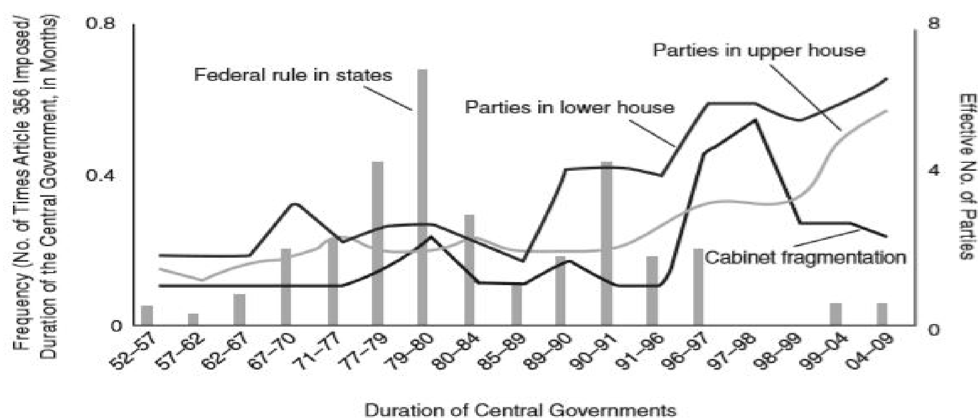
suggests that impeachment process should work on the same line as impeachment of President.

- It has also recommended that the state chief minister have a say in the appointment of governor**.** This is said as against the arbitrary doctrine of pleasure of President by parliament.

FALL IN THE USURPATION OF POWER BY THE CENTRE

The imposing of Article 356 had decreased since mid-1990s.An undeniably higher number of states being ruled by parties other than that in power in central government. This occurred because of two factors: Emboldening of regional parties, and the intervention by the Supreme

FIGURE 2. Regional Parties and the Fragmentation of the Federal Government



Court. Rise of regional parties, the mid-1990s saw essential change in the nature of Union governments. Prior to this period, when coalition governments took control in Delhi, just a couple of national parties came to rule the legislature. The mid-1990s was set apart by the

ascent of regional parties that loaned an increasingly opportunistic and volatile character to Indian polity. This implied the national parties were dependably vigilant for new territorial partners, and thus were careful about the use of Article 356 against their government. Other than having had coordinate political effect, the ascent of territorial parties likewise restored other institutional shields - the courts and the President - against discretionary use of Article 356. The table above shows [9]

There is an increase in regional parties in the parliament since mid – 1990, which have increase the weight of their opinion and voices. Also they have been the part of central cabinets since then. Every central cabinet in power since then have had ministers from 5 to 10 parties excluding 16th Lok Sabha election. The regional parties had made several coalitions Government which have played a significant role in restraining the central usurpation of state governance in India. firstly they reoriented the central government politically, spurring its fragmentation in ways and secondly regional parties have tended to form opportunistic alliances and have forced the national parties to be cautious in imposing direct rule to the state.

The Dominant party thesis also has a significant role in the use of Article 356. The theory specify the present of dominant national party like Congress party which formed the central government uninterrupted until 1977. The party was able to abuse the power under article 356 and used the same to dismiss the opposition ruled state government or to dissolve state assemblies when opposition parties were poised to form the state government. It can be seen from the table above. Out of the 115 times Article 356 had been invoked, Congress or alliances having Congress was in power at the center 84 times which counts more than 73% of the times when Article 356 had been invoked in the country. The Janata alliance was in power when Article 356 was imposed 16 times. Interestingly, the Janata alliance was in power only for 2 years between 1977 and 1979, but recommended president's rule 16 times. BJP or a BJP led alliance recommended President's rule 7 times followed the National Front Alliance that recommended President's rule 6 times. The United Front alliance (1996 to 1998) recommended President's rule only twice during its two year tenure.

JUDICIAL REVIEW

[9] Paul R. Brass, *The Politics of India since Independence*, New York: Cambridge University Press, 1990.

S.R. BOMMAI v.UNION OF INDIA

S.R. Bommai v.Union of India is considered to be the landmark in the history of Indian Constitution. This case clearly marked out the limitation and paradigm within which Article 356 was to function. Soli Sorabjee, eminenet jurist and former Solicitor-General of India says 'After the SC judgement in the *S.R. Bommai v.Union of India*[10], it is well settled that Art.356 is an extreme power and is to be used as a last resort in cases where there is a failure of constitutional machinery or has collapsed.

The summary of the conclusion in *S.R. Bommai v.Union of India* of the illustrious judges deciding the case, given in Paragraph 434 is:

1. Article 356 confers power upon the president and to use them only when he is satisfied that the situation has arisen where Government cannot be carried in accordance with the provision in the constitution. The power is vested with Union council of ministers with the President as its head.

2. The power conferred to the president is a conditional power and is not absolute in nature. There must be satisfaction on the part of President on the report of the governor and must be formed on relevant material.

3. The President shall exercise only after the proclamation is approved by both the house of parliament. Until such approval President can only suspend the Legislative Assembly by suspending under the provision under sub-clause (1). The Assembly is not a matter of course, it should be dissolved only where it is found necessary for achieving the purpose of proclamation.

4. Proclamation can be issued only when the situation contemplated by the clause arises {clause (1)}. There is no chance for holding that some powers are to be exercise by the president and some powers and authority by the State Government. There cannot be two Government at one Sphere.

5. Clause (3) of Article 356 is conceived to be a check on the power of President and also as a safeguard against the abuse. If in case both the houses of Parliament disapproves or do not approve the proclamation, the proclamation lapse at the end of 2 months. In such situation the government suspended is revived. The acts done, order made and law passed during the period

[10] (1994) 2 SCR 644.

do not become illegal or void. However they are subjected to review, repeal and modification by the authority in-charge. If the proclamation is approved by the houses of Parliament then the suspended Government/Legislative assembly does not revive

6. The proclamation is not immune from the judicial review. The Supreme court or the High court can struck down the proclamation if it is found to be mala-fide or irrelevant in that situation. When called upon the Union of India has to produce the material on the basic of which action was taken. The court will limit itself to check whether the fact is relevant or not and wouldn't go into for checking the correctness of the facts.

7. If the court has power to strike down the proclamation, it has the power to revive the Government and the Legislative assembly dismissed. The court has power to declare that the acts done, orders passed and laws passed during the period of proclamation would remain unaffected and shall be treated as valid.

In the case, the apex court cited the strengthening of regional parties to posit that it was no longer the prerogative of Union government to determine the quality of governance in states, and dismissal of a state government run by a different party was bound to raise eyebrows. Guidelines laid down by the Supreme Court.

In the said case, the SC laid down certain guidelines so as to prevent the misuse of A356 of the constitution:

• The majority enjoyed by the Council of Ministers shall be tested on the floor of the House.
• Centre should give a warning to the state and a time period of one week to reply.

The court cannot question the advice tendered by the Council of Ministers to the President but it can question the material behind the satisfaction of the President. Hence, Judicial Review will involve three questions only:

a) Is there any material behind the proclamation?
b) Is the material relevant?
c) Was there any mala-fide use of power?

If the courts find that there is improper use of Article 356 then the court will provide remedy.

In the year 1995 President Rule was imposed on the ***State of Uttar Pradesh*** on Oct. 17, 1995 on the ground that no party or group was in a position to form a stable government. The centre acted on the report of the Governor that there was no possibility of a stable government. The Allahabad high court in the *landmark judgment* [11] of three Judges Bench, held that the

[11] H.S. Jain and Others v. Union of India and Others, (1997) 1 UPLBEC 594.

presidential proclamation imposing President Rule under art. 356 in the state of UP and subsequently its approval by the Parliament is unconstitutional and was wholly based on irrelevant and extraneous ground and therefore is liable to be quashed.

After 2 years again on 19th Feb, 1998 President Rule was imposed on the ***State of Uttar Pradesh***. The action of the Governor was challenged in the Allahabad High Court by one of the BJP Minister as the Kalyan Singh government was in power. The Court held that the recommendation of Governor for imposition of the President Rule was to be set aside and Status quo to be maintained. The High Court held that the Governor's acted with *mala fide* intentions.

Similarly, ***President Rule in Bihar*** in 2005 was revoked. In the judgment of *Rameshwar Prasad v. Union of India*[12] a five judge bench of the Supreme Court comprising of Chief Justice held that the Proclamation of the President in dissolving State Assembly was unconstitutional and based on extraneous and irrelevant grounds. The Court said that the Governor misled the Centre in recommending the dissolution of the state assembly and the council of ministers should have verified before accepting it as gospel truth.

Recently in the ***State of Uttarakhand*** on 27th March, 2016 the President of India under Article 356 of the Constitution of India proclaimed state emergency on reports of Uttarakhand assembly Speaker Govind Kunjwal disqualifying nine rebel Congress MLAs emerged on Saturday night, President Pranab Mukherjee dismissed the Congress government headed by Harish Rawat and placed the assembly under suspended animation on the recommendation of the Union Cabinet.[13]

The imposition of President's rule in the state has brought the focus back on Article 356 of the Constitution – used and misused for decades by successive governments irrespective of their political ideology. The matter was brought before the Supreme Court[14]. The apex court upheld the decision of the High court of Uttarakhand, while laying down the official result of the floor test and was incidentally forced to step in on the functioning of the legislature. It was held that the floor test to be conducted and the result to be followed, for that time being the Proclamation would be imposed and post that it would be revoked.

---

[12] (2006) 2 SCC 1.

[13] http://www.hindustantimes.com/india/all-you-need-to-know-about-president-s-rule-in-uttarakhand/story-Uy0W8TiAxxLlQZPXDVORkO.html

[14] Union of India V. Harish Chandra Singh Rawat and Others., SLP(C) No. 11567/2016, SLP(C) No. CC 7915/2016 and SLP(C) No.CC 7916/2016.

In the ***State of Anuranchal Pradesh*** the Governor of the state Mr. J.P. Rajkhowa's decided to advance the Assembly session to December 16, 2015 from 14th January, 2016 a move which triggered political unrest in the sensitive border State and culminated in the declaration of President's rule on January 26 as it started on December 9, when a group of rebel Congress MLAs approached Governor JP Rajkhowa seeking to impeach Speaker Nabam Rebia. Their complaint was that he was trying to get them disqualified from the Assembly. The Governor agreed and called for an emergency session on December 16 to take up the impeachment motion. Congress protested the Governor's action, but the Centre went ahead and imposed President's Rule in the state invoking Article 356. In the special session attended by 20 rebel Congress MLAs, 11 BJP MLAs and 2 Independents at a community hall, the impeachment motion was passed and Pul was 'elected' as the Leader of the House.[15] The same day, the Speaker disqualified 14 Congress MLAs. The matter came to the Supreme Court[16] in which a five-judge Constitutional Bench, led by Justice J.S. Khehar, directed the immediate imposition of status quo ante as on December 15, 2015. Therefore the proclamation was revoked and the state government was given back the power. In this manner, Article 356 has been misused every then and now without much of relevant grounds.

The susceptibility of Proclamation emergency to judicial review is beyond dispute, because the power under Article 356 is not absolute. In judicial review the court have to just verify whether the situation is satisfactory or not. The grey part now revolves around the reach and scope of judicial review as there is no hard and fast rule applicable to all cases. It depends upon the factor, situation in which the Proclamation has been invoked.[17] However where it is possible the satisfaction can always be challenged on the ground of mala-fide or on irrelevant ground.

Judicial review of Proclamation under Article 356 was first tested in the case of State of Rajasthan v. Union of India. The Supreme Court being the ultimate interpreter of the Constitution has the power to review all the provision under the constitution. Although the Courts try to keep itself from political issues but this power does not enjoy blanket immunity from judicial review. In the case of *Minerva Mills and Others v. Union of India*[18] honourable Supreme Court dwelt with its power to examine the validity of Proclamation of Emergency.

---

[15] http://indianexpress.com/article/india/india-news-india/supreme-court-verdict-on-arunachal-pradesh-nabam-tuki- congress-kalikho-pul-bjp-jp-rajkhowa-2910600/
[16] Nabam Rebia and Others.v. Deputy Speaker and Others, Civil Appeal Nos. 6203-6204 of 2016.
[17] State of Rajasthan v. Union of India, 1977 AIR 1361, 1978 SCR (1).
[18] (1980) 3 SCC 625.

Court observed that it should not hesitate from performing its duty just because it involves political issues.

Thus we say that a lot has been changed in the power and authority of Article 356. It has evolved and changed drastically from Government of India Act, 1935 to Current Article 356 and from absolute power to a restricted one. From the cases like Bommai case and many others and also from the Sarkaria commission report a line has been drawn from use and abuse of the extreme power provided by this Article. Also we can conclude that, though limited, the Presidential proclamation under Article 356 is subjected to judicial review if misused.

Amendments pertaining to Article 356 of the Constitution

44th Amendment, 1978 restricted the scope of this Article. The amendment substitutes the word "six months" for the word "one year" as it existed originally. Thus it restored the position as it stood before the 42nd Amendment. A proclamation of Emergency will, if approved by the Parliament, continue for six months from the date of the issue. For further continuance it must be further approved by the parliament each time. It also added new clause (5) to Article 356 in place of existing clause (5) which is now omitted. This clause provides that a resolution for the continuance of the emergency beyond one year shall not be passed by either house of parliament unless-

(a) A proclamation of Emergency is in operation at the time of the passing of such resolution and

(b) The Election Commission certifies that the continuance in force of the Proclamation under Article 356 during the period specified in resolution is necessary on account of difficulties in holding general election to the Legislative Assembly of the state concerned.

Prior to this amendment there was no such condition imposed and the Government could extent the period upto maximum of three years without sufficient causes.

48th Amendment, 1984 amended clause (5) of the article and inserted a new proviso namely, "provided that in the case of the proclamation issued under clause (1) with respect to the State of Punjab, the reference in the clause to "any period beyond the expiration of one year" shall be construed as reference to "any period beyond the expiration of two years". The proviso was enacted to meet out the special circumstances prevailing in the state of Punjab due to Akali agitation, the continuance of the Proclamation beyond the specified time was necessary.

The Amendment make the conditions in the existing article 356 (5) inapplicable in case of State of Punjab. This was again amended with ***64th Amendment Act, 1990.*** The act provided for the extension for another 6 months as the situation there was not favourable for holding Assembly elections. The amendment added a new proviso after clause (4) in Article 356 which substituted the words "three years and six months" for "three years" and also applied that conditions laid down in Clause (5) shall not applied with respect to the state of Punjab. The 67th Amendment Act, 1990 extended the period of President rule for further period of 6 months. Accordingly, it has substituted the words "four years" for the words "three years and six months" in Clause (4) of Article 356 of the Constitution.

CONCLUSION

"Power tends to corrupt and absolute power corrupts absolutely".

-Lord Aldon.

The invocation of Article 356 and usurpation of the state governance by the central government present a great challenge to country's federal system and its functioning. It subverts the centre-state relationships and also undermines the democracy. Until 1990s the institutional safeguard set in place to check the arbitrary use of power by the state if the emergency provisions have failed. The ascent of regional parties and their presence in the Parliament and central cabinet however, imposed certain restraints on the central government. It can be seen that the rise in the regional parties has facilitated in the revitalization of the institutional safeguards put forth by the members of the Constituent Assembly members, curbing the central government to take over the state governance.

While we see the misuse of the Article 356 in imposing President rule, one other extreme was the failure of the Central government to impose the same. The government of Mr. Narendra Modi in Gujarat during the carnage following the Godhra train accident, in the State of Gujarat, it was a big question on the face of Union government as more than 1,00,000 persons on refugee camps and more than 30,000 people were charge-sheeted. It was a big question, whether these figures were not enough to compel the Central Government to take action under Article 355 and 356. It can be seen that the word in Article 356 that is "otherwise" becomes instrumental in such situation as in such situation cant it be sufficient to allow the president to act without waiting for the 'Governor's Report'.

It can be inferred that the lack of effectiveness of the safeguards against the abuse of the Emergency provisions. The proclamation could be biased as the party in power at the centre usually dominates the Parliament by a majority vote. Even a vote in Parliament declaring the Proclamation to be wrongful cannot undo the damage that is already done. The NCRWC advised that Article 356 should not be repealed, stating that it would create an imbalance in the Union and State relationship in upholding Constitutional governance, as in many situation the use of Article 356 is inevitable.

Thus in our opinion there is a need to implement the recommendation of Punchi committee and Sarkaria Commission to a large extent as they are plausible and feasible to implement which suggesets that governor should have a fixed tenure and should not be used as a mere football of the government and should be used in the rarest of rare circumstances.

- The governor should be appointed on recommendation of the Chief Minister.
- We suggest for giving a fixed term of five years to the governors and their removal by the process of impeachment (similar to that of the President) by the State Legislature.
- The governor should have the right to sanction prosecution of a minister against the advice of the council of ministers.
- We call for an amendment of Articles 355 and 356 to enable centre to bring specific trouble-torn areas under its rule for a limited period. Hence, we propose 'localizing emergency provisions' under which either a district or parts of a district can be brought under the central rule instead of the whole state. Such an emergency should not be for more than 3 months.

All these solutions can help in avoiding situations which has recently took a toll on Uttarakhand and Arunachal Pradesh thus maintaining the sanctity of the Article 356. Thus, we see that the issue of state autonomy has been a major issue in the dynamics of Indian federalism.

Therefore in the meantime, we have a institutional safeguard which cannot be overlooked, which is the power of the Supreme Court to have Judicial review, which has on more than one occasion shows that it is a power to be reckoned with. In this manner Article 356 in its correct sense can be used an emergency provision than a weapon of tyranny.