

# The Power of Judicial Review During State Emergency in India

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**Abstract:** In the normal peaceful times a notable feature of the Indian constitution of quasi-federal structure is followed but during the emergency the framers of the Constitution felt that in an emergency the centre should have overriding power to control and direct all aspects of administration and legislation throughout the country. A proclamation of Emergency is a very serious matter as it invites disturbance from the normal fabric of the Constitution which might adversely affect the rights of the people. Therefore this emergency is issued only under special circumstances and thus in order to prevent the abuse of power, the emergency provisions has been amended extensively. Article 356 has been misused by the political party in power at the Center to promote its own political interest in the state rather than focusing on the reason for breakdown of the constitution machinery.

**Keywords:** S.R. Bommai case, Article 356, Emergency, State of Rajasthan v. Union of India, breakdown.

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## 1. INTRODUCTION

In the normal peaceful times a notable feature of the Indian constitution of quasi-federal structure is followed but during the emergency the framers of the Constitution felt that in an emergency the centre should have overriding power to control and direct all aspects of administration and legislation throughout the country<sup>1</sup>. Part XVIII of the Constitution provides that there are 3 kinds of emergencies:

1. Emergency arising from a threat to the security of India
2. Failure of constitutional machinery in State
3. Financial Emergency<sup>2</sup>

A proclamation of Emergency is a very serious matter as it invites disturbance from the normal fabric of the Constitution which might adversely affect the rights of the people. Therefore this emergency is issued only under special circumstances and thus in order to prevent the abuse of power, the emergency provisions has been amended extensively.<sup>3</sup>

Article 356 and 357 provides that if a situation arises from the failure of the constitutional machinery in a state, the President on the receipt of the report from the Governor is "satisfied" that the situation arises in which the government of the state cannot carry out its function as per the provisions of the Constitution and the President proclaims<sup>4</sup>:

- A. assumes to himself all or any of the function of the State Government or the power of the Governor or anybody authority in the State other than the state legislature.
- B. declares that the powers of the State Legislature are to be exercised by Parliament.
- C. make such incidental provisions as may appear to him necessary or desirable for giving effect to the provision of proclamation.

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<sup>1</sup> JAIN, M.P., INDIAN CONSTITUTIONAL LAW, 738 (Wadhawa Nagpur, 6<sup>th</sup> Edition 2012)

<sup>2</sup> SINGH MAHENDER PAL, V.N. SHUKLA'S CONSTITUTION OF INDIA, 1025(Eastern Book Company, 12<sup>th</sup> Edition 2013)

<sup>3</sup> *Supra* Note 1 At 738.

<sup>4</sup> *Id.* At 751.

Article 357 adds to the meaning of Article 356(1)(b) which provides that when the State legislature does not have a power to make laws under 356(1)(b) the power is transferred to the Union Parliament<sup>5</sup>. The Parliament has a power to legislate in respect to the matters in List II but in case of emergency powers it can legislate on behalf of the State or States for a limited period of time if this Proclamation is issued under Article 356<sup>6</sup>. The law made does not come to an end automatically as soon as the proclamation is revoked which means that though the power of the Union to make laws on behalf of the State legislature on the subject of the state list ceases no sooner the proclamation under Article 356(1) comes to end, the law made during the existence of the proclamation continues to remain in force until it is altered or repealed by the state legislature that is an action by the state legislature is necessary to change these laws.<sup>7</sup> There has been frequent criticism of the use of Article 356 and the purport of the criticism has been that Article 356 has been misused by the political party in power at the Center to promote its own political interest in the state rather than focusing on the reason for breakdown of the constitution machinery<sup>8</sup>.

Article 356 was thought to be a “safety- valve”, which was proved to be a political weapon of the Center against the State and therefore it was like a “dead letter” for a large number of State Governments<sup>9</sup>. These different grounds which the framers of the constitution did not think for the imposition of President’s rule in the State in order to suit the political interest of the party in power at the Center<sup>10</sup>. Shri Santhanam in the Constituent Assembly had tried to categorize “physical breakdown”, “political breakdown” and “economic breakdown” and the Sarkaria Commission categorised it as political breakdown, internal subversion, physical breakdown, non-compliance with constitutional directions of the Union Executive<sup>11</sup>.

As per Article 356 the President acts on the report of the governor or otherwise which means the framers of the constitution by implementing Article 356 designed to strengthen the hands of the Center to discharge the obligations in order to protect the state and the Center is not bound by the Governor’s report<sup>12</sup>. Therefore the Centre has a freedom to act even without Governor’s report in order to fulfill the constitutional obligations.

The consequence of the presence of Article 74(1) satisfaction of the President does not mean the personal satisfaction of the President but the satisfaction of his Council of Ministers on whose behalf he can exercise his constitutional functions<sup>13</sup>.

## 2. RAJASTHAN V. UNION OF INDIA<sup>14</sup>

In 1977 when the general election of Lok Sabha was held in the country after the lifting of the emergency of 1975, the congress party was badly routed in many of the states by the Janata Party which won a large number of seat in the Lok Sabha and therefore it formed a government at the Center<sup>15</sup>. In these states Congress ministers were functioning at the time and they still had the time to run for completion of the full term<sup>16</sup>.

The Central Home Minister, Charan Singh, wrote a letter to each of the Chief Minister of the State mentioning that he should seek dissolution of the State Legislature from the governor and obtain fresh mandate for the electorate<sup>17</sup>. The state of Rajasthan along with other states filed an original suit in the Supreme Court against the Union of India as per Article 131 asking the Court to declare this directive of the Home Minister to be declared unconstitutional and illegal<sup>18</sup>. It was argued that the letter in question was to the invocation of Article 356 in these States and that the dissolution of the State Legislature on the mentioned ground in the letter was prima facie outside the purview of Article 356<sup>19</sup>.

<sup>5</sup> DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, 11005 (Wadhwa And Company Law Publishers 13<sup>th</sup> Edition)

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* Note 1 At 753.

<sup>8</sup> *Supra* Note 5 At 759.

<sup>9</sup> Dr. Seema Sharma, Article 356 Of The Constitution: A Critical Analysis (2014), <http://Lex-Warrior.In/2014/04/Article-356-Constitution-Critical-Analysis/>

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* Note 1 At 752.

<sup>13</sup> *Supra* Note 2 At 10949.

<sup>14</sup> AIR 1977 SC 1361

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

In the case of *Rajasthan v. Union Of India*<sup>20</sup> it was held by the Supreme Court dismissed the suit stating the Article 74(2) disables the Court from inquiring into “the very existence or nature or contents” of ministerial advice to the President and thus Article 356(5) makes it impossible for the court to question the President’s satisfaction on any ground unless and until resort to Article 356 in the given situation is shown to be grossly “preserve and unreasonable”.

### 3. S.R. BOMMAI V. UNION OF INDIA<sup>21</sup>

This case came before the bench of 9 judges which consisted of Kuldip Singh, P. B. Sawant, Katikithala Ramaswamy, S. C. Agarwal, Yogeshwar Dayal, B. P. Jeevan Reddy, S. R. Pandian, A. M. Ahmadi, J. S. Verma<sup>22</sup>.

In Karnataka the Janata Party being the majority party in the State Legislature had formed Government under the leadership of S.R. Bommai but it was by September 1988, Janta Dal which was a new was formed mingled with the Janata Party and Lok Dal<sup>23</sup>. The Ministry was added thirteen members and in two days a legislator of Janata Dal defected from the party<sup>24</sup>. He presented a letter to the Governor along with nineteen other letters alleging signature by legislators supporting the Ministry, withdrawing their support to the Ministry<sup>25</sup>. As a result on 19 April, the Governor sent a report to the President stating therein there was defection and there was no majority to support the floor of the house<sup>26</sup>. He further stated that in view of the withdrawal of the support by the said legislators, the chief Minister, Bommai did not command a majority in the Assembly and, hence, it was inappropriate under the Constitution, to have the State administered by an Executive consisting of Council of Ministers which did not command the majority in the state assembly<sup>27</sup>. He, therefore, recommended to the President that he should exercise power under Article 356(1)<sup>28</sup>. Meanwhile on the next day seven out of the nineteen legislators who had purportedly wrote in the said letters to the Governor sent letters to him complaining that their signatures were obtained in the earlier letters was by misrepresentation and affirmed their support to the Ministry<sup>29</sup>. The Chief Minister and his Law Minister had a meeting with the Governor on the same day and informed him about the decision to summon the Assembly in order to prove the confidence of assembly in his government and this information was sent to the President<sup>30</sup>. The Governor however sent another report to the President on the same day stating that the Chief Minister had lost the confidence of the majority in the House and repeated his earlier request for action under Article 356(1)<sup>31</sup>. On that very day, the President issued the Proclamation in question with the recitals already referred to above. The Proclamation was, thereafter approved by the Parliament as required by Article 356(3)<sup>32</sup>. A writ petition was filed on 26 April 1989 challenging the validity of the proclamation and a special bench of 3 judges of Karnataka High Court dismissed the writ petition<sup>33</sup>.

In Meghalaya on 11 October 1991 the President issued a proclamation under Article 356(1) dismissing the government of Meghalaya and dissolving the legislative assembly<sup>34</sup>. The Proclamation stated that the President was satisfied on the basis of the report from the Governor and other information received by him that the situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution<sup>35</sup>. The Government was dismissed and the Assembly was dissolved accordingly.

Whereas, in Nagaland in 7 August 1988 the President issued the proclamation on the basis of Governor Report and dismissed the Government hence dissolving the Legislative assembly<sup>36</sup>. Vamuzo, leader of opposition party, challenged the validity of Proclamation in Gauhati High Court. A Division Bench comprising the Chief Justice and Hansaria, J. heard the petition<sup>37</sup>. The Bench differed on the effect and operation of Article 74 and hence the matter was referred to the

<sup>20</sup> *Id.*

<sup>21</sup> AIR 1994 SC 1918.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

third Judge<sup>38</sup>. But before the third learned judge could hear the matter, the Union of India moved this Court for grant of special leave which was granted and the proceedings in the High Court were stayed<sup>39</sup>.

On account of the Babri Masjid demolition the communal riots spread out in the entire country and the Central Government banned RSS, VHP and Bajrang Dal<sup>40</sup>. It dismissed the BJP Governments of Madhya Pradesh, Himachal Pradesh and Rajasthan and as a consequence on 15 December 1992, the President issued the proclamation under Article 356 dismissing the State Governments and dissolving the Legislative Assemblies Madhya Pradesh, Himachal Pradesh and Rajasthan<sup>41</sup>. The validity of these proclamations was challenged by the Writs in the appropriate High Courts<sup>42</sup>. The Madhya Pradesh High Court allowed the petition, but writ petition relating to Rajasthan and Himachal Pradesh were withdrawn to Supreme Court<sup>43</sup>.

The very important issue in this case was if the Supreme Court had to determine the Presidential Proclamation under Article 356 was justiciable and if so to what extent? And then the second issue was whether the President has unfettered powers to issue Proclamation under Article 356(1) of the Constitution?

In the case of *Rajasthan v. Union of India*<sup>44</sup>, the central home minister, Charan Singh, wrote a letter to the CM of several state after the lifting of the emergency to seek dissolution of the State Legislature from the governor and obtain a fresh mandate from the electorate and State of Rajasthan along with several states filed an original suit in the Supreme Court under Article 131 praying the directives of the Home Minister unconstitutional and it was argued that the letters invoked Article 356 in these states and there shall be dissolution of the State legislature on the grounds mentioned in the letter. The suit was dismissed unanimously by the Supreme Court as Article 356(5) made it impossible for the court to question President's satisfaction unless it was totally unreasonable.

One of the matters dealt by the judges in *S.R. Bommai*<sup>45</sup> case was that the constitution provided for a federal structure which was also considered to be the basic structure of the constitution and thus the power of the president was supposed to be read in that context under Article 356 and it was held that 356 was subjected to the judicial review. The satisfaction of the President shall be based on the relevant facts and he is under the obligation to produce material on the on which the action under Article 356(1) is based but the court could not go into the correctness or adequacy of the material but it could seek into the relevance of the matter. The court can conclude that the President's action was unconstitutional.

It was judiciary who took the leading role to check the misuse of this provision. Before the State of *Rajasthan v. Union of India*<sup>46</sup> came into play the High Court were of the view that there could be no judicial review of the satisfaction of the President. The court in this case had to answer the question of political doctrine. The learned judges observed that the satisfaction of the President is only subjective and it cannot be tested by reference to any objective test.

In the epicenter of the case did the availability of judicial review which took a different path as per the decision of the judges constitute the seven judge bench<sup>47</sup>. The area of the judicial review was in regards to Article 74(2) of the Constitution which prohibited the Court from going through and investigates on the material and reason in support of a Presidential proclamation. Although all the judges rejected the contention that judicial review of the Presidential proclamation was barred and the proposed action and exercise of power were not mala fide or vitiated by incorporation of irrelevant matters<sup>48</sup>. The leading judgment of Justice Bhagwati and A.C. Gupta rejected the contention that the exercise of power under Article 356 involved political question, "...merely because a question has a political colour, the Court cannot fold its hands in despair and declare 'judicial hands off'." It was stated that the satisfaction of the President is a subjective one and it cannot be tested with the patterns of objectivity<sup>49</sup>.

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* Note 14.

<sup>45</sup> *Supra* Note 21

<sup>46</sup> *Supra* Note 14.

<sup>47</sup> Soli J. Sorabjee, Decision Of The Supreme Court In *S.R. Bommai V. Union Of India*: A Critique, [Http://Www.Ebc-India.Com/Lawyer/Articles/94v3a1.Htm](http://www.Ebc-India.Com/Lawyer/Articles/94v3a1.Htm), Last Visited On 18 November 2014 At 9:07PM.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

After the Supreme Court made its decision in *Rajasthan case*<sup>50</sup> the question of judicial review of Presidential Proclamation was issued under Article 356 which arose in Gauhati and Karnataka High Court. The Presidential Rule was imposed in Nagaland was challenged and it was held by Chief Justice Raghuvir that the Union of India cannot be compelled to tender any information to the Court respecting Article 74 of the Constitution<sup>51</sup>. But on the other hand Justice Hansaria held that as the material that was formed part of “other information” was not before the Court and it did not form part of the advice tendered by the Council of Minister under Article 74(1) where Union of India has an opportunity to disclose the information to the court else the court would have no other alternative but to decide the matter on the basis of the material which is placed before it<sup>52</sup>.

On April 1989 imposition of the President’s rule in the State of Karnataka was challenged before the Karnataka High Court where the Full Bench held that the Presidential proclamation was justiciable and the Court declined to decide the scope of Article 74(2) with reference to the question whether the “other information” could be cancelled for on the ground that the Court should base its decision on the matter which is disclosed material or inquire into the matter from which the judges shall stay away<sup>53</sup>. It was held that the fact stated in the report of the government were relevant. The cases were appealed to the Supreme Court.

It was agreed by all the judges that mala fide intentions will give rise to judicial interference and the main zone of disagreement has been the area and the extent of judicial review and justiciability of the required Presidential proclamation<sup>54</sup>. Justice Sawant and Kuldip Singh held that the objective material available either from the Governor’s report or from other information or both should indicate to the fact that the government of the State cannot be carried on as per the constitution and the proclamation of the issue by the President under Article 356(1) is judicially reviewed to the extent of examining material and if such enforcement lead to issue in the mala fide exercise of the power<sup>55</sup>. Once such material is shown to exist, the satisfaction of the President based on the material is not opened to question.

Justice Jeevan Reddy and Agarwal focused on the fact by rejecting the submission that judicial review of the Presidential proclamation is available in a limited area since it is a power committed by the President by the Constitution and also the contention that the issue cannot be resolved by applying judicially manageable standards<sup>56</sup>. The truth or correctness of the material cannot be questioned by the court<sup>57</sup>.

The Karnataka High Court in *S.R.Bommai v. Union of India*<sup>58</sup> held that the proclamation made under Article 356 of the Constitution was justiciable and that the courts could look into the material or the reasons disclosed for issuing the Proclamation to find out whether the material or reason were wholly inappropriate to formation of the satisfaction and had no rational nexus at all to the satisfaction reached under Article 356 of the Constitution.

*S.R Bommai case* discussed Article 356 at length and it concluded that<sup>59</sup>:

1. The Proclamation under the said Article 356 is not immune from judicial review as Supreme Court and High Court can strike down the Proclamation.
2. Article 74(2) bar the judicial review as far as the advice is given by the minister is concerned though it does not bar scrutiny of the material on the basis of which the advice is given.
3. State Government working against secularism only then the President’s Rule can be imposed.
4. The President’s Rule can be imposed after testing the strength of ministry on the floor of the House.
5. The dissolution of legislative assembly is not a matter of course as it should be resorted to only where it is found necessary for achieving the purpose of the Proclamation.

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<sup>50</sup> Supra Note 14.

<sup>51</sup> (1982) 2 Gau LJ 468

<sup>52</sup> *Id.*

<sup>53</sup> AIR 1990 Karn 5

<sup>54</sup> Supra Note 47.

<sup>55</sup> *Id.*

<sup>56</sup> Supra Note 14.

<sup>57</sup> *Id.*

<sup>58</sup> Supra Note 21.

<sup>59</sup> Supra Note 47.



6. In an appropriate case High Court or Supreme Court can stay the dissolution of the assembly but not in such a manner as to allow the assembly to continue beyond its original term.

7. If the Court strikes down the proclamation, it has the power to restore the dismissed government in office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension.

Though the question was whether Presidential proclamation extends to examining the truth or correctness of basic facts? The satisfaction of the President has to be based on objective material and this objective material should be available either in Governor's report or any other information but both shall mention that the government of the State cannot be carried on in accordance with the provision of the Constitution<sup>60</sup>. Therefore this validity of proclamation issued by the President under Article 356(1) is judicially reviewable in order to examine whether it was issued on the basis of any material at all or whether the material was relevant or whether the proclamation was issued with a mala fide intention<sup>61</sup>. If there is existence of such material the satisfaction of the President based on the material is not open to question<sup>62</sup>.

Justice Bhagwati supporting *Minerva Mills v. Union of India*<sup>63</sup> stated that, "This is also the view taken by Gupta, J and myself in *State of Rajasthan v. Union of India*. I pointed out in my judgment in that case and I still stand by it, that merely because a question has a political colour, the court cannot fold its hand in despair and declare 'judicial hands off'".

It was also mentioned in *Kehar Singh's*<sup>64</sup> case that the decision under Article 356 are "political decisions which call for judicial hands off" runs counter to the aforesaid legal position.

Though majority judgment failed to appreciate that the observation of Justice Bhagwati in the *State of Rajasthan* about fast changing situation, potential consequence etc. were made in context of the fact that no proclamation made by the President was issued when matter was argued before the Supreme Court<sup>65</sup> that is there are many things that can happen between the date of dispatch of the Home Minister letter and Law minister's radio broadcast and ultimate presidential proclamation that may be issued under Article 356 and such matters cannot be anticipated by the courts<sup>66</sup>. It is difficult to reconcile this part of the judgment with the decision of the merits of the matter about non justiciability of the Presidential proclamation and his conclusion that the judicial review is concerned with the decision making process and the merit of the case is not required<sup>67</sup>.

It was held that in any event the correct legal position is that "the susceptibility of a decision to the supervision of the courts must depend, in the ultimate analysis, upon the nature and consequence of the decision, and not upon the personality or individual circumstances of the person called upon to make the decision"<sup>68</sup>. That is in the case of *Maru Ram case*<sup>69</sup> the decision made by the President is mostly made by the Central government in order to hold the legal position. It is not an individual judgment or discretion on the part of the President in order to impose President's Rule under Article 356. The satisfaction in reality is that of the Council of Ministers and this becomes a challenge as to the subject matter of the judicial review. The post of the President and his being head of the State is a matter of irrelevance in determining the scope and ambit of judicial review.

One could conclude that non-justiciability of the President exercising prerogative power issuing a proclamation under Article 356 is unwarranted and the Indian Constitution does not recognize the doctrine of prerogative and power under Article 356 cannot be regarded as a prerogative<sup>70</sup>. As it was held in *Council of Civil Service Union v. Minister for the Civil Service*<sup>71</sup> prerogative power includes prerogative of mercy which means that these powers are not susceptible to judicial review because of their nature or subject matter. But it was held in *Kehar Singh*<sup>72</sup> that the power to grant pardon is not completely beyond judicial review in order to understand whether the act was constitutional and without malice and the fact that it is a political matter and not subjected to judicial matter was set aside by the Constitutional Bench.

<sup>60</sup> *Supra* Note 47.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> AIR 1980 SC 1789.

<sup>64</sup> 1989 AIR 653.

<sup>65</sup> *Supra* Note 47.

<sup>66</sup> *Id.*

<sup>67</sup> *Supra* Note 47.

<sup>68</sup> *Leech V. Deputy Governor Of Parkhurst Prison*, 1988 AC 533

<sup>69</sup> 1980 AIR 2147.

<sup>70</sup> *Supra* Note 216.

<sup>71</sup> [1983] UKHL 6

<sup>72</sup> *Supra* Note 9.

The *Bommai* decision is not a very good law as far as it lays down or is interpreted as laying down the proposition that State assemblies can be dissolved solely on the ground of a new political party having come to power at the Center with a sweeping majority<sup>73</sup>. The interpretation placed by it upon Article 74(2) which has been barred from the production of material on which the ministerial advice is based<sup>74</sup>.

Therefore in the decision no effective relief could be given to the State government and the legislative assemblies which were wrongly dissolved in the view of the fact that fresh elections were suppose to be held. In those States and the Court put the Central Government on notice that when there is a wrong dismissal of the State Government the court will have the power, not to hesitate to restore such Government<sup>75</sup>.

The Sarkaria Commission takes into consideration various decisions and one of them is S.R. Bommai which came up with certain principles in regards to Article 356<sup>76</sup>.

Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the court from calling upon the Union Council of Ministers (Union of India) to disclose to the court the material upon which the President had formed the requisite satisfaction<sup>77</sup>. The material on the basis of which advice was tendered does not become part of the advice<sup>78</sup>. Even if the material is looked into by or shown to the President, it does not share the character of advice<sup>79</sup>. Article 74(2) and section 123 of the Evidence Act cover different fields<sup>80</sup>. It may happen that while defending the proclamation, the Minister or the concerned official may claim the privilege under section 123<sup>81</sup>. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of section 123<sup>82</sup>.

The proclamation under article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds<sup>83</sup>. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action<sup>84</sup>. The court will not go into the correctness of the material or its adequacy<sup>85</sup>. Its enquiry is limited to see whether the material was relevant to the action<sup>86</sup>. Even if part of the material is irrelevant, the court cannot interfere so long as there is some material which is relevant to the action taken.<sup>87</sup>

Sarkaria Commission mentions that the Constitution of India has created a federation but it is partial with the Center<sup>88</sup>. When the power is granted, the superior power goes to the Center<sup>89</sup>.

The Commission reviewed that the implementation of Article 356 had been arising with the passage of time<sup>90</sup>. If the statistics is considered, 1950-1954 there were only three occasions where it was invoked<sup>91</sup>. Between the period of 1965-1969 it was invoked nine times, then in the period of 1975-1979 it was invoked 21 times and during the period of 1980-1987 the emergency of state was invoked 18 times<sup>92</sup>.

It was observed by Sarkaria Commission that it is not every time it is said that the provision of the constitution is breached but it is the only a situation where it can be said that there has been a "failure of the constitutional machinery"<sup>93</sup>. It was highlighted by the Commission that the will of the States were reduced to mere dependencies and would have an effect on democratic, parliamentary, federal form of government<sup>94</sup>. The Commission then pointed out that 'failure of

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> B.P. Jeevan Reddy, Article 356 Of The Constitution(2001), [Http://Lawmin.Nic.In/Nerwc/Finalreport/V2b2-5.Htm](http://Lawmin.Nic.In/Nerwc/Finalreport/V2b2-5.Htm).

<sup>76</sup> R.S. Sarkaria, A Consultation Paper On Article 356 Of The Constitution (2001), [Http://Lawmin.Nic.In/Nerwc/Finalreport/V2b2-5.Htm](http://Lawmin.Nic.In/Nerwc/Finalreport/V2b2-5.Htm)

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Supra* Note 75.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

constitutional machinery' can be examined under four heads, namely, (a) political crisis, (b) internal subversion, (c) physical breakdown and (d) non-compliance with constitutional directions of the Union Executive<sup>95</sup>.

After the Sarkaria Commission Report was submitted there were still ample amount of cases that invoked Article 356 for all the wrong reasons<sup>96</sup>. Though there was no effective relief that was given to the State government and the Legislative Assemblies but the Supreme Court gave a notice to the Central Government that in case of a wrong dismissal of the State government or dissolution of the Legislative Assembly the courts will take charge of such cases<sup>97</sup>. After the decision the use of Article 356 has come down. It was mentioned that Article 356 shall not stand amended<sup>98</sup>. Sarkaria Commission suggested that Article 356 should be rarely used<sup>99</sup>. It also mentioned that a little more meaning shall be added to the judicial review on the use of Article 356<sup>100</sup>.

As a result of the decision the use of Article 356 has drastically come down but in the year 1999 when the Central Government recommended to the President to dismiss the State Government in Bihar, the President called upon the Central Government to consider the matter in the light of the principles mentioned in *Bommai case*<sup>101</sup>. On such consideration the government had to withdraw the proposal<sup>102</sup>.

There was another decision where the Governor of U.P. chose to dismiss arbitrarily the State government without allowing the government to test its majority on the floor of the House and the principles laid down in *S.R. Bommai* restored the dismissed government to its office<sup>103</sup>. The Supreme Court did not have to deal with the decision in appeal though it alleged to evolve a particular kind of floor test both for the office of chief minister were asked to test their strength on the floor of the house and the consequence to it was that the chief Minister was dismissed wrongly by the Government established his majority and continued in office.<sup>104</sup> This case is different as the Governor initiated the report for dismissal of government in office and the mala fide intention was prima facie.

*Rameshwar Prasad and Others v. Union of India*<sup>105</sup> is one of the case where even before the first meeting of the Legislative Assembly its dissolution had been ordered on the ground that attempts were made to cobble together a majority by illegal means and to lay claim to form the government in the State. The case repeated the principle enunciated in *State of Rajasthan* and *Bommai case* with more constitutional conscience. The Court made it clear that Article 356 contains an emergency power and this emergency power should not be used as normal power.

One of the extreme misuses of Article 356 was failure of the Union Executive which was of the same political belief as the Government of Narendra Modi in Gujarat which invoked Article 356 during the Godhra train incident in 2000<sup>106</sup>. Fali Nariman mentioned in an interview that the Constitution may not have envisaged a situation where emergency has arisen in a state where the ruling party is of the same as that of the Center and thus the Center might be biased against dissolving that government by invoking Article 356 but he also pointed out that the word used "otherwise" in the provision becomes instrumental in such a situation to allow the President to act without waiting for the government report<sup>107</sup>.

#### 4. CONCLUSION

The prophecy of the constitution makers that this provision would remain a dead letter and since coming into force of the Constitution of India on January 26, 1950 President's rule has been imposed innumerable times and on most of the events it was misused<sup>108</sup>.

As the author states that the *Bommai case* has "high water mark of judicial review"<sup>109</sup>. It would be stating the obvious that the proclamation of emergency powers under Article 356(1) could be bias because the party is in power at the Center

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Supra* Note 21.

<sup>102</sup> *Id.*

<sup>103</sup> *J. Jagdambika Pal V. State Of U.P* AIR 1998 SC 998.

<sup>104</sup> *Id.*

<sup>105</sup> AIR 2006 SC 980.

<sup>106</sup> *Supra* Note 68.

<sup>107</sup> *Id.*

<sup>108</sup> *Supra* Note 9.

<sup>109</sup> *Supra* Note 47.



which generally dominates Parliament by a majority vote even a vote in Parliament declaring a particular imposition of President's Rule cannot undergo the damage which is already done<sup>110</sup>. Though there is a genuine concern about the misuse of Article 356 by the Center referring to the State Government and the real shield to this would be judicial review extending to an inquiry into the truth and correctness of the basic facts which was relied upon in support of the action under the Article. The judicial activism reflected in *Bommai case* will cause serious problem and which would lead to grave consequence of the basic structure of the constitution that is, federalism. Taking that in perspective law should be clear and precise as the parties concerned to interpret the language in the judgment differently in order to suit their purpose and that the words have to be chosen very carefully in order to make it more concrete.

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<sup>110</sup> AIR 2006 SC 980