STATE EMERGENCY AND ABUSE OF POWER BY GOVERNOR- S. R. BOMMAI vs. UNION OF INDIA AND LATER DEVELOPMENTS

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INTRODUCTION

The Constitution of India was adopted by the Constituent Assembly on 26 December, 1949. Apart from legal rights and duties stated for the people of India, it also laid down the structure, procedures, powers and duties of the government. However, few provisions inscribed in the constitution were questioned on the basis of validity and enforceability. One such provision was Article 356 in Part 18.

Article 356 deals with imposition of President's Rule over a State of India. When a state is under President's Rule, the elected state government led by the Chief Minister and the Council of Ministers is dismissed and administration is conducted directly by the Governor of the state. The Governor has the power to impose president rule in his administrative state, thus, effectively, a functionary of the Union Government.

Thus, imposition of President's Rule negates the federal character of the Indian political system, where administration usually is shared between the Union and State governments. It also goes against the democratic doctrine of popular sovereignty, since an elected government is suspended. These reasons have made the use of Article 356 controversial. Nevertheless, it was used repeatedly by central governments to suspend state governments based on genuine reasons or trumped-up excuses.

Dr. B. R. Ambedkar, chairman of the Drafting Committee of the Constitution of India, referred to Article 356 as a dead letter of the Constitution. Dr. Ambedkar stated, "I share the sentiments 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 these powers, will take proper precautions before actually suspending the administration of the provinces."

FACTS OF THE CASE[i]

On March 5, 1985, elections were held in the **Karnataka** State Legislative Assembly and the Janata Dal party won 139 seats out of 225 seats, Congress being next in line with 66 seats. S. R. Bommai, one of the appellants in the present case, became the Chief Minister of the state on August 12, 1988. On April 15, 1989, when the Chief Minister S. R. Bommai was increasing the number of members in his Ministry, it became a source of dissatisfaction to some of the aspirants. One of them called Kalyan Molakery, and some of his peers, defected from the Janata Dal, and later sent 19 letters to the Governor of the state of Karnataka expressing a lack of faith and confidence in the Chief Minister S. R. Bommai.

On April 19, 1989, the Karnataka Governor sent a report to the President, but a day later, on April 20, 1989, 7 out of the 19 MLAs that apparently supported the defector Kalyan Molakery, wrote to the Governor that their signatures were obtained by misrepresentation and reinstated that they had full faith in the abilities of the Chief Minister of Karnataka, S. R. Bommai. However, the Governor, disregarding a request being made by Bommai to be allowed to prove his majority in the House, sent a report to the President, and the latter exercised his power under Article 356 of the Indian Constitution and issued a Proclamation of Emergency, thus dismissing the Bommai government and dissolving the Assembly on April 21, 1989, and imposed President's Rule over the State.

A writ petition was filed on April 26, 1989 before a special three-judge bench of the Karnataka High Court, which was dismissed *[S. R. Bommai v. Union of India, AIR 1990 Kant 5]*. The court reasoned that the Governor's report could not be declared faulty or irrelevant and that his assessment that no other party could form the new government in the State was not questionable since his personal bona fides were not at fault, and his report was reasonable. Furthermore, a

floor-test to ascertain a majority in the House was not an essential prerequisite to sending a report to the President for seeking a Proclamation of Emergency in the State under Article 356 of the Constitution.

In one of the Writ Petitions filed before the Supreme Court, the challenge was against the Proclamation dated October 11, 1991 issued under Article 356 (1). In this the petitioner G. S. Massar belonged to a front known as the **Meghalaya** United Parliamentary Party (MUPP) which had a majority in the Legislative Assembly and was under the leadership of Chief Minister B. B. Lyngdoh, whose government was in power that time. Kyndiah Arthree, Speaker of the House, was elected as the opposition leader. Later on, upon his election, he requested the Governor to allow him to form the Government. The CM Mr. B. B. Lyngdoh now had to prove his majority via a floor-test in the House. The then CM won the motion of confidence 30 to 27, but the Speaker disqualified 5 independent MLAs of the ruling party under the anti-defection law, saying that 4 of them were Ministers in the then Ministry and one of was the Deputy Government Chief Whip.

On September 6, 1991, the 5 MLAs approached the honourable Supreme Court. The Court stayed the Speaker Kyndiah Arthree's orders for four of the five MLAs. The last MLA had not applied for such an order. After this, the 4 independent MLAs moved a contempt petition against the Speaker and Opposition Leader in the Supreme Court who not only had defied the SC's orders staying his disqualification of the 4 of them, but also prevented them from entering the House. The Speaker was later voted out of his position, and a new speaker was elected who later declared that the motion of confidence was a success as 30 against 27 had voted in favour of B. B. Lyngdoh's government. A further no-confidence motion against the old speaker was passed. However, the Governor wrote a letter to the CM asking him to resign. The CM moved the Supreme Court against the letter of the Governor. Regardless of all this, the President passed a Proclamation under Article 356 (1) on October 11, 1991, saying that he was satisfied with the Governor's report that business could not be conducted in the state in accordance with the Constitution. Therefore, the Government was dismissed and the Assembly was dissolved. The Supreme Court, a day later, set aside the order of the old Speaker dated August 17, 1991 which had disqualified the 5 MLAs. However, both the Houses met and approved the Proclamation issued by the President.

In **Nagaland** also, the situation was complicated. The Assembly consisted of 60 members, and 34 of those belonged to Congress I, 18 to Naga National Democratic Party (NNDP), 1 to the Naga Peoples Party, and 7 were independent. The Leader of the ruling party was Shri Sema, and Chief Minister of Nagaland then. On July 28, 1988, 13 out of the 34 members of Congress I formed a separate party from the ruling party and requested the Speaker for allotment of separate seats to them considering the same. One of the 13 MLAs, Shri Vamuzo, informed the Governor that he held the confidence of 35 out of the 59 members in the Assembly and was in a position to form the Government. On, August 6, the Governor sent a report to the President of India about the formation of a new party by the 13 MLAs. He also said that these 13 members were lured by money, and that they were kept in confinement by Shri Vamuzo and one other person, and that the story of the split in the ruling party Congress I was false and bereft of any substance. He accused the Speaker of hastily according party status to the 13 MLAs. He even went to the point of saying that some members of the Assembly were in contact with insurgents.

Meanwhile, the CM resigned and recommended the imposition of President's Rule. The government was dismissed and the Assembly dissolved. Vamuzo challenged the validity of the Proclamation in the Gauhati High Court. A division bench comprising the Chief Justice and erstwhile Justice Hansaria *[(1988) 2 Gauh LJ 468]*. The bench differed on the effect and operation of Article 74 (2) and hence the matter was referred to a third judge, but before that could happen, the Union of India moved the Supreme Court for grant of a special leave which was granted and further proceedings in the High Court were put on hold.

In the states of **Madhya Pradesh, Himachal Pradesh, Uttar Pradesh and Rajasthan,** the situations were as follows. Elections were held in February 1990, and the BJP emerged as the majority party in the Legislative Assemblies of Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh and formed governments in these states. One agenda of the BJP was to construct a temple for Lord Rama at his birthplace Ayodhya, and was also included in their manifesto at the time of elections. The structure already in place, called the Babri Masjid, was destroyed by the *kar sevaks* or party workers gathered there as a result of the momentum generated or propaganda spread by the BJP, Vishwa Hindu Parsishad, RSS, Bajrang Dal, Shiv Sena and other organizations. The government of Uttar Pradesh resigned after this incident, and Proclamation under Article 356 was issued by the President, on December 6, 1992. There was a great loss of life and property in Uttar Pradesh, also in Rajasthan and Madhya Pradesh,

and then the President again passed Proclamations on December 15, 1992, and assumed control of the states of Rajasthan, Madhya Pradesh and Himachal Pradesh. The validity of these proclamations was immediately challenged in the High Courts of proper jurisdiction. The Madhya Pradesh HC allowed the petition, but those of Rajasthan and Himachal Pradesh were withdrawn.

Despite the fact that elections were held subsequent to the Proclamations having been issued, and there being no possibility of effective relief being granted, the Court was requested by all parties concerned to issue guidelines which would show the way should such a situation in the future ever arise.

JUDGEMENT GIVEN IN THE CASE

The case of S. R. Bommai v. UOI is a landmark case in defining the powers of the Centre with respect to Art 356 of the Constitution that deals with emergency provision where the President can impose his rule over the State. Many reports suggested certain recommendations on the smooth functioning of the same without any conflicts. The recommendations were made according to Administrative Reforms Commission 1969, Rajmannar Committee 1969 and Sarkaria Commission 1987.

The Supreme Court's verdict in the Bommai case sharply limited the constitutional power vested in the Central Government to dismiss a State government, but upheld the dismissal of four BJP Governments for going against the constitutional philosophy and provisions that were secular.

Justices Jeevan Reddy and Agrawal said that the Governor has to exercise his executive power under **Article 356 (1)** with the aid and advice of the council of ministers, with the Chief Minister at its head. He takes the oath under Article 159, to preserve, protect and defend the Constitution and the laws to the best of his ability. This binds him to report the actions or omissions of the Government, which create a situation where the Government can’t be run according to the provisions of the constitution. He has two roles, one as the head of the state government, and the second as the independent holder of a constitutional office whose duty it

is to preserve, protect and defend the Constitution. In the present case, the situation envisaged in Article 356 (1) has arisen, and only then has the Proclamation been issued.

On the point of **federalism,** Justice Ahmadi, said that federalism is a concept which unites separate States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member-States may share in formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies. Thus, the essence of a federation is the existence of the Union and the States and the distribution of powers in a federal structure.

The Indian Constitution has features of a pragmatic federalism, which distributes legislative powers and indicates the limits of governmental powers of State and Central Governments. It gives more power to the Centre, such as appointing functionaries such as High Court and Supreme Court judges, and even displacing the State Legislatures and Governments in emergency situations, with the aid of Articles 352 to 360 of the Constitution.

On the point of **secularism,** the Judges were of the view that there should be religious tolerance and equal treatment to all religions. They also purported the concept of positive secularism, and said that secularism is part of the basic structure of the constitution. If any Government of any State does acts to subvert or sabotage secularism, then that would undoubtedly be unconstitutional, and call for the proclamation of emergency under Article 356 (1). This was the view of Justices Sawant and Kuldip Singh, with Justice Pandian concurring to it. Secularism is an affair to be taken care of by the state, and this is also mentioned in section 123 (3) of the Representation of People (RP) Act, 1951. Justices Reddy and Agrawal said that secularism is more than just a passive attitude of religious tolerance. It is rather, a positive and equal treatment of all religions, one of benevolent neutrality. It is not at all a phantom concept.

LATER IMPACT AND CONCLUSION

Article 356 got wider development in S.R. Bommai and in later cases like ***Jagdambika Pal v. Union of India and Others*** and ***Rameshwar Prasad vs Union of India.*** These decisions cast a deep impact on the credibility and approach of the Supreme Court to sustain the objective of federalism and democratic culture. Even after the S.R. Bommai case, misuse of Article 356 is

still prevalent. The executive discretion and the role of governor are always being condemned during the misuse of Article 356.

Jagdambika Pal vs Union of India and Others [ii] has been the most important case by the Allahabad High Court. General election in the state of U.P. was held in October -November 1996, but no alliance had the requisite majority to form the Government. BJP and its allies were the largest party, yet they were not called upon to form the Government and fresh Presidential Proclamation of October 17 in effect extended or continued the already one-year old Presidential Rule in the Uttar Pradesh. This decision was successfully challenged before a full bench of Allahabad High Court though the operation of order of the full bench was stayed and the matter was still pending before the Supreme Court.

On 19 December 1996, the Lucknow Bench of the Allahabad High court delivered its historic judgement disposing of the six writ petitions filed in the shape of public interest litigation challenging the Constitutional validity of the Presidential Proclamation of 17 October 1996, re-imposing President's Rule in U.P. under Article 356 of the Constitution. The Allahabad High court quashed the re-imposition of the President's Rule as 'unconstitutional.' To avoid any constitutional deadlock, it directed that the judgement would come into effect only prospectively from 26 December. The Supreme Court admitting a special leave petition against the judgement stayed its operation.

While each of the three judges on the Bench recorded their reasons separately, the court unanimously held that the presidential proclamation of 17 October 1996, subsequently approved by Parliament was "unconstitutionally issued in colourable exercise of power" and based on wholly irrelevant and extraneous grounds which therefore could not be allowed to stand. One of the judges referred to "non-application of mind" while the other doubted if the Governor was "really serious" about installing a responsible ministry and categorically said that the governor was wrong in not realizing that President's Rule is the "last resort" or that perhaps he did not understand the legal position correctly[iii]. The indictment could hardly be more severe or more serious as much as it was for the first time over that an act of the President performed on the advice of the council of ministers and approved by the two houses of

parliament was held to have been a colourable exercise of power based on irrelevant and extraneous grounds, declared unconstitutional and quashed.

After few months of the verdict of Allahabad High court, there was a mutual understanding between the BJP and the BSP. Mayawati became the Chief Minister on 21 March 1997. She handed over the reins to Kalyan Singh after the expiry of six months. He was sworn in as the Chief Minister on 21st September 1997. Later on, Mayawati withdrew her support to the government. She requested the governor, Romesh Bhandari to dismiss the government as it was reduced to minority. Leaders of the Congress party, Samajwaadi party, Janta Dal and others also informed the governor that they would not be supporting BJP Government. Kalyan Singh had to prove his majority on October 21, 1997.

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

When the proceedings of House were opened by the Speaker, nearly the entire opposition was in the well of the House. There was unprecedented violence. The security forces managed to lock out the opposition and the speaker took up the motion of confidence. At about 1:00 PM the speaker declared the result of the voting and announced that 222 members voted in favour of the motion and no member voted against.

Therefore, the confidence motion was declared as passed and the house was adjourned sine die. The Governor sent report stating that in view of violence in the house fair and free voting in the Assembly has been vitiated therefore President's Rule under Article 356 would need to be proclaimed. Accordingly, the United Front Govt. leaded by Prime Minister I.K. Gujral sent the recommendation to the President of India, K. R. Narayan for the imposition of the President's Rule in U.P.

The Cabinet after considering the President's view dropped the proposal invoking President's Rule in U.P. The politics of Uttar Pradesh was twisted again, when the State Government headed by Mr. Kalyan Singh was dismissed on February 21, 1998, by Governor Romesh Bhandari, who had appointed Mr. Jagdambika Pal as Chief Minister. Mr. Singh moved the Allahabad High Court which reinstated his Government on February 23 holding the dismissal unconstitutional. Mr. Pal challenged it in the Supreme Court.

On February 24, a Bench headed by CJI, M. M. Punchhi directed a composite floor test on Feb. 26. Both Mr. Singh and Pal set as CMs. on the designated day and Mr. Singh emerged victorious**.** It was a unique incident in which the Supreme Court recognized two CMs at a time. This case has given the guidelines for Government formation by the Governor sending a message to the house for electing their leader. The judgement laid down taking into account Article 175 (2) to elect the leader on the floor of the house.

Certain inferences can be deduced from Uttar Pradesh episode:

- Firstly, it was the first instance in the independent India's history that a cabinet recommendation for issuing Constitutional Proclamation u/a 356 sent back by the President.
- Secondly, three factors played a very significant role in returning the recommendations:
    - The S.R. Bommai judgement, which held that President's Rule, is subject to judicial review.
    - Violence in the house could not be equated the breakdown of Constitutional machinery; and
    - President's Rule had to be ratified by the Parliament

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

The detailed judgment of the Supreme Court in **Rameshwar Prasad And Others v. Union of India**[iv] on January 24, 2006 holding the dissolution of the Bihar Assembly as illegal and unconstitutional has enunciated far-reaching constitutional principles and has had wide ramifications. Although the Court held the dissolution unconstitutional it did not direct status quo ante and the revival of the assembly. Earlier, in an interim order delivered on the 7th October 2005, the Bench had, even while finding the dissolution unconstitutional, expressed its inability to restore the dissolved Assembly in view of the electoral process under way then to constitute a new Assembly.

The present case was the first of its kind where even before the first meeting of the Legislative Assembly its dissolution had been ordered on the ground that attempts were being made to cobble together a majority by illegal means and to lay claim to form the government in the State. So, the main question before the Court at the outset was whether the dissolution of the Assembly under Article 356(1) of the Constitution could be ordered on the said ground. Linked with this question was the correctness of the dissolution even before the Assembly met for the first time after its due constitution and the members took oath. The majority while agreeing with the contentions of the petitioners held that no such power has been vested with the governor. Such a power would be against the democratic principles of the majority rule. If such a power is vested in the governor and/or the president, the consequences can be horrendous and would open a floodgate of dissolutions and will have far reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignments and realignments on the ground of same being unethical, plunging the country or the state into another election.

It further held that there was no material, let alone relevant, with the governor to recommend dissolution and the drastic and extreme action of dissolution cannot be justified on mere *ipse dixit*, suspicion, whims and fancies of the governor. Unexceptionally, under no circumstances the action of the Governor can be held to be bona fide when it is intended to prevent a political party to stake claim for the formation of the government. After elections, every genuine attempt is to be made which helps in installation of a popular government, whichever be the political party. The Governor must not be allowed to take the plea that no government could be formed, unless he exhausts all possible options, including the one of asking the House itself to elect its Leader. Extreme step of imposition of President's Rule immediately after the election without

allowing the newly elected House to meet was nothing short of contempt of the electoral exercise and the verdict of "[We] the people"[v].

The representatives whom "[We] the people" elect cannot be so unceremoniously sent home on the arbitrary advice of a Governor and subsequent approval by the Cabinet and the seal of the President. Indeed, when President's Rule was imposed and instead of being dissolved, the Assembly was kept under suspended animation, obviously the hope was that through some realignments, some leader or political party could be in a position to stake claim to form a government. Thus, the possibility of change in loyalties of Members was accepted as legitimate.

So, the majority Judges described the two assumptions of the Governor as contained in his report as arbitrary: that the move was itself indicative of various allurements having been offered to the LJP MLAs and that the claim that might be staked to form a government would affect the constitutional provisions and safeguards built therein, and distort the verdict of the people. From this, the majority Judges concluded that Governor's attempt was to prevent, in one way or the other, the formation of the government by a political party – an area wholly prohibited insofar as the functions duties and obligations of the Governor are concerned.

Moreover, the argument of so-called horse trading as stated in the Governor Report is most untenable because for dealing with horse trading and defections, it is the speaker under the 10th Schedule of the Constitution and the governor cannot usurp these functions while forming his opinion about the capacity of a political party to form a stable government. Even under the 10th Schedule, the law comes into play only after the defection has taken place and not at the prospect or threat of defection. Also, there may be change of loyalties, which may be legal and protected under the merger clause. In any case, there is no provision that can justify dissolution of the House on grounds of threatened defections.

However, the judgment concentrated on the Governor's role and reiterated earlier recommendations about the type of persons who should or should not be appointed as Governors. It appeared to be too soft on the role of other players particularly the Union Cabinet when it merely said: "the Governor may be the main player, but Council of Ministers should

have verified facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what Governor stated.

So, in the facts and circumstances of the case the "council of ministers should have verified facts stated in the report of the governor before hurriedly accepting it as a gospel truth". Clearly, the Governor has misled the Council of Ministers." And we might add that the Council of Ministers misled the President. It would be a moot question whether more responsibility was attached to those who misled or who got misled. Lastly, the majority judgment failed to address any arguments advanced on behalf of the State of Bihar. One is left to speculate only whether the majority considered the said argument and felt that it was of no relevance or missed it altogether inadvertently.

In a nutshell, this judgment can well be regarded as a salutary check on the arbitrary exercise of power of dissolution of legislative assemblies and an affirmation of democratic and federal principles. In a sense it is also an affirmation of constitutionalism and negation of the impropriety of midnight dissolution of assemblies in indecent haste. However, the two dissenting views highlight the position that more than one view is possible in a case like this. Whatever the case may be, whether right or wrong, every judgment of the Supreme Court is entitled to respect and needs to be given full effect both in spirit as well as in letter so long as it is not modified or overruled.

CONCLUSION

As is ocular from the above discussion, following the historic Bommai Judgment, States have been strengthened and have got a new identity of them which relates to the mandate they received from the population, thereby increasing its value. Furthermore, after an analysis of Supreme Court's judgments, it is clear the Apex court is of the opinion that since both of the Union and State Governments have been elected by direct voting, both are therefore, equivalent in nature. According to the pronouncement in the Bommai case, the Supreme Court curbs the further political misuse of Article 356 in general circumstances.[vi]

In a federation, the States are not the subordinate units of the Central government. It needs to be remembered that only the spirit of 'co-operative federalism' can preserve the balance between the union and the States to promote the good of the people and not an attitude of dominance or superiority. Under Indian constitutional system no single entity can claim superiority. Union and the units are the equal partners in the governance of the country. In democracy the desire of the people expressed through the election process has to be respected. Any misuse or abuse of the power by the central government will damage the fabric of federalism.

This notion is visible from the fact that the Judiciary of India has favoured the preservation of the federal system and declared that it is the basic structure of the Indian Constitution.

The Emergency powers of the President under Article 356 are normally the most spoken about and to a great extent discussed. It is unfortunate that that the remedial nature of the Article 356 has been perverted to enforce the domination of Cardinal Government over the province authorities. It cannot be denied that the article provides an immense sum of power to the Cardinal authorities and the fact that it has been used legion times merely proves the fact that the hope of the establishing that the Article would stay a 'dead letter' has been dashed.

It is dry that despite the unsuccessful experience of the abuse of this proviso during the British Raj in India, Article 356 was finally incorporated into the Constitution. In India, if we look into the history of Article 356 closely, we find that it is misused in two extremes – one being that its supplication being an abuse and the other being the failure to raise exigency powers. For example, after the autumn of the Mayawati Government in the State of Uttar Pradesh, it might have been justifiable to enforce President's regulation, but it was besides of import that it kept fresh elections every bit short as possible.

The *mala fide* intention of the Union Executive in forestalling the premise of office by an unfavourable political entity become clearly manifest in Governor Bhandari's actions and the determination of the United Front Government at the Centre to enforce President's regulation in U.P. The worst harm may perchance hold been through the office of the Governor because the Governor cannot be held responsible for his or her actions. Another blazing abuse of Article

356 was the infliction of Presidents regulation in the State of Gujarat from September 1996 to October 1996 following the incidents of force indulged in by the members of the Gujarat legislative assembly.

Justice Soli Sorabjee pointed out that force within the Assembly cannot be treated as a case of failure of the Constitutional machinery, it would otherwise go really easy for malicious legislators to fade out a duly elected legislative organic structure by making a chaos in the assembly and thereby motivating improper application of Article 356. The right process to be followed in such a state of affairs is to go through suited statute law for finding the guilty legislators.

On the other extreme, the abuse of not raising Article 356 is seen clearly in the ugly incident of the Godhra train incident on the 27th of February, 2002. It was reported that there were more than 1 lakh individuals who were in refugee cantonments and that more than 30 thousand people were charge sheeted. These figures were plenty for the authorities to take an action under Article 355 and 356.

Looking at the past events in history caused due to the abuse of Article 356, it cannot be denied that a darker side to Indian democracy is being portrayed. However, the intervention of the Supreme Court after the *Bommai* instance, coupled with the guidelines of the Sarkaria Commission clearly show that Article 356 should be used merely in the rarest instances and that the Union Government should not use the Article for their personal benefit.

REFERENCES

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[iii] Hon'ble Justice Pandian
[iv] AIR 2006 SC 980
[v] Alakhnanda Shroff for Hindustan Times
[vi] Research paper by Dr. Dharmendra Prasad Singh