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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

THE ADEQUACY OF ARTICLE 356 OF THE INDIAN CONSTITUTION WITH SPECIAL EMPHASIS ON WHAT CONSTITUTES BREAKDOWN OF CONSTITUTE MACHINERY AND ITS IMPACT ON FEDERAL POLITY IN INDIA

-Shubham Airi

INTRODUCTION

Extra-Ordinary powers have been the matter of great controversies in every society since the establishment of an organised political system. Few see them as the necessary evil and justify preserving the peace and order in the society whereas others criticize them on ground of being a noose to straighten the neck of basic freedoms and idea of democracy. We have a crisis laden country from external as well as internal forces. Article 356 has been incorporated under the Indian constitution to enable the central government to combat from internal crisis occasioned on account of, constitutional deadlock due to lack of majority by any party in state elections, militancy, communal and class conflicts, politico-religious turmoil, strikes, bandhs or other incidents of like nature where state government can't be carried on in accordance with the provisions of the constitution. The emergence of emergency powers was subject to a lot of debate and discussion in the constituent assembly with regard to its possibility of endangering the federal polity. Finally these provisions were incorporated in the constitution believing that these would be the **dead letters** but to the utter dismay they became the **death letters of the constitution.** Intending to have remained as the least used provisions these finally turned out to be the most misused provisions of the constitution. Though this Article was incorporated in all good faith for the national integrity, it seemed to have paved way for settling personal scores with the states being ruled by other parties. In one way or the other the parties in control by manipulating these constitutional provisions have more or less succeeded in quenching their political rivalries. So the contemplation of *B.R Ambedkar* towards the rarest application of these provisions has actually gained force in the exactly opposite direction. The political leaders have tasted experience against reason and chosen to deny power to the state in certain matters, but it has also tempered reason against experience and provided the elasticity required to adapt a controlling constitution to the necessities of emergency situations, where the government of the state cannot be carried on in accordance with the provisions of the constitution in both the dimensions of power[1] i.e. the defence power and the civil power. One of the most significant provisions of the Indian constitution is article 356[2]. During the finalisation of the of the text of the constitution this provision had attracted notice and debate but the chairman of the drafting committee, *Dr. B.R. Ambedkar*,[3] had

[1] INDIAN CONST. art 352
[2]INDIAN CONST. art 356
[3]Constituent Assembly Debates, Vol. IX, p. 177

opined that the provision was meant to be used only in the *"rarest of the rare cases*". The scope of this article is to objectively examine the provision in the constitution in relation to imposition of president's rule. With the best possible efforts I have tried to cover the important areas under the present paper. However special attention has been provided towards the recommendations made by the *Sarkaria Commission*[4] and the landmark judgment delivered in the case of *S R Bommai v Union of India.*[5]

1. BACKGROUND AND HISTORY OF ITS EVOLUTION

Emergency rule or crisis government as it is generally called has been in existence for almost as long as organized government itself. [6] During the medieval age, emergency powers were handed down by the ruling princes to the commissioners appointed under royal prerogative, who exercised specific powers on the basis of special instructions. It can be safely stated that the concept of emergency is not entirely a western concept as considerable historical evidence of the recognition of emergency powers in eastern politics is also found corroborating it. The universal tradition of emergency rule has been adopted in one form or the other, by successive generations in mostly al political systems. The government is justified in suspending the normal rules of governance. The following will be divided in the two heads as follows:

i. The roots of the provisions as found in the Government of India Act, 1935 and

ii. Analogy between Article 356 and Sections 45 and 93 of the Government of India Act, 1935.

i. ROOTS IN THE GOVERNMENT OF INDIA ACT 1935

The British introduced the Government of India Act 1935[7] which envisaged a federal system of government with the governor at the head of each province and underlined with the concept of division of power. Section 93 of the Act It was basically meant to be an experiment where the British Government entrusted limited powers to the Provinces. The colonial powers were not inclined to trust these Ministries even with limited powers probably in view of the fact that not only the political parties in India were ambiguous regarding entering the Legislatures and Ministries created under the said Act but some of them were also proclaiming that even if they entered the Ministries they would try to break the governments from within. These precautions were manifested in the form of

[4]The Sarkaria Commission Report, (1987)
[5]S.R. Bommai v. Union of India, (1994) 3 SCC 1.
[6] Mulchand v State of Bihar, AIR 1974.
[7]Government of India Act, 1935.

emergency powers under Sections 93 and 45 of this Act, where the Governor General and the Governor, under extraordinary circumstances, exercised near absolute control over the Provinces.

ii. ANALOGY BETWEEN ARTICLE 356 AND SECTIONS 45 AND 93 OF THE GOVERNMENT OF INDIA ACT, 1935.

Sections 93 of the Government of India Act, 1935 provided that if a Governor of a province was satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of the said Act, he could, by proclamation, assume to himself all or any of the powers vested in or exercisable by a provincial body or authority including the Ministry and the Legislature and to discharge those functions in his discretion. The only exception was that under this section the Governor could not encroach upon the powers of the High Court. (Section 45 conferred a similar power upon the Governor-General with respect to the Central Government/Central Legislature). It is well-known that the said two provisions were incorporated in the 1935 Act to meet certain purposes and exigencies. In the first place article 188 of the draft constitution was analogous to Section 93 of the Government of India Act 1935 and it was contemplated that the governor of a state could assume the powers of the state when the government of the state is not carried in accordance with the constitution. This was deleted. In the finalized text it was the president alone who could issue a proclamation, when there is a failure of constitutional machinery in the state and assumes all or any of the functions of the state.

WHAT DID OUR CONSTITUTIONAL MAKERS THINK?

On August 29, 1947, a Drafting Committee was set up by the Constituent Assembly. Under the chairmanship *of Dr. B.R. Ambedkar*, it was to prepare a draft Constitution for India. In the course of about two years, the Assembly discussed 2,473 amendments out of a total of 7,635 amendments tabled. Even though article 356 was patterned upon the controversial section 93 of the 1935 Act - with this difference that instead of the Governor, the President is vested with the said power -it was yet thought necessary to have it in view of the problems that the Indian republic was expected to face soon after independence. When it was suggested in the Drafting Committee to confer similar powers of emergency as had been held by the Governor-General under the Government of India Act, 1935, upon the President, many members of that eminent committee vociferously opposed that idea. The Constituent Assembly debates disclose these sentiments. They also disclose that several members strongly opposed the incorporation of article 356 (draft article 278) precisely for the reason that it purported to reincarnate an imperial legacy. However, these objections were overridden by *Dr. Ambedkar* with the argument that no provision of any Constitution is immune from abuse as such and that mere possibility of abuse cannot be a ground for not incorporating it. He stated:

"In fact I share the sentiments expressed by my Hon'ble friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain as dead letters. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces."[8]

By virtue of this earnest advice given by the prime architect of the Indian Constitution, we can safely conclude that this is the very last resort to be used only in the rarest of rare events. A good Constitution must provide for all conceivable exigencies. Therefore this Article is like a safety valve to counter disruption of political machinery in a State.

1.) THE IMPLEMENTATION OF ARTICLE 356 – THE CANONS AND MECHANISM

Imposition of Article 356 proceeds according to the below mentioned canons of constitution:

1.) Article 355[9]: Central government determines that state is not running according to the Constitution.
2.) Article 256[10]& 257(1)[11]: Central government issues direction to the State to comply with the provisions of the Constitution.
3.) Article 365[12] : On non-compliance with the direction, the President can presume the failure of the State constitutional machinery.
4.) Article 356: Subject to its limitation, Effect of this Article is ensued.

These are only constitutional mechanism. Imposition of Article 356 requires also the fulfilment of judicial and conventional norms in the light of entire constitution.

2. PRESIDENTIAL RULE AND ITS IMPACT ON THE FEDERAL POLITY IN INDIA

It needs to be remembered that only the spirit of "co-operative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. *Dr. B.R Ambedkar*, who chaired the Drafting Committee of the Constituent Assembly, stressed the importance of describing India as a 'Union of States' rather than a 'Federation of States.' He said: '. . . what is important is that the use of the word "Union" is deliberate . . . Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a

[8] Constituent Assembly Debates, Vol. IX, p. 219
[9] INDIAN CONST. art 355
[10] INDIAN CONST. art 256
[11] INDIAN CONST. art 257 § 1
[12]INDIAN CONST. art 365

single source.11 This is in essence how one would describe Centre-State relations in India; excepting provisions for certain emergency situations in the Constitution of India, where the Union would exercise absolute control within the State. On the basis of a study of similar systems in ancient times, like the Achaean League, it is revealed that the danger of usurpation of authority by the Federal power would be smaller than the danger of degeneration of the federation into smaller factions that would not be able to defend themselves against external aggression. This is precisely the rationale behind the distribution of power between the Union and the States in India. In fact, specific powers are divided into three lists - the Union List, the State List, and the Concurrent List (powers shared by both the Union and the States). The power of governance is distributed in several organs and institutions - a sine qua non for good governance. It can be considered federal because of the distribution of powers between the Centre and States and it may be considered unitary because of the retention of Union control over certain State matters, and also because of the constitutional provisions relating to emergencies when all powers of a State would revert to the Centre. India has a vast and diverse population, with a large number of people living in abject poverty. Extraordinary situations are not novel to the Indian political scene. Therefore extraordinary powers to deal with these situations become necessary. The power contained in Article 356 is both extraordinary and arbitrary, but it is an uncanny trait of extraordinary power that it tends to corrupt the wielder. A close scrutiny of the history of its application would reveal that Article 356 is no exception. The Centre has not always kept in mind the concept of co-operative federalism or the spirit and object with which the article was enacted while dealing with the States and has indeed grossly abused the power under article 356 on many occasions. The facts and figures contained in Chapter Six of the *Sarkaria Commission Report*[13]read with Annexure VI (1 to 4) appended to the said chapter and the decision of the Supreme Court in *S.R. Bommai v. Union of India*[14] (reported in AIR 1994 SC 1918) amply bear out the truth of our assertion.

3. PROPOSALS MADE BY THE SARKARIA COMMISIION REPORT- 1987 5.1.

BACKGROUND

The Article was invoked on several occasions by the Centre, without any regards to the preventive steps laid down in Article356, due to ambiguities in its wording. It was only in 1987 when the *Sarkaria Commission* headed by *Justice R.S. Sarkaria*, was appointed in 1983 and spent four years researching reforms to improve Centre-State relations and it submitted its report that part of the obscurity surrounding Article 356 was cleared.

[13]Sarkaria Commission Report
[14]S.R. Bommai v. Union of India, (1994) 3 SCC 1.

INTERPRETATIONS MADE BY THE COMMISSION AS TO THE SCOPE OF ART 356

The *Sarkaria Commission* recommended extreme rare use of Article 356

The Commission observed that, although the passage,

". . . the government of the State cannot be carried on in accordance with the provisions of this Constitution . . ." is vague, each and every breach and infraction of constitutional provisions, irrespective of their significance, extent, and effect, cannot be treated as constituting a failure of the constitutional machinery. According to the Commission, Article 356 provides remedies for a situation in which there has been an actual breakdown of the constitutional machinery in a State. Any abuse or misuse of this drastic power would damage the democratic fabric of the Constitution. The report discourages a literal construction of Article 356(1). The Commission, after reviewing suggestions placed before it by several parties, individuals and organizations, decided that Article 356 should be used sparingly, as a last measure, when all available alternatives had failed to prevent or rectify a breakdown of constitutional machinery in a State. The report further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account

AVOIDING DISASTROUS CONSEQUENCES

According to the Commission's report, these alternatives may be dispensed with only in cases of extreme emergency, where failure on the part of the Union to take The *Sarkaria Commission Report, (1987).* Immediate action under Article 356 would lead to disastrous consequences. The report further recommended that a warning be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation in which not taking immediate action would lead to disastrous consequences.

THE GOVERNOR'S OBLIGATION TO EXPLORE ALTERNATIVES

In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without delay, the report recommends that the Governor request the outgoing Ministry to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and agrees to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should merely carry on the day-to-day government and should desist from

taking any major policy decision. Every Proclamation of Emergency is to be 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).

THE PROCLAMATION OF EMERGENCY AND THE GOVERNOR'S REPORT

The State Legislative Assembly should not be dissolved either by the Governor or the President before a Proclamation issued under Article 356(1) has been laid before Parliament and the latter has had an opportunity to consider it. The Commission's report recommends amending Article 356 suitably to ensure this. The report also recommends using safeguards that would enable the Parliament to review continuance in force of a Proclamation. 15 The report recommends appropriately amending Article 356 to include in a Proclamation material facts and grounds on which Article 356(1) is invoked. This, it is observed in the report, would make the remedy of judicial review on the grounds of mala fides more meaningful and the check of Parliament over the exercise of this power by the Union Executive more effective.15 It will be seen from this peremptory examination of the important passages of the Sarkaria Commission Report that its recommendations are extensive and define the applicability and justification of Article 356 in full. The views of Sri P.V. Rajamannar, former Chief Justice of the Madras (Chennai) High Court, who headed the Inquiry Commission by the State of Tamil Nadu to report on Center-State relations, concur broadly with the views of the Sarkaria Commission. But it is unfortunate that the principles and recommendations given by them are disregarded in the present day and that actions have been taken that are prima facie against the letter and spirit of the Constitution of India.

4. S.R. BOMMAI V UNION OF INDIA- REDIFINING THE INTERPRETATIONS OF ARTICLE 356

S. R. Bommai v. Union of India is the most vital milestone in the history of the Indian Constitution when comes to the application of Article 356. It was in this case that the Supreme Court boldly marked out the paradigm and limitations within which Article 356 was to function. In the words of Soli Sorabjee[15], eminent jurist and former Solicitor-General of India, “After the Supreme Court's judgment in the *S. R. Bommai case*, it is well settled that Article 356 is an extreme power and is to be used as a last resort in cases where it is manifest that there is an impasse and the constitutional machinery in a State has collapsed.”

The views expressed by the various judges of the Supreme Court in this case concur mostly with the recommendations of the Sarkaria Commission and hence need not be set out in extension. However,

[15] Soli Sorabjee, *Constitutional Morality Violated in Gujarat*, Indian Express, Pune, India, Sept. 21, 1996.

the summary of the conclusions of the illustrious judges deciding the case, given in paragraph 434 of the lengthy judgment deserves mention:

(1) Article 356 of the Constitution confers a power upon the President to be exercised only where he is satisfied that a situation has arisen where the Government of a State cannot be carried on in accordance with the provisions of the Constitution. Under our Constitution, the power is really that of the Union Council of Ministers with the Prime Minister at its head. The satisfaction contemplated by the article is subjective in nature.

(2) The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. The existence of material - which may comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on relevant material.

(3) Though the power of dissolving of the Legislative Assembly can be said to be implicit in clause (1) of Article 356, it must be held, having regard to the overall constitutional scheme that the President shall exercise it only after the Proclamation is approved by both Houses of Parliament under clause (3) and not before. Until such approval, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly under sub-clause (c) of clause (1).

The dissolution of Legislative Assembly is not a matter of course. It should be resorted to only where it is found necessary for achieving the purposes of the Proclamation.

5. POWER OF THE JUDICIARY TO STRIKE DOWN SUCH PROCLAMATION AND THE AFTERMATH- JUDICIAL REVIEW.

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 18 be mala fide or based on wholly irrelevant or extraneous grounds. 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[16]. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action.

If the Court strikes down the proclamation, it has the power to restore the dismissed Government to office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension. In such a case, the Court has the power to declare that acts done, orders passed and laws made during the period the Proclamation was in force shall remain unaffected and be treated as valid. Such declaration, however, shall not preclude the Government/Legislative Assembly or other

[16] Sanjay Hegde, *The Judiciary Can Stop the Misuse of Article 356, If It Chooses to Act*, The Wire (dated 17th February, 2018).

competent authority to review, repeal or modify such acts, orders and laws.17 Thus it can be seen from the conclusions of this Bench of the Supreme Court that the President's power under Article 356 is not absolute or arbitrary. The President cannot impose Central rule on a State at his whim, without reasonable cause.

6. PROPER GROUNDS FOR INVOCATION OF ARTICLE 356

The supreme court after analysing the scope and dimension of article 356, gave few illustrations as to where application of Article 356 would be proper, few of them are mentioned below[17]:-

1. Hung assembly scenario, having no possibility of forming the government.

2. Large scale law and order problem.

3. Damage to national integrity or security of state and calling for an application of Article 352.

4. Gross mismanagement of administration or abuse of power.

5. State involve in creating disunity and dissatisfaction among people.

6. Acting contrary to the constitution or union directivesi.e subversion of the constitution by state government.

7. Failure to meet an extra ordinary situation e.g.an outbreak of unprecedented violence, a great natural calamity etc.

However application of this article merely to secure good governance, preventing bribing to MLA's or determination of lack of majority by state government in governor chamber not on floor of assembly ,dissolving the assembly without probing the possibility of an alternative government through floor test are examples of improper exercise of Article 356.

7. IMPOSITION OF THE ARTICLE 356 IN PRACTICE

Article 356 was invoked in the following instances[18] after the Sarkaria Commission Report was submitted:

a. Assam (27.11.1990 - deterioration of the law and order situation),
b. Nagaland (2.4.1992 - fluid party position and deteriorating law and order situation),

[17] S.R. Bommai v. Union of India, (1994) 3 SCC 1.
[18]Shubhash Arora,*President's rule in Indian states (A study of Punjab). India: Mittal Publications*, ISBN 81-7099-234-6 (1990).

c. Nagaland (7.8.1988), (Karnataka - 21.4.1989) and Meghalaya (11.10.1991) - these three cases are dealt with by the Supreme Court in S.R. Bommai and held to be totally unconstitutional and unsupportable,

d. Bihar (28.3.1995 - process of election could not be completed; to facilitate passage of vote on account by Parliament) and U.P. (1996 - No clear majority in election); and

e. Tamil Nadu (30.1.88 - Deadlock due to death of Sri M.G. Ramachandran), Mizoram (7.9.1988 - Defections reduced the Government to minority), Jammu and Kashmir (18.7.1990 – Militancy), Karnataka (10.10.1990 - dissensions in the ruling party - floor-crossing), Goa (14.12.1990 - C.M. resigned consequent upon his disqualification by High Court - No other Government found viable), Tamil Nadu (30.1.1991 - alleged LTTE activities), Haryana (6.4.1991 - with the disqualification of three MLAs, Government lost majority, Ministry refused to face floor-test and recommended dissolution of House), Manipur (7-1-1992 - Government lost majority as a result of resignation of certain members), Tripura (11.3.1993 - Government resigned - no alternative viable), Manipur (31.12.1993 - 1000 persons died in controlling Naga-Kuki clashes - continuing violence), U.P. (18.10.1995 - Government lost majority - no viable 22 alternative Government in sight); and Gujarat (1996 - Government reduced to minority due to defections).

It follows from the facts stated above that more than often the constitutional power under article 356 was exercised wrongly. The Supreme Court proceeded to precisely check this abuse through its decision in *S.R. Bommai*. Though in the said decision no effective relief could be given to the State governments and the Legislative Assemblies which were wrongly dismissed/dissolved in view of the fact that pending the proceedings in the courts, fresh elections were held in those States, yet the court put the Central Government on notice that in case of a wrong dismissal of the State government and/or a wrong dissolution of the Legislative Assembly, the court does have the power, and that it will not hesitate, to restore such Government/Assembly back to life. Indeed it was indicated that would be the normal and natural consequence on the finding that Art. 356 was wrongly invoked in the case.

The result has been that since the said decision, the use of article 356 has drastically come down. Indeed 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 reconsider the matter in the light of the principles enunciated in the said decision. On a reconsideration of the matter, the government withdrew the proposal. We may also refer to yet 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. Following the principles enunciated in S.R. Bommai, the Allahabad High Court restored the dismissed government to its office (W.P. 7151 of 1998 disposed of on 23 February, 1998). This decision was not disturbed by the Supreme Court in appeal though it purported to evolve a peculiar kind of floor-test, namely, both the contenders for the office of chief

minister were asked to test their strength on the floor of the House. The Chief Minister who was dismissed wrongly by the Governor established his majority and continued in office (A.I.R. 1998 Supreme Court 998).

8. NEED FOR THE AMENDMENT IN ARTICLE 356 – SUBJECTIVE ANALYSIS BY THE AUTHOR.

In the light of the entire preceding discussion, the question arises whether article 356 needs to be amended. In fact there has been a strident demand for deletion of article 356 but if article 356 is removed while retaining articles 355 and 365, the situation may be worse from the point of view of the States.

In other words, the checks which are created by article 356 and in particular by clause (3) thereof, would not be there and the Central Government would be free to act in the name of redressing a situation where the government of a State cannot be carried on in accordance with the provisions of the Constitution. I am therefore not in favour of deleting article 356. If, however, Art. 356 (and the consequential article 357) are to be deleted then certain other provisions too require to be deleted viz.

a. The words "and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution" in Art. 355; and (b) Art. 365, in its entirety.
b. But then what would one say regarding Art. 256 and 257, which, no doubt, state the obvious, yet if they are deleted, the Courts may construe such deletion as bringing about a drastic change in Centre-State Relations. In any event, we feel that the stage has not yet arrived in our constitutional development, where we can recommend the deletion of Art. 356. What is required is its proper use and that has to be ensured by appropriate amendments to the article.

9. CONCLUSION

On ground of above observations it is evident that Article 356 has been deliberately incorporated to provide a platform to the amphibian central government to change its federal plane into unitary to avoid the political and social contingencies in a state, where its constitutional machinery can’t be run according to the mandate of the constitution.

Every power is purposive; it depends upon the nature of its application which brings it into repute and disrepute. Despite of its wide utility, Article 356, the dead letter of Dr, Ambedkar has become the death letter to the popularly elected governments at states due to its indiscriminate and politically

motivated application by union government. A careful observation of constitutional provisions in the light of judicial decisions makes it clear that central government's power under Article 356 is a restricted power bound by the constitutional, judicial and conventional norms and has not been given the blanket immunity. Being extra-ordinary power it is to be exercised sparingly with great caution as a weapon of last resort to dislodge the elected government in a state following breakdown of constitutional machinery therein when all the possible avenues of federal dynamics have been explored and resources of federal solutions to set up an alternative administration exhausted. After going through the intricate dimensions of this constitutional provisions and analysing the imposition of the president's rule in practice for umpteen times the writer would consider the following suggestions worth a mention:-

1. Firstly the appropriate provision should be incorporated whereby it provides that until both Houses of Parliament approve the proclamation issued under clause (1) of article 356, the Legislative Assembly cannot be dissolved. If necessary it can be kept only under animated suspension.

2. Arbitrary transfer, posting and removal of governors must be prevented through necessary constitutional amendments so as to prevent them from being the agent of political party in rule at centre. Further in appointment of the governor at least advice of the concerned chief minister must be taken.

3. The single safeguard in the name of parliamentary approval in Article 356(3) is not sufficient because ordinarily the ruling party at Centre generally 25 dominates Parliament by a majority. Hence a concise Act incorporating the provisions of constitutional, judicial and conventional norms are passed to regulate the imposition of Article 356(1)

4. Before issuing the proclamation under clause (1), the President/the Central Government should indicate to the State Government the matters wherein the State Government is not acting in accordance with the provisions of the Constitution and give it a reasonable opportunity of redressing the situation, unless the situation is such that following the above course would not be in the interest of security of State or defence of the country.

5. Next it should be made a mandate that once a proclamation is issued, it should not be permissible to withdraw it and issue another proclamation to the same effect with a view to circumvent the requirement in clause (3). Even if a proclamation is substituted by another proclamation, the period prescribed in clause (3) should be calculated from the date of the first proclamation.

6. The proclamation must contain the circumstances and the grounds upon which the President is satisfied that a situation has arisen where the government of the State cannot be carried on in accordance with the provisions of the Constitution. Further, if the Legislative Assembly is sought to be kept under animated suspension or dissolved, reasons for such course of action should also be stated in the appropriate proclamation.

7. Whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and not in the chamber of governor or else other. If necessary, the Central Government should take necessary steps to enable the Legislative Assembly to meet and freely transact its business. The Governors should not be allowed to dismiss the Ministry so long as it enjoys the confidence of the House. Only where a Chief Minister of the Ministry refuses to resign after his Ministry is defeated on a motion of no-confidence, should the Governor dismiss the State Government.

Under the light of the preceding discussion on Article 356 from various dimensions I tend to incline myself towards the rationale given by the constitutional framers towards the desirability of having such a provision. The intervention of the Supreme Court in the spate of misused applications of this Article for umpteen times seems to have turned the tide from blatant misuse to judicious use. With the reformative role played by the judiciary being laudable, it's now time for the executive to fasten its loose ends and thereby not give any room for criticism.