

An Analysis of Pre and Post S.R. Bommai Scenario with Reference to President's Rule in States

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Abstract: The study of the topic is relevant because Article 356 of the Constitution of India has been the most controversial article since its commencement as it posed danger to the federal structure of the India. In 1994, a judgment in *S.R. Bommai vs. Union of India* pronounced by the Supreme Court of India proved to be a milestone in the history of this controversial article. The Supreme Court in *S.R. Bommai* judgment provided several guidelines on this Article which has given the right direction to Article 356 (President's Rule over States). The study is centered on the *Bommai* judgment, focusing on judgments before *Bommai* and developments that took place after *Bommai*. This study also proposes an amendment similar to the norms and guidelines pronounced in the *Bommai* case as before *S.R. Bommai's Judgment* the governments at the centre were playing the foul game of imposing Presidential Rule to meet their political desires.

Keywords: Constitution of India, President's Rule, Article 356, *S.R. Bommai*, Federal Structure

I. INTRODUCTION

The founding fathers of the Constitution of India were highly influenced by the factors like national unity, integrity and security of the country. They, therefore, were committed with the idea of setting up a federation with a strong Centre as India, at that point of time, was a land that had just been partitioned and to drive out that fear of further breaking up of the nation, a strong centre was a priority. Article 356 of the Constitution was most keenly discussed and debated in the Constituent Assembly. The founding fathers apprehended that, if and when it would be misused, it would violate not merely the federal character of the polity envisaged by them but also make a mockery of democratic principles. Drafting Committee Chairman of Constitution Dr. B. R. Ambedkar hoped that this provision of Article 356 "will never be called into operation" and "would remain a dead letter"^[1]. Dr. Ambedkar had opined that the provision was meant to be used only in the "rarest of the rare cases"^[2]. Up to year 2016, 124 times while after *S.R. Bommai* judgment, more than 25 times Article 356 has been imposed on the States. Most of the times, the centre misuses this power for its political purpose but the States contend it by saying that these provisions are the encroachment on federal character, i.e. the autonomy of the States.

The Emergency provisions (Article 355, 356 and 365) under Constitution of India have always been a matter of dispute between the centre and the States. Article 356 of the Indian Constitution has always been the focal point of a wider debate of the federal structure of government in Indian polity^[3]. This Article gave wide powers to the central government to take remedial action over a State if civil unrest occurred and the State government did not have the means to end the unrest so that it can function according to the constitution yet from the facts, it is experienced that power under the said Article was exercised wrongly to serve the interest of the party ruling in the centre against constitutional aspiration. Such misuse is against the established norms of federalism.

What has been an irony is that the aspect of State emergency was foreseen to have remained as the 'least used provision' but finally, it turned out to be among the most misused provision of the Constitution of India. The provision, which was thought to as a 'safety valve' proved to be a political weapon of the Centre against the States. The provision, which was intended to be a 'dead letter', has proved to be a 'death letter', for a number of State Governments. Different Political parties have misused the Article 356 to assert their authority over States using distinctive ways and ideas, which were never thought of by the framers of the constitution.

The objectives of the study are to analyze Pre and post *S.R. Bommai's* judgment on Article 356, its impact on further cases and the role of this judgment to strengthen the federal structure of the country. Again developments brought in Article 356, after *S.R. Bommai* case judgment and its role to avoid the misuse and making the balance between centre and the States relation will also be critically analyzed.

II. SOME REFLECTIONS OF PRE S. R BOMMAI SCENARIO

State of Rajasthan V/s Union of India^[4]

The Union Home Minister, Charan Singh, of the Janata Party Government, communicated a letter on 17-04-1977 advising the State Government of Bihar, U.P., Himachal Pradesh, Haryana, Madhya Pradesh, Orissa, Punjab, Rajasthan and West Bengal to advise their respective Governors for dissolution of their

Legislative Assembly and posing threat to dissolve the Legislature in exercise of power under Article 356 of the Constitution of India forcing the State Government to seek fresh mandate in the light of a massive defeat of Congress party in these nine States. The matter was examined by Supreme Court by a special constitution Bench of seven judges in the *State of Rajasthan V/s Union of India* ^[4] in the light of preliminary objections regarding the non-justiciability of circumstances warranting invocation of Article 356. The court dismissed the Suit of the State governments that Article 356(1) was imposed in the State by mala fide intention. In the words of Justice P.N. Bhagwati^[5]:

"The satisfaction of the President under Article 356 is a subjective one and cannot be tested by reference to any objective tests or by judicially discoverable and manageable standards."

Thus once again the judicial review of this Article was struck down. But Court also held that the court cannot go into the correctness or adequacy of the facts and the circumstances on which the satisfaction of the Central Government is based. But if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the court would have jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied, the satisfaction of the President is a condition precedent to the exercise of power under Article 356 (1), and if it can be shown that there was no satisfaction of the President at all, the exercise of power would be Constitutionally invalid of course, in most of the cases it would be difficult, if not impossible to challenge the exercise of power under Article 356 (1), even on this limited ground because the facts and circumstances on which the satisfaction is based would not be known, but what is possible, the existence of satisfaction can always be challenged on the grounds that it is *mala fide* or based on wholly extraneous and irrelevant grounds^[6].

In *A.K. Roy v. Union of India*^[7], a Constitution Bench of the Supreme Court observed that after the deletion of Clause 5 of the 44th Constitutional Amendment, which was in existence when the Rajasthan case was decided "any observations made in the Rajasthan case on the basis of that clause cannot any longer hold good"^[8].

Sarkaria Commission Recommendation

The arising dissatisfaction and suspicion of the danger to the autonomy of States prompted the Chief Ministers of the States to put pressure on union government to constitute a commission on union-state relations in order clarify their status in the federation. Mrs. Indira Gandhi constituted a commission in 1983 headed by Justice Ranjeet Singh Sarkaria^[9] on Union-State relations which presented its report in 1988. The Sarkaria commission recommended that Article 356 containing the extra ordinary provision must be used very sparingly in extreme cases, as a measure of last resort where all the other alternatives fail to prevent or rectify a breakdown of constitutional machinery in the States.

The Commission also warned that involving Article 356 for solving the political crisis in the ruling party was an instance of misuse. Regarding internal subversion^[10], it said that if any State government deliberately pursues an unconstitutional policy it would be a case calling for invocation of this power but only after giving due warnings and opportunities for corrective measures. The Commission also pointed out that if the State Govt. does not comply with any directions issued under Article 353 during an emergency in spite of due warnings it may invite the power under Article 356. Similarly, the commission stated that if a public disorder of a significant magnitude endangering the security of the state takes place, it is the duty of the State Govt. to inform the centre of such development and if it fails to do so it may again invite Article 356 subject of course to prior warnings.

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 Govt to be installed and if fresh elections can be held without available delay, he should ask the outgoing ministry, if there is one, to continue as a caretaker Government, provided the ministry was defeated sole on a major policy issue, unconnected with any allegations of mal administration or corruption and agreeable to continue. The Governor should then dissolve the legislative Assembly, leaving the resolution of the Constitutional crisis to electorate. During the interim period, the caretaker Government should be allowed to function. As a matter of convention, the caretaker Government should merely carry on the day to day Government and desist from taking any major policy decision^[11].

Every proclamation should be placed before each house of the parliament at the earliest in any case before the expiry of the two months period contemplated in cl. (3) of Article 356. The State Legislative Assembly should not be dissolved by either by the Governor or the President before the proclamation issued under Article 356 (1) has laid before parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

Sarkaria Commission also pointed^[12] out that the abuse of article 356 can be prevented only by the way of reverting to the narrow sense in which it had been explained and understood. A liberal interpretation of Article 356 will reduce the states to mere dependencies and cut at the root of democratic, parliamentary, federal

form of government but unfortunately it so happened that over the years, 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.

III. S.R. BOMMAI'S JUDGMENT

The unending misuse of Article 356 made the Constitutional expert, legal luminaries and Judiciary disturbed and uneasy. They needed to curb the misuse of this Article and to preserve the federal structure and balance it with the unity and integrity of India. In this situation a rays of hope arises by the judgment of the Supreme Court in *S.R. Bommai vs. Union of India*^[13] where the court proceeded to precisely check the abuse. Though the recommendation of Sarkaria Commission had not its binding force but the Supreme Court took the recommendation in to consideration and respectfully endorsed^[14] it in the *S.R. Bommai* case. The judgment delivered by 9 judge's special Constitution Bench of Hon'ble Supreme Court has brought wide development of Article 356. This decision overruled the decision given in *State of Rajasthan vs. Union*^[15] of India.

In 1989, Janata Dal Government in Karnataka was headed by Sri S.R. Bommai as the Chief Minister. The problem arose when a number of members defected from the party and this put a question mark on the majority support in the House for the Bommai Ministry. The Chief Minister proposed to the Governor that the Assembly session be called to test the strength of the ministry on the floor of the Houses. But the Governor ignored this suggestion. He also did not explore the possibility of an alternative government but reported to the President that as Mr. Bommai had lost the majority support in the House, and as no other party was in position to form the Government action be taken under Article 356 (1). Accordingly, the President issued the proclamation in April, 1989.

Mr. Bommai challenged the validity of the proclamation before the Karnataka High court through a writ petition on various grounds. The High court dismissed the petition and ruled that the proclamation issued under Article 356 (1) is not wholly outside the pole of judicial scrutiny, the satisfaction of the President under Article 356 (1) is a condition present issue of the proclamation right to be real and genuine satisfaction based on relevant facts and circumstances. The scope of judicial scrutiny is therefore confined to an examination whether the disclosed reasons bear any rational nexus to the proposed proclamation issued. Bommai appealed to the Supreme Court against the High court decision.

A Bench of nine judges was constituted in Bommai to consider the various issues arising in the several cases, and seven opinions were delivered. While some of the judges (Ahmadi, Verma, Ramaswamy, and J.J) adopted a passive attitude towards judicial review of the presidential proclamation under Article 356 (1), other adopted somewhat activist stance. The court held^[16] that proclamation made under Article 356 of the Constitution is justiciable and the courts could look into the materials or the reasons disclosed for issuing the proclamation to find out whether those materials or reasons were wholly extraneous to the formation of the satisfaction and held no rationality at all to the satisfaction reached under Article 356 of the constitution.

On the basis of consensus among the judges the following propositions can be enunciated in relation to Article 356 (1) and the scope of judicial review there under:-

- (1)The proclamation of President's Rule is subject to judicial review (as provided by 44th Amendment 1978) on grounds of *mala fide* Intention;
- (2)The proclamation shall be based on relevant material and Centre has to justify the imposition of President's Rule .The Article 74(2) is not a bar against the scrutiny of the material on the basis of which the President arrived at his satisfaction.
- (3)The court has power to revive dissolved or suspended State government. If proclamation of President's Rule is found unconstitutional and invalid, it will be open to the Court to restore the status quo ante to the issuance of the Proclamation and hence to restore the Legislative Assembly and the Ministry.
- (3)The State Assembly can't be dissolved before approval of parliament for imposition of President's Rule and President can only suspend the Assembly.
- (4)The grounds of serious allegations of corruption against Ministry of State and financial instability are not enough for imposition of President's Rule;
- (5)The Government shall be given enough opportunities to correct itself in cases where directives are issued ;
- (6)Secularism is the basic feature of our Constitution and any measure or action taken by State government for security of this feature can't lead to use of Article 356; the power under Article 356 can't be used to sort intra party problems of ruling party';
- (7)If Ministry of State resigns or dismissed or loses majority then Governor can't advise President to impose President's Rule until enough measures are taken by Governor for formation an alternative Government;
- (8)The SC held that power under Article 356 is an exceptional power and to be used only in case of exigencies.

Along with other guidelines in Bommai case, judgment was also held^[17] that the power conferred by Article 356 is a conditioned power, it is not absolute to be exercised in the discretion of the president and if the proclamation issued is declared invalid, it will be open to the court to restore the dismissed government to office

and revive and reactivate the legislative assembly it may have been dissolved or kept under suspension. While restoring *status-quo ante*, it will be open for the court to mould the relief suitably and declare as void action taken by the president till date.

Before this judgment it was hard to guess the view of High Court/Supreme Court on the misuse of Article 356 that created a situation of uncertainty. This landmark judgment has absolutely changed the scenario of misuse of Article 356 by Union Government. Before this historical judgment Article 356 was seen as deviating from its actual purpose. After this pronouncement, Article 356 seems to have taken the right path and creates a new metamorphosis of the Centre-State relationship. The Constitutional implication of this case has strengthened the federal character of Indian Constitution. S.R. Bommai's Pronouncement laid down the specific guidelines, conditions and norms for using the powers under Article 356 by Union government. This hailed judgment has put the Union government on back foot before imposing the presidential rule on untenable grounds and provides a right direction to Article 356 for serving its very purpose which was foresighted by the founding fathers of the Constitution of India.

The Supreme Court also endorsed Sarkaria Commission's^[18] some recommendations that Article 356 should be imposed as a last resort after taking the recourse of warning, floor test to prove majority in the legislature etc. As it is said that federalism has been designed as a basic value of Indian Constitution, dismissal of duly elected State Assembly by the central government is really a negative of federal concept. This Judgment cast deep impact on Article 356.

IV. POST S.R. BOMMAI'S JUDGMENT SCENARIO

Article 356 got the wider development in S.R. Bommai and in later cases like *Jagdambika Pal vs Union of India and ors.*^[19] *Rameshwar Prasad vs Union of India*^[20], *Union of India vs Harish Chandra Singh Rawat and another*^[21] and *Nabam Rebia vs Deputy Speaker and Others*^[22]. These decisions casted a deep impact on the credibility and approach of the Supreme Court to sustain the character of federalism and democratic norms. Even after S.R. Bommai case Judgment, misuse of Article 356 is still in practice. The executive discretion and the role of governor are always being condemned during the misuse of Article 356. The development of Article 356 after S.R. Bommai's judgment is very interesting.

UP Legislative Assembly dissolution case

Jagdambika Pal vs Union of India and ors.^[23] was the most important case decided by the Allahabad High court and Supreme Court, but undoubtedly the most dramatic one. General election in the state of U.P. was held in October -November 1996, but no alliance had the requisite majority to form the Government. BJP and its allies were the largest party, yet they were not called upon to form the Government and fresh presidential proclamation of October 17 in effect extended or continued the already one year old Presidential Rule in the Uttar Pradesh. This decision was successfully challenged before a full bench of Allahabad High Court though the operation of order of the full bench has been stayed and the matter was still pending before the Supreme Court. On 19 Dec. 1996, the Lucknow Bench of the Allahabad High court delivered its historic judgement disposing of the six writ petitions filed in the shape of public interest litigation challenging the Constitutional validity of the Presidential proclamation of 17 October 1996, re-imposing President's Rule in U.P. under Article 356 of the Constitution.

The Allahabad High court quashed the re-imposition' of the President's Rule as 'unconstitutional.' To avoid any constitutional deadlock, it directed that the judgement would come into effect only prospectively from 26 December. The Supreme Court admitting a special leave petition against the judgement stayed its operation. While each of the three judges on the Bench recorded their reasons separately, the court unanimously held^[24] that the presidential proclamation of 17 October 1996, 'subsequently' approved by Parliament was 'unconstitutional issued in colourable exercise of power' and based on wholly irrelevant and extraneous grounds which therefore could not be allowed to stand ".

One of the judges referred to 'non-application of mind' while the other doubted if the Governor was 'really serious' about installing a responsible ministry and categorically said that the governor was wrong in not realizing that President's Rule is the 'last resort' or that perhaps he did not understand the legal position correctly. The indictment could hardly be more severe or more serious as much as it was for the first time over that an act of the President performed on the advice of the council of ministers and approved by the two houses of parliament was held to have been a colourable exercise of power based on irrelevant and extraneous grounds, declared unconstitutional and quashed.

After few month of the verdict of Allahabad High court, there was a mutual understanding between the BJP and the BSP. Mayawati became the Chief Minister on 21 March 1997. She handed over the reins to Kalyan Singh after the expiry of six months. He was sworn in as the Chief Minister on 21st September 1997. Later on, Mayawati withdrew her support to the government. She requested the governor, Romesh Bhandari to dismiss the government as it was reduced to minority. Leader of the Congress party, Samajwadi party, Janta dal and

other also informed the governor that they would not be supporting BJP Government. Kalyan Singh had to prove his majority on October 21, 1997.

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

When the proceedings of House were opened by the Speaker, nearly the entire opposition was in the well of the House. There was unprecedented violence. The security forces managed to lock out the opposition and the speaker took up the motion of confidence. At about 1:00 PM the speaker declared the result of the voting and announced that 222 members voted in favour of the motion and no member voted against. Therefore the confidence motion was declared as passed and the house was adjourned sine die. The Governor sent report stating that in view of violence in the house fair and free voting in the Assembly has been vitiated therefore President's Rule under Article 356 would need to be proclaimed. Accordingly the United Front Govt. led by Prime Minister I.K. Gujral sent the recommendation to the President of India, K.R.Narayan for the imposition of the President's Rule in U.P.

The Cabinet after considering the President's view dropped the proposal invoking President's Rule in U.P. The politics of Uttar Pradesh was twisted again, when the State Government headed by Mr. Kalyan Singh was dismissed on February 21, 1998, by Governor Romesh Bhandari, who had appointed Mr. Jagdambika Pal as Chief Minister. Mr. Singh moved the Allahabad High Court which reinstated his Government on Feb.23 holding the dismissal unconstitutional. Mr. Pal challenged it in the Supreme Court. On Feb. 24, a Bench headed by CJI, M.M. Punchhi directed a composite floor test on Feb. 26. Both Mr. Singh and Pal set as CMs. on the designated day and Mr. Singh emerged victorious. It was a unique incident in which the Supreme Court recognized two CMs at a time.

This case^[25] has given the guidelines for Government formation by the Governor sending a message to the house for electing their leader. The judgement laid down taking into account Article 175 (2) to elect the leader on the floor of the house.

Certain inferences can be deduced from Uttar Pradesh episode:-

(A) Firstly, it was the first instance in the independent India's history that a cabinet recommendation for issuing Constitutional proclamation U/Article 356 sent back by the President.

(B) Secondly, three factors played a very significant role in returning the recommendations:-

- (1) The S.R. Bommai judgement, which held that President's Rule, is subject to judicial review.
- (2) Violence in the house could not be equated to the breakdown of Constitutional machinery; and
- (3) President's Rule had to be ratified by the Parliament.

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

Bihar legislative Assembly dissolution case (2005)

The Rameshwar Prasad vs Union of India^[26] is a landmark case which deals with election disputes and the question of legality of post-election re-alignment. Set against the background of the Bihar legislative Assembly elections, 2005, this case was one of the first of its kind. In Feb, 2005, elections to the Bihar legislative Assembly were conducted by the elections Commission of India. The results for the elections were declared on 4th March, 2005. The Bihar legislative Assembly has total of 243 seats. For any political party to obtain a simple majority and form the State Government, a total of 122 seats had to be obtained. However, after the 2005, elections none of the political parties had managed to obtain a simple majority. The distribution of seats after the election were as, National Democratic Alliance (NDA) and Rashtriya Janta Dal (RJD) had the first and second highest number of the seats in the legislative Assembly with 92 & 75 seats respectively, they were still unable to secure a simple majority of 122 seats required to form the State Government. Both parties tried to secure LJP (Lok Jan shakti party) loyalties, but LJP was not interested to joining hands with either of parties and refrained. As a result of this, the Assembly reached a deadlock with no party or combination of parties forming a majority in the post - election re-alignment. As a result of this deadlock, the Government could not be established and the Assembly was handicapped. The Governor of Bihar, Buta Singh, requested for the imposition of the President's Rule in the State under Article 356 of the Constitution of India. The President's Rule was imposed on 7th March, 2005, till the time some consensus was reached and the manner in which the Government would be formed was decided. While, the President's Rule had been imposed and the Assembly was in suspended animation, it came to the Governor's notice that the NDA (particularly the elected representatives of the BJP) and RJD (particularly elected representatives of JDU) members of the legislative

Assembly (MLAs) had been trying to woo the LJP MLAs to change their political alliance and join hands with them. The MLAs allegedly promised the LJP, MLAs money and political positions to win them over.

Shocked at the illegality of the actions of the MLAs, the Governor of the State of Bihar wrote a letter to the President of India, APJ Abdul Kalam on April 27, 2005, making him aware of the situation in the State. The President did not react to the letter immediately. Following this, the Governor drafted a second letter on May 21, 2005, wherein he stated that according to his intelligence and media sources, that 17-18 LJP MLAs had been successfully away by the elected representatives of the JD (U) party were planning on leaving their party and joining hands with the JD (U). He also mentioned the presence of horse trading between the elected representatives of the Government. On receiving the Governor's report the President called for an emergency cabinet meeting to discuss the fate of Bihar. On the advice of the cabinet, the President issued order for dissolution of Bihar legislative Assembly on May 23rd 2005, even before the Assembly had its first meeting. After the dissolution of the legislative Assembly without even a single meeting, there was an uprising in the political community with respect to the same. It was argued that since the Assembly had not officially met, it could not be regarded as functional and hence could not be dissolved. Following the uprising, several writ petitions were filed under Article 32 of the Constitution challenging the Constitutionality, legality and the validity of the President's order dated May 23, 2005 to dissolve the Assembly. In total, three writ petitions had been filed with respect to the dissolution of the Bihar Assembly. The dissolution of the Bihar legislative Assembly was regarded as unconstitutional by a majority of 3:2. The case was heard by a bench comprising of 5 Supreme Court judges namely the then Hon'ble Chief justice of India, Y.K. Sabbarbal and Justices B.N. Agarwal, Ashok Bhan, K.G. Balkrishan and Arjit Pasayat. While the then Hon'ble Chief justice of India, Y.K. Sabbarbal and Justices B.N. Agarwal, Ashok Bhan JJ. gave a majority judgement, J. K.G. Balkrishan gave a dissenting judgement and justice Arjit Pasayat gave the minority judgement. The dissenting judgement given in this case by K.G. Balkrishan J. stated that petitioner did not have sufficient ground to prove the unconstitutionality of the President's order dated 23 May, 2005. Thus, the justice was of the opinion that the writ petition should be thrown out. The minority judgement given by Arjit Pasayat ,J. stated that the writ petitions could have been disposed of, however, there were certain other disturbing aspects such as allegations of horse-trading etc. that should have been looked into more intensely.

The majority judgement held^[27] that given in the case was that the proclamation dated 23 May, 2005, was unconstitutional. Just because the Governor is awarded absolute immunity while in office under Article 361 of the Constitution does not, however, mean that the Governor's actions mala fide cannot be examined by the court. In other words, if the court is not of the opinion that a particular action of Governor has been performed with an incorrect and directly endangers the sanctity of the Constitution of India, then the court has the right to examine such an act and check its Constitutionality and legality.

In this case, Buta Singh, the Governor of Bihar, did not give the legislative Assembly an adequate chance to form a Government at the state level. In the case the political parties were not able to reach a consensus on their own, as the Constitutional head of the State; the Governor should have intervened and helped the parties on his own accord. However, none of this was done.

A few points emerging from the judgement^[28] could be highlighted:-

First, much was made by some politicians and political parties of the judgement of the Constitution bench not being unanimous but 3:2 majority judgement. The effort was thereby, to dilute the severity of the indictment by taking recourse behind the argument of the two judges who disagreed with the majority and found the Governor's role above-board and the dissolution of the Assembly in order. This did not make much sense when it was remembered that many of the most historic and path-breaking judgements of the Supreme Court had been majority judgement only, for example, in the case of Keshvanand Bharti and the Bommai cases. It is always the majority judgement that is the binding verdict of the court and becomes the declared law of the land.

Second, as far as the judgement was concerned, the question of the validity of the proclamation of President's Rule (March 7, 2005) was not raised, in fact, that was the original sin. The purpose of holding elections was to elect people's representatives and to constitute a democratic Government. i.e. why, Article 164 provide that the Chief Minister 'shall' be appointed and other ministers appointed on his advice. Thus, an obligation was cast upon the Governor to appoint the CM. He could theoretically appoint anyone but he had to appoint someone.

The Governor could not take the plea that no Government could be formed unless he exhausted all the possible options available to him including the one of asking the house itself to elect his leader. In Bihar, Governor Buta Singh was not of the sort and rushed to recommend imposition of President's Rule under Article 356 which, under the Constitution, was a device of last resort to be used when everything else failed - when the discharge of Union responsibilities under Article 365 did not yield results, when directions issued to state Government under Article 256-257 were not complied with and when U /Article 365, it could not be carried on in accordance with the Constitution. Imposition of President's Rule immediately after election without allowing the newly elected house to meet was nothing short of contempt of the electoral exercise and the verdict of the

people. The representatives whom the people elected could not be so unceremoniously sent home on the arbitrary advice of a Governor.

Case of Arunachal Pradesh (2016)

The fact of the case of *Nabam Rebia vs Deputy Speaker and Others*^[29] was that Nabam Tuki won election in 2011, with full majority of 47 seats out of 60. His brother was elected as speaker. Chief Minister dropped his health minister Kalikho Pul by reshuffling the cabinet in 2014, around April, 2014. Ex. Health Minister Kalikho Pul had charged Congress Government with financial mismanagement in NDRF and SDRF relief funds. He was expelled from party citing anti party activities. Kalikho Pul met with BJP leaders and 21 MLAs of Congress rebelled against their party. So, BJP had now 21 Ex Congress + 11 MLAs +2 independent MLAs including the deputy speaker. The Congress Speaker disqualifies the 14 rebels on basis of 10th schedule of anti defection law (14 rebel Congress MLAs in Arunachal disqualified the times of India) Congress then gave notice for resolution of removal of deputy speaker. After the disqualification, Governor summoned the Assembly without consultation of incumbent Government under Article 174 (1) and sent the message as speaker removal being first priority to Assembly. He advanced the Assembly to December 16 though the session was to commence from January 14. Then, because Assembly was locked by Tuki Government, Assembly proceedings happened in parallel building to Assembly where 33 MLAs unanimously voted Kalikho Pul as next CM of Arunachal Pradesh. And a Congress rebel was appointed deputy speaker who then quashed the order to disqualify the 14 rebel Congress man. Guwahati High court stayed the Governor's order on stay till February 1 and also stayed the 14 rebels disqualification matter till next hearing.

While bunch of petitions and counter petitions have led this matter to SC, which in turn has referred the matter to a Constitutional bench is debating matters of speaker and Governor's. While case of 14 rebels disqualified is still yet to be resolved by the courts. President's Rule is recommended by cabinet and Central Government imposed President's Rule in the State. Governor of the State appointed by BJP Government wanted to advance the house sitting, deputy speaker to preside and have the Congress Government to lose vote of confidence which was BJP's plan. Congress hit back the plan with locking the Government but Assembly presiding proceedings happened any way in near hotel. It did not happen inside the Assembly.

The Supreme Court stated^[30], censoring the Governor for 'humiliating the elected Government of the day', Supreme Court restored the Nabam Tuki Government in Arunachal Pradesh, and declared as "unconstitutional " all decisions of Governor that had first led to imposition of President's Rule in the State and later formation of a new Government led by the ruling party's breakaway faction.

The order is welcomed. It will curb an undemocratic, authoritarian trend through the 1970s and 1980s, when the Centre used Article 356 to topple elected State Governments on its whim. The return of Government with strong majority at the Centre has culminated in the extension of its country wide reach and attempts to bring under its flag all outposts that stand in opposition. The timely intervention of judiciary made the imposition of Article 356, President's Rule, contingent on a Constitutional breakdown, subject to judicial review. The Supreme Court has proved a worthy foil to executive excess once again. The historic judgement will check the Centre's tendency to abuse Governor's powers and President' Rule to topple opposition State Governments.

The Supreme Court held^[31], while restoring the previous Government, that the Assembly was not dissolved immediately, but only kept under suspended animation until both houses of parliament approved President's Rule. It also demanded a floor test to ascertain Government's majority. Thus, the Supreme Court reinstated the sanctity of floor test. Supreme Court ordered Arunachal Pradesh Governor to respond why he recommended President's Rule in the sensitive border state. But later, the Supreme Court recalled the order saying it made a mistake by not realising that Governor's have completely immunity and are not answerable to courts for acts done under in their official capacity^[32].

Case of Uttrakhand (2016)

In the case of *Union of India vs Harish Chandra Singh Rawat and another*^[33], March 2016 an identical problem like Arunachal Pradesh arose in Uttrakhand State. Some members of ruling party demanded for vote on appropriation bill but the presiding officer of the house refused it and passed the bill by voice majority. The presiding officer of the house disqualified 9 MLAs of ruling party but they challenged it before the court on basis of violation of natural justice. On the other hand the Governor of the State gave some time for floor test but before the test, Union Government got a compact disc in which it was shown that Mr. CM was giving bribe to some members. On this report Union Government imposed Presidential Rule in Uttrakhand. After few days the HC of Uttrakhand ordered for floor test in the house but Supreme Court put a stay on this order. Now Supreme Court has constituted seven questions to solve this situation.

The Centre justified Central rule on grounds that Rawat Government's failure to pass the appropriation bill on March 18, the speaker' 'unconstitutional' action in declaring the bill passed when it failed, and the sting operation which showed Rawat purportedly indulging in horse- trading. To end the political

uncertainty in Uttarakhand hand marred by charges of horse-trading, the Supreme Court asked to dismiss Congress CM Harish Rawat to face a trust vote on the floor of the Assembly on May 10, but clarified that the nine disqualified rebels Congress MLAs will vote unless allowed by the High Court. The trust vote motion moved by sacked CM Rawat will be overseen by State principal secretary (legislative Assembly and parliamentary affairs).

The floor test held in Uttarakhand Assembly, which conducted smoothly under the supervision of Supreme Court nominated observer. The result was declared by the apex court on next day. Next day, the Supreme Court^[34] put the Harish Rawat led Congress Government back in saddle in Uttarakhand allowing the Central Government to revoke President's Rule following Rawat victory in floor test. As the Attorney General submitted that Rawat had been successful in proving his majority on the floor of the house, the Bench opened the results of floor test, submitted by Court appointed observer, and declared that Rawat had secured 33 of the 61 votes. The Centre's decision to dismiss the State Government before the day to prove majority in the house, as instructed by the Governor to the Assembly, was proved wrong. The most novel and striking instance after this floor test was that the Supreme Court pulled off the President's Rule for two hours and there was no authoritative power governing the State.

The imposition of President's Rule in Uttarakhand on the eve of a vote to test the majority of the Harish Rawat Government is yet another instance of a highly questionable resort to a Constitutional remedy that was envisaged for extra-ordinary circumstances. The action is bad in law as much as it pre-empted a floor test. It was believed that the Bommai judgement of 1994 would put an end to this abhorrent practice. Yet successive Central Governments used Article 356, more often than not, for short term practical gains. Supreme Court^[34] in its ruling, apart from demanding a floor test to ascertain a Government's majority, also held that Assembly could not be dissolved immediately, but only kept in suspended animation until both houses of parliament approved President's Rule. But we have a recent history that demonstrates that such norms can be cynically exploited by political parties. Since an Assembly cannot be dissolved prior to both houses adopting resolution approving President's Rule, one way of achieving some political objectives is to dismiss the State Government first, and utilize the period in which the legislature is under suspended animation to install a new regime consisting of defectors bucked by the opposition. In this way, both the floor test requirement and the bar on premature dissolution of the Assembly are utilized to serve political interests, instead of serving as salutary measures to curb undemocratic dissolution of an elected legislature.

Finally, we can say that the Bommai case has been the driving force for the four basic developments that took place since 1994. As in the case of Rameshwar Prasad vs Union of India^[35] a seven judge constitution bench of the Supreme Court laid down the parameters of immunity envisaged by Article 361, in *Union of India vs Harish Chandra Singh Rawat and another*^[36], the highest court went one step further from the Bommai Judgment to execute the floor test lifting the presidential rule for two hours, in historical judgment of *Nabam Rebia vs Deputy speaker and ors.*^[37] the Supreme Court at the first time ordered to restore *status quo-ante*. The court called it political circus and commented that how can the court be silent when it sees the murder of democracy. The court ruled that the Governor is not the conscience keeper of legislative Assembly and that he had to stay away from the business of the assembly besides steering clear of political horse trading.

V. IMPACT OF BOMMAI AND POST BOMMAI CASES ON FEDERAL STRUCTURE OF INDIA

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

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

VI. CONCLUSIONS

It is noticed that on most occasions, President's Rule has been imposed on the basis of the report of the Governor. If we study the role of the Governor from 1950-1994, it will be found that from its commencement in most cases the role of his office was controversial and created a great concern and dissatisfaction in the minds of the States. Although he has been appointed by the Central government and holds his office during the pleasure of the president, he is not the agent of central government. But unfortunately the role of the governor has been found most of the time unfair to the States. This conduct of the Governors has been exposed so far on many occasions including in the recent cases of Arunachal Pradesh and Uttarakhand.

In 1988, the Sarkaria Commission put forward its recommendation on Article 356 but the Commission's recommendations were not binding. In the Bommai case of 1994, the Supreme Court endorsed the recommendations of the Sarkaria Commission and created a legally binding norm and guideline through its judicial pronouncement. Therefore, the Bommai judgment was a huge step in strengthening the Centre-State ties and the federal structure of the Government. The judgment in Bommai case provides a strong framework to Article 356 that made the way for the future development of this article in a positive direction. S.R. Bommai vs. Union of India case acted as a positive catalyst in strengthening the federal structure of the country and its guidelines gave broad dimension to Article 356 serving its very purpose in later cases. This decision was an activist step by the Supreme Court. The legal luminaries, post- Bommai judgment envisaged that the political misuse of Article 356 would be stopped through the Supreme Court's binding judgment and would be used only in the '*rarest of the rare cases*' according to the expectations of framers of the constitution.

The four cases of the misuse of Article 356 after Bommai judgment are the Bihar Legislative Case (2005), The U.P. Legislative case (1999), The Arunachal Pradesh Assembly Legislative Case (2016), The Uttarakhand Assembly Case (2016). The misuse of this article in these four cases proves that even after the binding guideline of a nine judges' bench, the misuse of this article is not stopped. The Central Government, even after knowing that it won't get any remedy from the Judiciary, uses this Article as a political terror against States.

Even after the misuse of Article 356 in four basic instances, the developments after Bommai's judgment have become able to check the misuse of the Article 356 to much extent and played a vital role in shrinking central government long arm. But some other safeguards are also needed to curb the misuse of this Article. The guidelines and binding norms pronounced in Bommai case are sufficient to curb the misuse of Article 356 but due to the unscrupulous acts of Central Governments after the landmark judgment, an amendment in Article 356 with respect to the line of action taken in Bommai case is the utmost need today.

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