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LONG-STANDING DRACONIAN LAW WITH VARYING CONTOURS: ARTICLE 356

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ABSTRACT

The Indian Constitution, being the fundamental law of the land, upholds the principle of democracy. Since Independence, the citizens of our country have given to themselves the right of enfranchisement but the same has been vitiated at the hands of the ruling government. Since India has imbibed a quasi-federal system which is implicit in its practice over the years, there is and has been a huge probability of a contest between the Centre and the States. There is a plethora of instances where the Centre has subjugated the States and thereby, had trampled upon the feature of co-operative federalism enshrined in the Constitution.

In this research paper, I would be dealing with the unfettered power of "proclaiming emergency", in the hands of the Central government. There are three kinds of emergency, National emergency, State emergency and Financial emergency.I would particularly take into account "State emergency" and discuss in detail that how the Central government has misused the law so far, by forcing the State into subservience of the Centre under the pretext of bringing harmony in such State.Though, State emergency has nowhere been mentioned in the relevant provision but it is used in the popular sense. Judiciary being the protector of the Constitution, the stance of the court onto such instances of emergency will be dealt with.

I. INTRODUCTION

The power of declaring State emergency vested in the hands of the President is not to obliterate the functional machinery of the State. The President is required to adhere to the prevailing circumstances in a State rather than merely acting on the unscrupulous advice so tendered by the Governor. There are certain pre-requisites which need to be taken into consideration before the issuance of proclamation and the same will constitute a major part of the further submission.

The break-up of my research paper is as follows- where Part I is the introduction itself, Part II identifies the various disputed components of Article 356 and the related provisions, through a certain set of case law and the last Part is based on the Constitutional as well as Fundamental Rights perspective to Article 356.

Before I begin with the next part of my submission, there are few methodological points that are required to be broached up. The research paper does not deal with the fact that how many times in total a State emergency has been declared in our country or specifically the grounds for invocationof emergency,though that may become implicit in process. The main aim is to analyze the ambiguous provisions relating to State emergency which have been blatantlyinvoked every time according to the whims and fancies of the power at the Centre as the President has to act on the advice of the Prime Minister and the Council of Ministers.

Since Dr. B.R. Ambedkar has considered Article 32 as the Heart and Soul of the Indian Constitution, in case of its infringement, Supreme Court is the final arbiter in that regard. Being cognizant of the position of the Indian Supreme Court in the Indian democracy, as a rights protector and final arbiter of the Constitution, only its judgements will be studied for the study at hand.In order to identify my chalked-out parameters, I have used SCC Online which is a private reporter and since it is a private reporter, it is unbound to report all Supreme Court cases. Therefore, certain unreported judgments regarding the promulgation of State emergency stand at the stated risk of exclusion. In total, there are 117 case law which have dealt with the issue of State emergency and out of which, 19 case law have been encompassed in this research paper, after being processed qualitatively before qualifying in the dataset.Bearing this template in mind, I would begin with the next part of my submission.

II. WIDENED AMBIT OF ARTICLE 356: A SEXAGENARIAN

It is a stated fact that Article 356 was invoked for the first time in 1959 and the scope of the provision has augmented to such extent that an enumerative list of precautionsneeds to be kept in mind while deciding a case of Article 356. In the history of State emergency, there had been three impactful cases wherein the Supreme Court has come up with certain concrete propositions, these are **State of Rajasthan v. Union of India[1] (hereinafter referred to as**

[1] (1977) 3 SCC 592

'Sajida Begum case'), S.R. Bommai v. Union of India[2] and Rameshwar Prasad (VI) v. Union of India[3]. In the following part, I will discuss in detail every proposition enunciated in the Bommai case, being the landmark case in this regard and compare its position with that in the other two cases. Meanwhile, certain other judgments will also find a place in this submission which have a substantial impact on the principles laid down in the aforesaid three cases.

In order to have a clear understanding of all the three cases, a brief factual background of such cases is as follows-

- *Bommai Case*

  In this case, the promulgation of emergency in seven States was under challenge, that are, Karnataka, Meghalaya, Nagaland, Uttar Pradesh (U.P), Madhya Pradesh (M.P), Himachal Pradesh (H.P) and Rajasthan. Though, the ground of challenge was different in the case of former three States than in the rest of the other States. The issue in the States of Karnataka, Meghalaya and Nagaland was regarding the formation of a stable government as there were defections happening but most importantly, the aggrieved parties in all the three States were in a position to form the government and the dominantposition of the Centre did not let that happen. On the other hand, the issue then prevailing in the States of U.P, M.P, H.P, and Rajasthan was based on the construction of Lord Rama's temple at Ayodhya and thereby, the demolition of the Babri structure. This led to chaos in the country and widespread violent protests everywhere, resultant was the proclamation of State emergency in the aforesaid four States which were the hotspots of violence.

  The court held the proclamation of emergency in the States of Karnataka, Meghalaya and Nagaland as unconstitutional but the reverse happened in the case of the other States. Although, fresh elections were already held in the States ofKarnataka, Meghalaya and Nagaland and thus, the restoration of status quo ante (state of affairs existing previously) was not possible.

- *Sajida Begum Case*

[2] (1994) 3 SCC 1
[3] (2006) 2 SCC 1

This case is a quintessential example of anti-federalism. In this case, the Central government through Home Minister proposes to overthrow the State governments in nine States where the party at the Centre was not in power by stating that since the party common to all such States had lost the election to Lok Sabha and it is implied that they have also lost the confidence of people, thereby requiring the mandate of people again.

The court affirming to the contentions of the Union, held the issuance of the proclamation to be appropriate.

- *Rameshwar Prasad Case*

The President's Rule was imposed in the State of Bihar as there was no single party to secure a majority but the Assembly was kept in a 'suspended animation'. Thereafter, the cobbling of parties began in order to form a government but the Governor of the State requested for the invocation of Article 356 on the ground that illegal means are being used to secure a stake which is against the democracy. This led to the dissolution of Assembly and continuation of President's Rule.

The court held that the proclamation so issued was unconstitutional but since the fresh elections were about to be held in the State and no party was able to form a government hitherto; status quo ante could not be restored.

Now, the ambiguities pertaining to Article 356 which have lived all these years have been listed below.

❖ ***Nature of Power Under Article 356***

The prima facie question arises is that whether the power conferred under Article 356 is an "absolute power or not". Certainly not, as conferring of absolute power in this regard is nothing morethan unleashing a beast. In the Bommai case, JJ. Jeevan Reddy and Agrawal were of the opinion that the power under Article 356 shall be invoked under "exceptional circumstances" and not for the purposes of furthering the interests of the power at the Centre. The same view was per majority upheld in Rameshwar Prasad case but the position was different altogether in Sajida Begum case. In Sajida Begum, the court made it up that a State will function normally under the supervision of the Governor *unless* the same is not overridden by the President by exercising its powers under Article 356 and the same is the case with the legislative assembly of the State, being superseded by the Parliament in case of State emergency.

There is an explicit dichotomy between Bommai and Rameshwar Prasad case on one side and the Sajida Begum on the other. Since a Nine-Judge bench, being the largest amongst the three cases, presided over the Bommai case and the case was a result of the'bad decision' delivered in the Sajida Begum case, it becomes an imperative to delve into the sub-constituents and other propositions of it and the effect of Bommai seen on the Rameshwar Prasad case.

In the reply to the nature of power under Article 356, we have come across an expression, exceptional circumstances, whichthough depend on a case-to-case basis but its meaning and necessary implications can be understood on a *substantivereading* of the provision as a whole.

- ***Under Exceptional Circumstances***

  There could be humongous reasons which can compel the invocation of Article 356 in a particular State but the lacuna here is that since there is no stated list enumerating such instances, the power under Article 356 becomes arbitrarily extensive in its application.Hereinafter, I will discuss that *how the need of proclamation of President's Rule can be ascertained* and other analogous considerations which become corollary to such exceptional circumstances.

  - ***State Machinery's Inconsistency with the Constitution***

    Article 355 casts a duty upon the Union that it shall protect the State from *external aggression, internal disturbance* and to *ensure that the State machinery is working in consonance with the provisions of the Constitution*. In other words, Article 355 prescribes such situations where it is justified that Article 356 must be promulgated. But, the three exceptional circumstances prescribed under Article 355 are so broad that any mere operational stoppage in the State's machinery would lead to invocation of Article 356. This should not become a practice and the recourse to Article 356 should be the last resort. This also means that the three situations of urgency so contemplated under Article 355 must be narrowly tailored in order to refrain from capriciously moving the President Rule. External Aggression explicitly states that the security of a State is under a threat of being disturbed by outside forces or has already been vitiated, like the Ajmal Kasab case where there were terrorist attacks in Mumbai. Internal disturbance on

the other hand has been substituted by the expression *armed rebellion* by virtue of the forty-fourth amendment Act, 1978. In the case of **Gujarat Mazdoor Sabha & Another v. State of Gujarat**[4], a link between armed rebellion and the inability of the State to carry its machinery in accordance with the Constitutional provisions was propounded in this case. It was said that the failure of constitutional machinery can arise from an armed rebellion in the State and thereby, can become a ground for invoking Article 356. B.R. Ambedkar made it clear in the Drafting Committee that the Central government has to give a prior warning to the State before invoking Draft Article 278 which has now transformed into Article 356 and if the warning fails, then elections must be announced in such State.[5]

However, failure of Constitutional machinery still remains to have the widest scope amongst others. In the Bommai case, it was said that when a State is unable to control the *administration* of the State, then there exists a failure of Constitutional machinery. But in my opinion, administration of a State is governed by the Constitutional provisions itself as was manifest in the Bommai case. There were attacks happening resulting in loss of lives due to the *unsecular* decision taken by the BJP government that they will demolish Babri Masjid and construct Ram Mandir. Such action of the government was in clear violation of Secularism, which forms a part of the *basic structure of the Indian constitution*. This justifies the invocation of Article 356, as anything that would go against the basic tenets of the constitution will not be overlooked.

Also, K. Ramaswamy J. in the Bommai case contemplated few instances of failure of Constitutional machinery in a State which primarily revolved around the attacks on security and financial stability of the State, thereby justifying proclamation of State emergency. But the same will not be justifiable, if merely a political party has failed to secure a majority at the Centre but was able to find the stake in some States and the will of the people of such States is being adequately represented by such party. Otherwise, I think it would be a mockery

[4](2020) SCC 798
[5]IX, *Constitutional Assembly Debates*, 815

of the electorate's right of enfranchisement as if the majority States are represented by a particular party at Lok Sabha and the remaining States are represented by certain other parties, then parties in such States cannot be superseded by the power in majority. Therefore, the will of the people is different in different States and cannot be generalized by the fact that there is a difference in power at the Centre and in some States, thereby abolishing the very premise of *federalism*. Unfortunately, reverse was the case in Sajida Begum.

The *Sarkaria Commission Report* clearly stated that Article 356 must never be called into action and shall remain to be a 'dead letter'. The report also mentioned that if a political turmoil happens in a State due to the incapacity of a political party to form a majority does not *necessarilysuffice* the need of President Rule in that State and thereby, seeking fresh mandate of people.[6] It must be considered as a temporary disruption in the political machinery of the State and the legislative assembly could be kept in a *suspendedanimation* by allowing the contesting political parties to find a recourse and form a stable government and if such is not possible, then fresh elections must be conducted. However, in the Bommai and Rameshwar Prasad case, it was contended that the aftermath of such suspension resulted in rampant defections and horse-trading which is against the democracy. It will be dealt in the next section(s) that to what extent the President must be *satisfied* for proclaiming State emergency in regard of the preceding issue or otherwise.

- ***Satisfaction as to Proclamation***

  A mere statement of reasons does not in itself sufficient to proclaim emergency. It is the court's duty to look into the veracity of such *reasons* and the *materials so adduced to support such reasons*.The satisfaction of the President is formed on the basis of the report so given by the Governor of such impugned State or it could be from *othersources* as well.The powers which a Governor ought to exercise within certain parameters were truly given in the case of Rameshwar Prasad. It is a duty of the Governor that the material which he forwards to the

[6]National Commission to Review the Working of the Constitution, "A Consultation Paper on Article 356 of the Constitution" 938 (2001)

President recommending latter's interference must be based on true facts and circumstances. Since there was no such concrete evidence with the Governor which could state that illicit means were being used for the purposes of forming majority in the abovementioned case, it shows the arbitrary exercise of powers by the Governor.

The word 'otherwise' in Article 356(1) shows that the President is not confined only to the report of the Governor but can also adhere to other *relevant* materials. Though, the sanctity of such material is also a consideration as for say, the President cannot merely rely on a video where the MP's belonging to the political party in power are indulged in an unlawful activity like delivering a hatred speech against a particular religion or inciting communal violence but it has to be ensured that the *authenticity* of the video has remained intact.In **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.**[7], the court was clearly of the view that in case a secondary electronic evidence is being produced before the court, the same shall be accompanied by a certificate verifying the contents of such evidence. Thus, the President must also adopt such similar means to strictly scrutinize any material produced before him, whether being electronic or not.

- ***Governor's Discretion***

In **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Others**[8], this case specifically dealt with the discretionary powers of the Governor and the limitations upon them. Under Article 163(2)[9], the Governor has been provided with discretionary powers which he can exercise without consulting with the Council of Ministers. But it is only an

[7] (2020) SCC 571
[8] (2016) 8 SCC 1
[9] Article 163- Council of Ministers to aid and advise Governor—(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

exception which can be exercised when the constitution expressly provides that and otherwise, the general rule under Article 163(1) which states that the Governor has to act on the aid and advice so tendered by the Council of Ministers, will prevail. This is also implicit from the Constitutional Assembly Debates which state that the executive powers conferred upon the State, *do not assign any significant role to Governor*.Govind Ballabh Pant clearly stated that the Governor shall not be vested with discretionary powers during the time of State emergency, otherwise he would gain an autocratic position. This led B.R. Ambedkar to propose for the deletion of Draft Article 188 which empowered the Governor to administer the State during emergency and exercise his discretionary powers.[10]

However, in **Shamsher Singh v. State of Punjab**[11], the court said that the Governor can send the report to President for recommending State emergency without the aid and advice of the Council of Ministers *because such situation may have arisen due to such Council of Ministers itself.*Also, in **Badrinath v. Government of Tamil Nadu and Others**[12], it has been mentioned that if the President under Article 356(1)(a) has assumed all the functions of the State government and later, confers those powers upon the Governor, the Governor will be deemed to have all such powers of the President. He will be directly attributable to the President and *the Governor can then act without the aid and advice of the Council of Ministers*.

One of the most crucial judgment regarding the Governor's powers was delivered in the case of **Thiru K.N. Rajgopal v. Thiru M. Karunanidhi**[13]**& Ors**. This case was a replica of **U.N.R Rao v. Smt. Indira Gandhi**[14] and it was stated that Article 164(2)[15] shall be read in *harmonious construction* with Article 163(1). This means that firstly, where the Legislative Assembly has only been *prorogued but not dissolved*, then the Governor has to work in consultation with the Council

[10] *Supra* note 6 at 812
[11] (1974) 2 SCC 831
[12] (2000) 8 SCC 395
[13] (1972) 4 SCC 733
[14] (1971) 2 SCC 63
[15] Article 164(2)- The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

of Ministers and secondly, the *Karunanidhi case* explicitly stated that the *dissolution of Legislative Assembly does not lead to failure of constitutional machinery in a State and thus, no need of invoking Article 356*.

This takes us to the next segment, which will deal with dissolution of Assembly, as a cause for or effect of Article 356.

- ***Dissolution of Legislative Assembly***

Since it is not necessary that every time the dissolution of Assembly would be a necessary consequence of Article 356, but it could be prior to the proclamation as well. This also poses a question that whether it is actually required to dissolve an Assembly. In Bommai case, it was contemplated that Article 356(1)(a) needs to be read in harmonious construction with clause (1)(c) of the same provision as it is not an obligation upon the President that he has to dissolve the Assembly but can also *suspend* the same for the time being until *the Parliament gives its assent to such dissolution*.Though, an opposite view was taken in the Sajida Begum case. Parliamentary check over the executive powers is a *subsidiaryreview* to judicial one. The issue relating to keeping an Assembly in suspended animation is that it is prone to defections and the consequent horse-trading. However, in **Aam Aadmi Party v. Union of India**[16], the court simply stated that the Governor being the constitutional head of the State has to ensure that defections does not take place in such manner that the same goes against the notion of democracy, as rampant defections become a natural corollary to the suppression of electorates right to choose a government of their choice.

In the **Matter of Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter)**[17], Article 356 gained significance with respect to Article 174[18]. Due to communal riots in the State, the Legislative Assembly was dissolved and it was

[16] (2014) 16 SCC 396
[17] (2002) 8 SCC 237
[18]Article [174- Sessions of the State Legislature, prorogation and dissolution—(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
(2) The Governor may from time to time—
(a) prorogue the House or either House;
(b) dissolve the Legislative Assembly.]

made clear that the fresh elections need to be held before October 3, 2002 when the first sitting of the next session would take place, thereby complying with the requirement stated in the latter part of clause (1) of Article 174. But the Election Commission before hand communicated that conducting elections before October will not be possible due to shortness of time, in order to conduct "free and fair elections" as required under Article 324[19]. This led the President to seek advice from the Supreme Court under Article 143(1)[20] that whether Article 356 would be appropriate to be invoked,seeking to the failure of the State's constitutional machinery as upheld by the Election Commission. The court negatived to the same and said that the requirement of conducting the next session of the Assembly within six months from the last session cannot override the basic

[19] Article 324- Superintendence, direction and control of elections to be vested in an Election Commission—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).
(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:
Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:
Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).
[20] Article 143- Power of President to consult Supreme Court—(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.
(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the [said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

principle of conducting free and fair elections to ensure democracy. Also, it is within the duties of the Election Commission to hold elections at the earliest under Article 324 and thus, there is no relevance of Article 356 in this regard.

One more thing which emanates from the above discussion is that *when can the question of conducting fresh elections or floor-test arise*. Necessarily, if a government is prima facie in majority, then it should be allowed to be in power but if the existing government or any other party is not able to retain or form a majority, then conducting fresh elections will be the last resort. As in the Bommai case, the court was of the view that the governments in the States of Karnataka, Nagaland and Meghalaya must have been allowed to prove their majority through floor-test.

- ***Parallel Check of Judiciary***

  Judicial Review ought to be existing in regard of Article 356 as we have seen that due to ambiguities in law, there had been unfettered exercise of power on part of various government actors. In the cases of **A.K. Kaul v. Union of India**[21] and **Chandigarh Administration, Union Territory, Chandigarh & Ors. v. Ajay Manchanda & Ors.**[22]**,**the court made it clear that the ambit of Judicial Review became wider after the Bommai case than it was in the Sajida Begum case. Also, clause (5) of Article 356 provided that the satisfaction of President under clause (1) shall be "final and conclusive" and will not be subjected to judicial review, but after the Forty-Fourth Amendment Act, 1978, the clause was deleted and this made the position of Judicial Review more concrete in this regard. Also, the advice given to the President by the Union Council of Ministers can be questioned by the court. Even though it has been protected under Article 74(2)[23] but the *material* based on which the advice was so given can be called in question

[21] (1995) 4 SCC 73
[22] (1996) 3 SCC 753
[23] Article 74- Council of Ministers to aid and advise President—[(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]
[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]
(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

and it can be seen that whether it is based on fallacious or extraneous grounds or not.

Article 361[24] grants immunity to President and Governor from being answerable to court for their actions, in exercise of their powers and duties so conferred upon them. However, **Nabam Rebia v. Registrar General, Guwahati High Court & Ors.**[25] and **Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh**[26]were clearly of the view that such impugned actions of the President or Governor can be brought under the scrutiny of the court as in cases of charged mala fides or otherwise, the State has to defend itself by either producing some cogent material or through an affidavit which though the court is barred from asking but the State can certainly adduce the same in its defence.Also, in **Balchandra L. Jarkiholi v. B.S Yeddyurappa**[27], the court in its opinion to the Governor said that the Governor shall not act carelessly, but it should first look into the substance of the matter and if the circumstances so demand, then he should make a report to the President seeking his interference.

- ***Miscellaneous***

  Once the emergency has been proclaimed, what follows thereafter also needs to be looked upon. The laws made during the emergency will not lose value

[24] Article 361- Protection of President and Governors and Rajpramukhs—(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:
Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:
Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.
(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.
(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.
(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

[25] (2016) SCC 94

[26] (2004) 8 SCC 788

[27] (2011) 7 SCC 1

automatically after the proclamation gets revoked. In **Nishi Kanta Mondal v. State of West Bengal**[28]and **Mohd. Salim Khan v. Shri C.C. Bose & Another**[29], it was held that the laws made during the subsistence of a proclamation does not cease to exist upon the revocation of such proclamation *unless repealed*. Also, in **Shri Ram Prasad v. State of Punjab**[30], the court said that for the *then*purposes of Article 357(2)[31], the phrase ''one year'' does not mean that the law will prevail until one year only *but it has to be ascertained from the whole of such law and its intendment*. Also, thereafter the period of one year has been deleted by the Forty-Second Amendment Act, 1976 and *thus, a law needs to be repealed if it has to be ceased to exist as provided under Article 357(2).*

III. CONCLUSION

It is very clear that when a State emergency is proclaimed, the situation in such State is no less severe than a pandemic and it certainly requires Central Government's interference. However, when such provision is invoked to obliterate the State's machinery in order to fulfill undemocratic agendas, the very law becomes subversive to its intendment. This also means that unlawful intervention with the State's functioning is violative of its *constitutionalrights*. Under Article 166[32], the conduct of business of a State government is to vest in the name of Governor and during State emergency, President assumes the power of Governor which becomes unconstitutional, *if done with a mala fide intention*. In other words, Article 356 cannot override Article 166 *arbitrarily*. Unlike the citizens, the State cannot claim fundamental rights, but can certainly defend its constitutional rights.A State can do the

[28] (1972) 2 SCC 486
[29] (1972) 2 SCC 607
[30] (1966) 3 SCR 486
[31]Article 357[(2)- Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.]
[32] Article 166- Conduct of business of the Government of a State—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

same by invoking the exclusive jurisdiction of the Supreme Court under Article 131(a)[33] and can thus challenge the proclamation issued by the President. In the case of **State of Jharkhand v. State of Bihar and Another[34]**, the court clearly said that the constitutionality of a law can be certainly raised in any case under Article 131 of the Indian Constitution.

Also, apart from the State, the citizens can also challenge such action by exercising their fundamental rights and hereby, Article 359 gains significance. Under Article 359(1)[35], aperson can invoke Article 21, which is an exception to the general rule, and the same is justifiable as the rights of people of such State where emergency is being proclaimed gets violated severely due to stringent restrictions. In the case of **Anuradha Bhasin v. Union of India[36]**, the internet and mobile services in the then State of J&K were completely banned, when the President Rule was in operation. This brings into focus the role of "Proportionality Analysis" which was applied by the court in Anuradha Bhasin case in order to check the validity of ban on such services. In the Bommai case, though Sawant and Kuldip Singh, JJ. dissented in this regard, they were of the view that the Doctrine of Proportionality applies very much on the subject which falls within the domain of constitutional law. In the present scenario, if an impermissible object is being achieved by a constitutional authority, the same must be subjected to the Proportionality test.

Now, if the State did not have any *legitimate backing* for the promulgation of the impugned law, with no *rational nexus* between infringement of a right and infringing such right for achieving a desired goal, *unnecessarily* picking such law by overlooking other available feasible alternatives to it and lastly, no *balancing* was meted out of the benefit-harm that such law will entail, hereupon, the ball will keep rolling down in the court of the State as well as

[33] Article 131- Original jurisdiction of the Supreme Court—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—
(a) 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,

[34] (2015) 2 SCC 431

[35] Article 359(1)- Suspension of the enforcement of the rights conferred by Part III during emergencies—
(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

[36] (2020) 3 SCC 637

that of the right-seeker, as when they will approbate and reprobate respectively to the aforesaid stages of the *Proportionality Review*. Thus, even though the position of the Proportionality Review is not much clear in regard of its application in the context of Article 356 but, such review would *substantively* screen a proclamation under Article 356 and will coextensively cover the widened purview of such constitutional provision.

Annexure

S. No.	Case Name	Citation	Judges Involved	Ratio Decidendi
1.	State of Rajasthan v. Union of India	(1977) 3 SCC 592	M.H. Beg, C.J. and Y.V. Chandrachud, P.N. Bhagwati, P.K. Goswami, A.C. Gupta, N.L. Untwalia and S. Murtaza Fazal Ali	The court was reluctant to question the unfettered power under Article 356 and considered the proclamation to be appropriate, despite being malicious in nature.
2.	S.R. Bommai v. Union of India	(1994) 3 SCC 1	S. Ratnavel Pandian, A.M. Ahmadi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C. Agrawal, Yogeshwar Dayal and B.P. Jeevan Reddy	A substantive view was taken by the court that every constitutional authority and their proposed actions will come under judicial scrutiny.
3.	Aam Aadmi Party v. Union of India	(2014) 16 SCC 396	Orders given by different Judges	Suspended Animation of Assembly invites defections which have to be prevented; the same would be Governor's duty but was left inconclusive as fresh elections were already held.
4.	Thiru K.N. Rajgopal v. Thiru M. Karunanidhi & Ors. and U.N.R Rao v. Smt. Indira Gandhi	(1972) 4 SCC 733 and (1971) 2 SCC 63	**(For both the cases)** Sikri, C.J. and G.K. Mitter, K.S. Hegde, A.N. Grover and Jaganmohan Reddy	No need to invoke Article 356 in case of dissolution of State Assembly.
5.	A.K. Kaul v.	(1995) 4	**(For A.K. Kaul**	Extent of judicial

	Union of India and Chandigarh Administration, Union Territory, Chandigarh & Ors. v. Ajay Manchanda & Ors.	SCC 73 and (1996) 3 SCC 753	**case)** S.C. Agrawal and Faizan Uddin and **(For Chandigarh Administration case)** B.P. Jeevan Reddy and K.S. Paripoornan	review with regard to the satisfaction of president or governor based on the material placed before them.
6.	Nishi Kanta Mondal v. State of West Bengal and Mohd. Salim Khan v. Shri C.C. Bose & Another	(1972) 2 SCC 486 and (1972) 2 SCC 607	**(For both the cases)** J.M. Shelat and H.R. Khanna	Laws made during the subsistence of a proclamation does not cease to exist on the revocation of such proclamation unless repealed.
7.	In the Matter of Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter)	(2002) 8 SCC 237	B.N. Kirpal, C.J. and V.N. Khare, K.G. Balakrishnan, Ashok Bhan and Arijit Pasayat	Article 174(1) has no relevance in the case of dissolved assembly, thus, no invocation of Article 356 in case of its non-compliance.
8.	Shamsher Singh v. State of Punjab	(1974) 2 SCC 831	A.N. Ray, C.J. and D.G. Palekar, K.K. Mathew, Y.V. Chandrachud, A. Alagiriswami, P.N. Bhagwati and V.R. Krishna Iyer	The Governor can under his discretion take a decision even without the advice of Council of Ministers [Article 163(2)].
9.	Balchandra L. Jarkiholi v. B.S Yeddyurappa	(2011) 7 SCC 1	Altamas Kabir and Cyriac Joseph	The Governor shall not act in hurry to seek for Article 356 unless such necessity arises.
10.	Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Others	(2016) 8 SCC 1	Jagdish Singh Khehar, Dipak Misra, Madan B. Lokur, Pinaki Chandra Ghose and N.V. Ramana	Governor has discretionary powers but they must be exercised when provided explicitly and otherwise, deal in consonance with the Council of Ministers of the State.
11.	Badrinath v. Government of Tamil Nadu& Ors.	(2000) 8 SCC 395	M. Jagannadha Rao and U.C. Banerjee	If the President confers power upon the Governor under Article 356(1)(a), the

				Governor would have the same powers as a President has.
12.	Shri Ram Prasad v. State of Punjab	(1966) 3 SCR 486	P.B. Gajendragadkar, C.J. and K.N. Wanchoo, M. Hidayatullah, V. Ramaswami and P. Satyanarayana Raju	For the purposes of Article 357(2), the phrase ‘’one year’’ does not mean that the law will prevail until one year only, but it has to be ascertained from the whole of such law and its intendment. Over the top, the period of one year has now been deleted by the 42nd amendment Act, 1976 and thus, a law needs to be repealed if it has to be ceased to exist.
13.	Gujarat Mazdoor Sabha & Another v. State of Gujarat	(2020) SCC 798	Dhananjaya Y. Chandrachud, Indu Malhotra and K.M. Joseph	When can ‘’internal disturbance (now, armed rebellion)’’ turn into ‘’failure of constitutional machinery’’.
14.	Nabam Rebia v. Registrar General, Guwahati High Court & Ors. and Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh	(2016) SCC 94 and(2004) 8 SCC 788	**(For Nabam Rebia case)** Jagdish Singh Khehar, Dipak Misra, Madan B. Lokur, Pinaki Chandra Ghose and N.V. Ramana and **(For M.P. Special Police case)** N. Santosh Hegde, S.N. Variava, B.P. Singh, H.K. Sema and S.B. Sinha	Article 361 grants complete immunity to the Governor or President from being questioned by court in relation to charges of malafides. However, the aforesaid view was reversed in the Rameshwar Prasad case and the State has to defend itself either through affidavit or any cogent material.
15.	Rameshwar Prasad (VI) v. UOI	(2006) 2 SCC 1	Y.K. Sabharwal, C.J. and K.G. Balakrishnan, B.N. Agrawal, Ashok Bhan and Arijit Pasayat	This case followed the foot-steps of Bommai case and narrowly tailored the powers and duties of Governor with regard to Article

				356. It also detailed about the circumstances in which dissolution of Assembly and floor-test is to be done.
16.	State of Jharkhand v. State of Bihar and Another	(2015) 2 SCC 431	Jasti Chelameswar and S.A. Bobde	The constitutionality of a law can be certainly challenged under Article 131.
17.	Anuradha Bhasin v. Union of India	(2020) 3 SCC 637	N.V. Ramana, R. Subhash Reddy and B.R. Gavai	This case is an instance of stringent restrictions during the President Rule and the consequent application of the "Proportionality Analysis".
18.	Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.	(2020) SCC 571	R.F. Nariman, S. Ravindra Bhat and V. Ramasubramanian	This case contemplates a strict scrutiny of a secondary electronic evidence through the requirement of a certificate. In the context of Article 356, the President must adopt such means to determine the validity of material so adduced in support of proclamation.