

**SUPREME COURT ON ARTICLE 356****Nimesh Das Guru**

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**ABSTRACT**

*The recent decision of Supreme Court in the case of Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors<sup>1</sup> has brought the power of Governor and Union Government under Art 356 ((hereinafter Art. 356) under the scanner. Art. 356 of the Constitution of India (hereinafter COI) empowers Union Government to take over ‘all or any of functions of the state government’ on receipt of a report from the Governor (or otherwise) if the President is satisfied that “the Government of the State cannot be carried on in accordance with provision of this Constitution”.<sup>2</sup> This provision was carried forward from the section 93 of the Government of India Act 1935 (hereinafter GOI 1935).<sup>3</sup> In the Constituent Assembly some of the members expressed their apprehension on carrying forward this particular legacy of GOI 1935 mainly on the ground that this power could be abused by the Union Government in case they have conflict on the issue of governance with the state.<sup>4</sup> Dr. Ambedkar, Chairman of Drafting Committee, responding to the heated debate on this article emphatically stated that he hopes this article “will never be called into operation and that they would remain a dead letter”. Ironically this article was ‘called into operation’ for more than 100 times.<sup>5</sup> It remained anything but dead letters. The apprehension of the members that it could be abused by Union Government came true.*

*The controversial proclamation of Art. 356 started reaching to Supreme Court. In the early period, it appears, that the Supreme Court was reluctant on the scope of judicial review against wrongful invocation of Art. 356 and the nature of the relief that court could provide in such cases. However, in *S. R. Bommai v. Union of India*<sup>6</sup> (hereinafter Bommai case) Supreme Court laid down clear guidelines on the grounds on which proclamation under Art. 356 could be made and held that the wrongful invocation of Art. 356 is subject to judicial review. This decision led to almost all proclamations under this of Art. 356 reaching before the Supreme Court and in a series of cases the Court further clarified the scope of judicial review for wrongful invocation of Art. 356, the nature of the relief that it could provide in cases of such wrongful invocation. This paper provides a brief account of the decisions given by Supreme Court on the invocation of Art. 356. This paper is divided in three sections, the first section provides a brief overview of Art. 356, the second section reports the decisions given in early cases leading to the landmark decision given in Bommai case, and the third section discusses the development in post Bommai world.*

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<sup>1</sup> *Infra* Note 80.

<sup>2</sup> Article 356, The Constitution of India.

<sup>3</sup> Seervai, H. M. (1988). Constitutional law of India: a critical commentary: supplement to third ed., including a monograph on the transfer of power to India. Vol. 3 page 3085 Bombay, Tripathi.

<sup>4</sup> Constituent Assembly Debates, Wednesday, the 3rd August 1949, available at <https://loksabha.nic.in/writereaddata/cadebatefiles/C03081949.html>, ((Last visited on June 27, 2023)).

<sup>5</sup> Kancharla, B., & Dubbudu, R., How many times is the president’s rule imposed so far? FACTLY. Available at <https://factly.in/how-many-times-presidents-rule-imposed-so-far-india/>, (Last visited on June 27, 2023).

<sup>6</sup> (1994)3 SCC 1.

**SECTION I****A brief overview of Article 356****Legislative History**

Art. 356 of the Constitution is taken *mutatis mutandis* from section 93 of GOI 1935.<sup>7</sup> Section 93 of the GOI Act 1935 gave powers to the Governor to take over the governance of the Province in his own hand in case he was satisfied that a situation has arisen in which the government of the Province could not be carried on in accordance with the provisions of this Act.<sup>8</sup> The reason behind giving this power to Governor was the apprehension emerging out of the open declaration of Congress party to wreck the government from within after assuming power through democratic means.<sup>9</sup> GOI 1935 was ending the dyarchical form of government introduced in the provinces through Government of India Act 1919 under which the field of governance was distributed between elected ministry and governor.<sup>10</sup> Post 1935, governor was going to have very limited administrative power and almost all field of governance was going to be transferred to the elected ministry.<sup>11</sup> Congress was sure of winning election handsomely in almost all provinces and they stated that after assuming power they would wreck the British rule from within.<sup>12</sup> Additionally there were apprehension that Congress Party rule may not be neutral to all sections, particularly religious minorities. In this context Marquis of Lothian in House of Lords, Secretary of State for India, provided rationale for such emergency power under the Act. He observed giving conclusory remarks on the Act that these provisions are necessary to meet the exigencies when the elected ministry while acting within the constitutional forms aims to subvert the principle of responsible government and substitute for them some form of party dictatorship.<sup>13</sup>

**Debates in Constituent Assembly**

The members in the Constituent Assembly were aware of the background in which this provision was kept in GOI Act 1935. One of the most important alteration that the Union Constitution Committee and the Provincial Constitution Committee suggested was that the power of the Governor should be limited to sending a report to the President, further power to act in such situation should be with the President.<sup>14</sup> At the time of clause by clause discussion, several members expressed their anxieties that this provision would empower Union Government to make inroads on the autonomy of the states.<sup>15</sup> Their main concern was on the vague and open texture of the provision where such proclamation could be made solely on the Presidential satisfaction that situation has arisen in which governance in the State could not be carried in accordance of the provision of this Constitution; there was no mention of specific grounds like threat to peace and order.<sup>16</sup> The President could have formed his opinion

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<sup>7</sup> *Supra* 2 at page 3085.

<sup>8</sup> Section 93, Government of India Act, 1935. Available at, [https://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga\\_19350002\\_en.pdf](https://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf) (Last visited on June 27, 2023).

<sup>9</sup> *Supra* 3.

<sup>10</sup> Kulshreshtha, V.D., Landmarks in Indian Legal history and Constitutional History, 11th Edition, 2016 Eastern Book Co. Lucknow, page 410-412.

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

<sup>12</sup> *Supra* 2.

<sup>13</sup> *Id.*

<sup>14</sup> Rao, B. S., The framing of India's constitution, The Indian Institute of Public Administration, Government of India Press, Nasik, 1968, Page 804.

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

<sup>16</sup> *Id* at 813.

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on the basis of the report sent by the Governor or otherwise as well.<sup>17</sup> Some members were particularly critical of President's power to intervene "otherwise than" on the report of a Governor.<sup>18</sup> A member, Mr. H. N Kunzru had concerns that this will weaken the base of 'responsible government' in the state because electors in the state would start expecting Union Government to intervene in case there was dissatisfaction from the government. He said that it was necessary for the electors to learn that in case they were dissatisfied with elected government then the solution lies in removing the elected government in democratic manner and not lay hope in the intervention of Union Government.<sup>19</sup>

Hari Nath Kunzru observed "*if this provision enable Center to intervene for the sake of 'good governance' in the provinces*".<sup>20</sup> In response to these apprehensions Dr. Ambedkar, Chairman of the Drafting Committee of the Constitution, empathically responded "*No... No... The Centre is not given that authority .... Expression 'failure of constitutional machinery' was in Govt. of India Act 1935 ... and everybody must be quite familiar, therefore, with its de jure and de facto meaning*".<sup>21</sup> He went on to observe that this provision was going to become a dead letter of the Constitution. However, as it happened this apprehension of abuse proved to be true. Art. 356 was invoked within one year of the Constitution coming into force and in the next fifty years it was invoked for 97 times.<sup>22</sup>

### **Working of Art 356**

The first proclamation under 356 was made in the year 1951 in the state of Punjab.<sup>23</sup> There was an internal political crisis in the ruling political party in the state of Punjab. The central leadership rather than resolving the internal crisis within the party chose to invoke article 356 to dismiss the democratically elected ministry though it enjoyed the confidence of the legislative assembly.<sup>24</sup> Sarkaria Commission observed that it "contained the seeds for future misapplication".<sup>25</sup>

The next controversial use of article 356 took place in the state of Kerala when democratically elected government of Achuthanandan was dismissed by central government even though the state government had majority in legislative assembly.<sup>26</sup> The alleged abused reached to its crescendo in the time of Indira Gandhi. She

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

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

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

<sup>20</sup> *Supra* 4, see Speech of H. N. Kunzru.

<sup>21</sup> *Supra* 4, Speech of Dr. Ambedkar.

<sup>22</sup> Ministry of Home Affairs, Statement Showing Date of roclamation and Revocation Regarding President's Rule in State Under Article 356 of the Constitution, V-12011 (1 )/2016-CSR, (A Reply on RTI RTI application's No MHOME/R/2016/50960 and MHOME/R/2016/80728 dated 10.04.2016 and 13.04.2016, released on 03/05/2016, Available at <https://factly.in/wp-content/uploads//2018/06/MHA-Presidents-Rule.pdf>.

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

<sup>24</sup> Sarkaria Commission Report and Centre-State relations. Agra, India : Sahitya Bhawanhttps, available at [web.archive.org/web/20140820195906/http://interstatecouncil.nic.in/Sarkaria/CHAPTERVI.pdf](http://web.archive.org/web/20140820195906/http://interstatecouncil.nic.in/Sarkaria/CHAPTERVI.pdf)

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

<sup>26</sup> Daniyal, S. (2016, February 1). A short history of the colonial origins of president's rule and its misuse in independent India. Scroll.in. available at, <https://scroll.in/article/802736/a-short-history-of-the-colonial-origins-of-presidents-rule-and-its-misuse-in-independent-india>,

made proclamation under article 356 for more than fifty times.<sup>27</sup> Paradoxically, the opposition parties who were critical of abuse of this power by the ruling Congress party, when they formed government in post emergency election in 1978, they also dismissed Congress ruled government in states exercising power under Art. 356.

## Section II

### Supreme Court on Article 356

#### Pre-Bommai phase

Supreme Court got the opportunity to express its opinion on the wrongful proclamations under Art. 356 for the first time in case of *State of Rajasthan v Union of India* (hereinafter *Rajasthan* case).<sup>28</sup> In the post emergency election Janta Party formed government at the Union. Chudhary Charan Singh (Union Home Minister) wrote letters to the Chief-Ministers of nine Congress ruled states.<sup>29</sup> In this letter Chaudhary Charan Singh observed that the Congress Party has lost the mandate of the people to be in government as it was clear from the result of general election conducted for the House of People where Congress party was resoundingly rejected by people.<sup>30</sup> Therefore, he advised Chief Ministers to tender resignation and advice Governor of their states to dissolve the Legislative Assembly so that election could be conducted to seek the fresh mandate of the people.<sup>31</sup> Six states filed petition under Art. 131 against Union of India seeking permanent injunction against the 'directive' in the said letter and/or dissolving state legislative assemblies.<sup>32</sup> The Court set two main issues for adjudication. The first issue was if the suit was maintainable and the second issue was if the President could dissolve the Legislative Assembly even before the Parliament has expressed its view on the Proclamation under Art. 356(3).<sup>33</sup>

The suit was filed invoking jurisdiction of the Supreme Court under Art. 131. Art. 131 of the Constitution grants the Supreme Court of India original jurisdiction "in any disputes between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."<sup>34</sup> The respondent raised a preliminary objections that the suit was not maintainable because there was no *lis* between Government of India and State but between Government of India and State Government.<sup>35</sup> Art. 131 use expression state and not 'state government'.<sup>36</sup> However, the majority of the judges dismissed this hyper technical interpretation of Art. 131. Beg

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<sup>27</sup> What is Article 356, which PM says Indira Gandhi misused 50 times? Firstpost. (2023, February 9), available at <https://www.firstpost.com/explainers/what-is-article-356-which-pm-says-indira-gandhi-misused-50-times-12132492.html>

<sup>28</sup> (1977) 3 SCC 592.

<sup>29</sup> Singh M. P., V. N. Shukla's Constitution of India, Eastern Book Company, Lucknow, Thirteenth Edition, 2017, page number 1055.

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

<sup>31</sup> Guru, N. D. (2022, May). (PDF) Constitutional Law of India II - researchgate. available at [https://www.researchgate.net/publication/360748202\\_Constitutional\\_Law\\_of\\_India\\_II\\_Nimesh\\_Das\\_Guru](https://www.researchgate.net/publication/360748202_Constitutional_Law_of_India_II_Nimesh_Das_Guru) (Last visited on June 27, 2023).

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

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

<sup>34</sup> Article 131, The Constitution of India.

<sup>35</sup> *Supra* note 3 at para 25.24 at page 2626.

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

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CJ opined that even if we take note of the difference between state and state government; we do not need to “take a too restrictive or a hyper-technical view of the State’s rights to sue for any rights, actual or fancied, which the State Government chooses to take up on behalf of the State concerned in a suit under Article 131.”<sup>37</sup> Chandrachud J. writing for himself and Gupta J. also dismissed the preliminary objection.<sup>38</sup>

The next important issue in this case was if the Court can pass an injunction restraining the President from dissolving the legislative assembly until Parliament has expressed its view on the Proclamation under clause 3 of Art. 356. Art. 356(3) states that every Proclamation under this article is to be laid before each of House of Parliament and if the Proclamation is not approved by each House then it would cease to have any effect.<sup>39</sup> However, all judges (except Goswami J.) rejected this submission.<sup>40</sup> Beg CJ observed that there was nothing in Art. 356 that would make it “a condition precedent to the exercise of the power of the dissolution of legislative assembly”.<sup>41</sup>

The next issue was on the extent of judicial review; if the Court can look into allegation of *mala fide* exercise of power. The Court held that where the reason of the exercise of the discretion (on the dissolution of the assembly) is available then court can conduct a limited judicial review to see if there is any rational nexus between the reason disclosed and the action proposed.<sup>42</sup>

### **The S. R. Bommai Case**

The next landmark decision on Art. 356 was given in the case of *S. R. Bommai v. Union of India*.<sup>43</sup> Janta Dal led by R. K. Hegde secured majority in the general election conducted for Karnataka State Legislative Assembly on March 5, 1985 and was sworn in as Chief Minister of Karnataka.<sup>44</sup> He resigned from his office on August 12, 1988 and subsequently S. R. Bommai was sworn in as Chief Minister.<sup>45</sup> K. R. Molakeryan, a Member of Legislative Assembly (hereinafter MLA) of Karnataka wrote a letter to Governor enclosing the letters of 19 MLAs that government of S. R. Bommai has lost support of the majority of the MLAs and therefore, Governor should call for a vote of no confidence in Legislative Assembly where Ministry should be asked to prove their majority.<sup>46</sup> Accordingly, the Governor sent a report to the President stating that it appears Bommai’s government has lost the confidence of the Legislative Assembly.<sup>47</sup> Later 7 out of 19 MLAs reported to the Governor that their signature was forged.<sup>48</sup> The cabinet of S. R. Bommai taking note of development met Governor and also requested him to summon the meeting of Legislative Assembly so that he can prove the confidence of the House.<sup>49</sup> Governor, instead sent a second report to the President and accordingly President issued a Proclamation

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<sup>37</sup> *Id.* at 2627.

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

<sup>39</sup> See Article 356(3), The Constitution of India.

<sup>40</sup> *Supra* note 3, Seervai at para 29.28 page 3095.

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

<sup>42</sup> *Supra* note 29, Singh M. P. at page 1055.

<sup>43</sup> (1994) 3 SCC 1.

<sup>44</sup> *Id.* at page 4.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

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

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under Art. 356 dismissing the Government of S. R. Bommai and on the same day Legislative Assembly of Karnataka was also dissolved.<sup>50</sup>

The constitutional validity of the Proclamation was challenged before the High Court of Karnataka where the Court upheld the Proclamation.<sup>51</sup> The Court observed that the Governor's report was not irrelevant and Governor has formed his satisfaction that no party is in position to form government on the basis of assessment of facts presented to him.<sup>52</sup> The Court further held that it is 'neither compulsory nor obligatory' and also it is not a prerequisite for Governor to conduct a floor test before sending his report to the President. The Court basically reached to its conclusion on the basis of the law laid down in *Rajasthan* case<sup>53</sup> and held that Presidential satisfaction was not based on irrelevant fact therefore, the Proclamation is valid. The decision of the High Court was challenged before the Supreme Court of India.

In a parallel development, the government of Meghalaya and Nagaland were also dismissed on more or less same grounds where it was reported that the Ministry has lost its majority in the Assembly. In further development on December 15, 1992, Union Government dismissed the BJP government in Rajasthan, Madhya Pradesh and Himachal Pradesh issuing a Proclamation under Art. 356. This decision was taken in the aftermath of demolition of the disputed structure in Ajudhya in Uttar Pradesh and subsequent communal riots which spread in various states in India.<sup>54</sup>

The Chief Minister of Madhya Pradesh filed a writ petition before High Court challenging the constitutional validity of the above made Proclamation. The Madhya Pradesh High Court invalidated the proclamation on the ground some incident of arson, rioting and killing in the aftermath of the demolition of the disputed structure at Ajudhya could not be the adequate justification for an action under Art. 356.<sup>55</sup> The Court held that disturbance in the state should be of that magnitude that it should be become impossible to govern state in accordance with Constitution.<sup>56</sup> The Court found that there was nothing on record to show that disturbances cited were of such magnitude, therefore, accordingly the Court ordered restoration of the government and the Legislative Assembly.<sup>57</sup> This decision was challenged before the Supreme Court and the Supreme Court stayed the operation of the High Court's order pending the disposal of the appeal.<sup>58</sup>

All these petitions were clubbed together with the pending appeal in the case of *S. R. Bommai* and a truly landmark decision was delivered where a bench of a nine judge produced seven different opinions, where it gave detailed observations on working of Art. 356.<sup>59</sup>

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

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

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

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Sunderlal Patwa v. Union of India*, 1993 Jab LJ 387 (FB).

<sup>56</sup> *Supra* note 29, Singh M. P. at page 1056.

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

<sup>58</sup> *Id.*

<sup>59</sup> *Supra* note 29, Singh M. P., Also see Soli j. Sorabjee, "Decision of the Supreme Court in *S. R. Bommai v Union of India*: A critique. (1994) 3 SCC J 1.

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One of the most important observation of this case was that the wrongful proclamation under Art. 356 is an affront to the federal features of the Constitution.<sup>60</sup> Some judges held that federalism is a basic feature of the Constitution. All judges unanimously agreed that the proclamation under Art. 356 is subject to judicial review.<sup>61</sup> The only difference was on the scope of judicial review. Some of the judges went for wider judicial review and some went for narrower judicial review.<sup>62</sup>

The Court was unanimous that the Presidential satisfaction under Art. 356 must be based on relevant material.<sup>63</sup> The Court has the power to demand the material on the basis of which the Proclamation was made.<sup>64</sup> Art. 74(2) does not put any bar on Court making enquiry about the material on the basis of which President formed his satisfaction.<sup>65</sup> The Court has the power to strike down the Proclamation if it was made on wholly irrelevant or extraneous grounds. The Court in this decision also had the opportunity to look into the reports submitted by Sarkaria Committee.

A Commission in the chairmanship Justice R. S. Sarkaria was constituted to give a report on Centre-State relation under the COI.<sup>66</sup> The Report dedicated an entire chapter, Chapter Six, on Emergency Provision. The Commission gave a detailed report on the historical evolution, highlighted the wrongful cases of Proclamation, the scope and effect of the power under Art. 356, and most importantly recommended the grounds on which valid proclamation could be made or not made.<sup>67</sup>

Sarkaria Commission laid down grounds on which proclamation under Art. 356 could be made and also listed the grounds on which proclamation could not be made. The grounds on which proclamation would be valid are (i) political crisis (where no political party or coalition is in the position to form government), (ii) internal subversion (where a government is knowingly acting in violation of Constitutional provisions and the law, actively involved in fomenting a violent revolt or revolution) (iii) physical breakdown (where a Ministry though properly constituted deliberately neglects or completely fail in acting against a situation of 'internal disturbances' leading to endangering the security of the state, or in case of great calamities or disaster of unprecedented magnitude the state has completely failed in discharging its obligations towards restoring the normalcy), and (iv) non-compliance with constitutional directions of the Union Government issued under various provisions of the COI like Art. 256, 257, 339(2) or 353.<sup>68</sup>

The situations when the Proclamation would not constitutionally sustainable. They are i) maladministration in a state; ii) Proclamation made before exploring if any other political party or coalition is in a position to form government after the sitting ministry lost its confidence of the Assembly; iii) dismissing the government without giving the ministry the chance to prove its majority at the floor of the House; iv) massive defeat of the political party ruling the state in Lok Sabha as it happened in 1977 with Congress Party; v) internal disturbances not amounting internal subversion; vi) issuing proclamation without giving a prior warning to state government

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<sup>60</sup> *Id.*

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

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

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* See *Supra* note 24 for Report of Sarkaria Commission.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* Singh M.P. at page 1057 also Report of Sarkaria Commission page 172-174.

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unless there is an extreme urgency; vii) to resolve intra-party discord as it was done in Punjab in 1951; viii) financial emergency in state; ix) allegation of corruptions against the ministry; x) exercise of power on irrelevant grounds.<sup>69</sup>

The Court in Bommai case endorsed most of these recommendations.<sup>70</sup> The Court also held the even if the state government was dismissed, the Legislative Assembly should not be dissolved until Parliament has expressed its view on the Proclamation under Art. 356. In case the Proclamation is not approved then the Assembly should get reactivated.<sup>71</sup>

### Section III

#### Post Bommai Development

The impact of Bommai decision on reduction of Proclamation under Art. 356 was also acknowledged in the Report of 'National Commission to Review the Working of the Constitution'.<sup>72</sup> This Commission was constituted in February 2000 to make report on the working of the Constitution 'in the light of the experience of the past 50 years'. The report dedicated an entire chapter on the working of Art. 356. It observed that the use of Art. 356 has drastically come down post Bommai decision.<sup>73</sup> The *Bommai* decision made it clear that Proclamation under Art. 356 is subject to judicial review and the Court will restore the dismissed government, revive the dissolved Legislative Assembly in cases of wrongful Proclamation. In the year 1999 when the Union Cabinet recommended the Proclamation under Art 356 in the State of Bihar, the President sent the file for reconsideration citing that the Proclamation is not in line of the principles enunciated in *Bommai* case.<sup>74</sup> Similarly Allahabad High Court reversed Governor's decision to dismiss the Uttar Pradesh Government following the principles enunciated in Bommai Case.<sup>75</sup>

The next landmark decision came in *Rameshwar Prasad (6) v Union of India*<sup>76</sup> where the Supreme Court further developed principles laid down in *Bommai* Case.

A unique situation emerged in Bihar when after general election no political party or coalition was in position to form government. Governor apprised the President of the situation and the President made the proclamation to bring Bihar under President's rule "keeping the Legislative Assembly in animated suspension".<sup>77</sup> When even after a month no political party came to form government, Governor send another report citing newspapers reports that he is apprehending large scale 'horse trading' asking President to take appropriate action. Again, when no political party came to form government, Governor sent another report where he submitted that various allurements are being offered to MLAs to bring them on their side and he recommended these trends need to be arrested because it goes against the Constitution. He submitted that the Legislative Assembly kept in animated

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> National Commission to Review the Working of the Constitution, Article 356 of the Constitution (2001). Available at <https://legalaffairs.gov.in/sites/default/files/Article%20356%20of%20the%20Constitution.pdf> ((Last visited on June 27, 2023).

<sup>73</sup> *Id* at 7.3.

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

<sup>75</sup> *Id.*

<sup>76</sup> 2006 (2) SCC 1

<sup>77</sup> *Supra* note 29, Singh, M. P. 1058.

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suspension should be dissolved and fresh election should be called for. President accordingly issued a notification dissolving the suspended Assembly.

Several MLAs filed petition under Art. 32 of COI challenging Presidential action of dissolving Assembly. The Supreme Court in a divided opinion (3-2) held the dissolution of the Assembly unconstitutional. The main issue in this case was if the Assembly could be dissolved by the President after assuming power under Art. 356(1) on the ground that political parties are trying to obtain the support of MLAs by illegal means. The Court observed that

*It would be wholly irrational for a constitutional authority to deny the claim made by a majority to form the Government only on the ground that the majority has been obtained by offering allurements and bribes, which deals have taken place in the cover of darkness, but his undisclosed sources have confirmed such deals.*<sup>78</sup>

The Court further held that it would enquire into the *mala fide* aspect of the Proclamation; the drastic and extreme action under Article 356 cannot be justified on mere *ipse dixit*, suspicion, whims and fancies of the Governor.<sup>79</sup> This Court cannot remain a silent spectator watching the subversion of the Constitution. The power under Tenth Schedule for defection lies with the Speaker of the House and not with the Governor. The power exercised by the Speaker under the Tenth Schedule is of judicial nature. Dealing with the question whether power of disqualification of members of the House vests exclusively with the House.

In recent past the controversy has primarily arisen because of defection in political party leading to fall of government. In series of such cases The Court has reiterated the position taken in *Bommai* case that whether a ministry has lost confidence of the House should only be decided in the floor of the House. In the most recent case of *Subhash Desai v. Principal Secretary, Governor of Maharashtra & Ors.*,<sup>80</sup> the Court again reiterated its position observing “*the Governor cannot decide whether the Council of Ministers has lost the confidence of the House and this has to be determined on the floor of the House*”.<sup>81</sup> One of the most important observation in this case was that the Court would have reinstated the government had Governor dismissed the ministry before providing them an opportunity to prove their confidence on the floor of the Assembly.<sup>82</sup>

### CONCLUSION

The apprehension of members of the Constituent assembly that Union Government may abuse its power under Art. 356, though it was dismissed by Dr. Ambedkar, actually came true. The study of the series of judicial decisions delivered by the Supreme Court and reports of the various committee makes it clear that in the past there had been instances of abuse of power while making Proclamation under Art. 356. However, the decision of the *Bommai* case where the Court laid down clear guidelines with respect to valid and invalid grounds on which such Proclamation under Art. 356 could be made put a check on the abuse of this power by Union Government. The significant drop in the number of times Proclamation under Art. 356 Post *Bommai* makes it clear. Perhaps now the legendary observation of Dr. Ambedkar that this article would be a dead letter in the Constitution is coming true.

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<sup>78</sup> *Id.* 1058-59.

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

<sup>80</sup> Available here [https://main.sci.gov.in/supremecourt/2022/20234/20234\\_2022\\_1\\_1502\\_44512\\_Judgement\\_11-May-2023.pdf](https://main.sci.gov.in/supremecourt/2022/20234/20234_2022_1_1502_44512_Judgement_11-May-2023.pdf) (Last Visited June 27, 2023).

<sup>81</sup> *Id.* para 175.

<sup>82</sup> *Id.* para 189.