FEDERALISM AND EMERGENCIES: A CASE STUDY ON CENTRE-STATE RELATIONS IN LIGHT OF S.R BOMMAI VS UNION OF INDIA

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1. Introduction:

The Indian Constitution is an exceptional document especially when considering the nature in which it establishes certain provisions. One of these notable features is present in Part XVIII of our Constitution[1]. Indian governance is Federal in nature but this form of federalism that is followed in India is different from the contemporary definitions of federalism. While the Centre allows for reasonable integration between the Centre and the States in normal circumstances, it is remarkable how the federal feature of the Indian Constitution in normal peacetime can be adopted into an emergency situation.

The reason for the Centre having overriding powers over the state was given by the framers of the Constitution who felt that all aspects of Administration and legislation throughout the country should be in direct control of the Centre during the imposition of a national emergency.

There are three types of Emergencies that are envisaged by the Constitution of India:

1. A National Emergency: An Emergency arising from a threat to the security of India
2. President's Rule: Imposed upon the breaking of the Constitutional Machinery of the States
3. A Financial Emergency

As goes a threat to the security of India or any part of the territory thereof, under Article 352(1) of the Constitution, it can happen due to War, External Aggression, or Armed Rebellion. A

[1] Part XVIII - ministry of external affairs Part XVIII EMERGENCY PROVISIONS, https://www.mea.gov.in/Images/pdf1/Part18.pdf (last visited Apr 26, 2023)

breakdown of constitutional machinery in a state, under Article 356(1) of the Constitution, is said to occur when the Government of the state cannot be carried out in accordance with the Constitution. Financial emergency, lastly, is said to have arisen when, under Article 360(1) of the Constitution, the financial stability or credit of India or any part of its territory is threatened.

Under all these forms of Emergencies, the most important factor is the power of Presidential Discretion. Even though it is already held that the decisions taken by the President must always be *objective* in nature, and based on factual interpretation, rather than *subjective*, and based on the opinions of the President[2], Art. 352(1) clearly states that the President may make a proclamation of Emergency only when he is satisfied as to the existence of a threat to the security of India, or any part thereof. The problem with this interpretation is that it is completely up to the subjective satisfaction of the President, (Acting upon the advice of the Council of Ministers[3]) whether there is an imminent threat to the security of India, and there have been a lot of questions on the justifiability of the same.

Another important factor to take into consideration is the Centre-State relations that are disturbed during the state of Emergencies. The major aspect of centre- State relations in India can be seen through the lens of Federalism. The Quasi- Federal, rather than Federal structure of this country gives Indian Federalism a strong *Unitary Bias*. Federalism in India is very similar, at the same time, extremely different from that of the United States.

"...what is important is that the use of the word "Union" is deliberate . . . Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source"[4]

Dr B.R Ambedkar (on why India is a Union of States)

Even if India is a Quasi- Federal State, the emphasis on the word *Union* again and again ushers us towards the understanding of the same in the oldest Constitution in the world. It is time to integrate the ideals of American Constitutionalism in this research paper, if only to purely look at the term *Union*, and how it brings up the discussion at hand, Federalism. Both the

[2] BP Singhal Vs. UOI [(2010)(4)AWC3617(SC)]
[3] UN Rao Vs Indira Nehru Gandhi (AIR 1971 SC 1002)
[4] NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, Report, I, ¶ 8.1.2 (2002), at http://lawmin.nic.in/ncrwc/finalreport/volume1.htm (last visited Apr 26, 2023)

governments of India, and the United States exhibit a strong Union control, where the individual States give up a significant portion of their autonomous rights to the Central Government in return for security and pursuit of common interests. In fact, moving back to India for a moment, there is a whole integration of the functions of the State, and the States, and their role being discussed extensively in the Seventh Schedule of the Constitution.

The function of federalism and the Union is well quoted by the co-author of the *Federalist Papers*, Alexander Hamilton. The quoted text clearly helps us to understand the Centre-State relations of India, even; which is the main body of this research paper. In his words,

"The definition of a confederate republic seems simply to be an 'assemblage of societies,' or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government"[5]

A very simple understanding of why it is necessary for the Residuary Powers, or the final say, to remain with the Centre, in this context can be justified by the Fist Theory. A fist is always stronger than a finger, or five for that matter. A finger is powerful as long as it identifies alongside the rest, as a part of the fist, and for it to do so, it has to curl up. Conclusively, in order for all the members of a Union of States to benefit on a common front, it is necessary for the states to sacrifice a part of their power to the Centre.

Another logical argument can be looked at, through the eyes of history. If anything, history has repeatedly taught us that power must be vested in the hands of the Centre, and not all. That was the main reason for the failure of communism. Power at the hands of all ceases to be power.

[5] The project Gutenberg ebook of The federalist papers, by Alexander ... The Union as a Safeguard Against Domestic Faction and Insurrection, https://www.gutenberg.org/files/1404/1404-h/1404-h.htm (last visited Apr 26, 2023)

And the more dangerous perspective is looking back at ancient confederate systems such as Achaea or Lycia. It is the better of two evils to have absolute power with the Centre than let it degenerate in the hands of smaller systems which will not be able to defend themselves from themselves, much less from an external threat to their security.

2. Development of Art. 356

Even though Art. 356 does talk about a form of Emergency, more commonly called a State Emergency, the right term to address the provisions of Art. 356 is a President's Rule. As discussed earlier, the President's Rule is subjective, rather than objective, and the justiciability of a subjective decision is at many times questioned in the Court of Law. In fact, in a landmark judgment, the Supreme Court, refusing to hold the continuance of the emergency under Art. 352 'void', stated that the question of Presidential Satisfaction is "a political, not justiciable issue and the appeal should be to the *polls* and not to the *courts*."[6]

2.1 A Brief Look at Centre-State Relations in India:

The Indian Constitution provides for a federal system of government with powers divided between the central government and the state governments. The central government has the power to make laws on subjects listed in the Union List, while the state governments have the power to make laws on subjects listed in the State List. Both the central and state governments have the power to make laws on subjects listed in the Concurrent List.

The Constitution also provides for a division of powers between the central and state governments. The central government has the power to make laws on matters of national importance such as defense, foreign affairs, currency and banking, and inter-state trade and commerce. The state governments have the power to make laws on matters such as law and order, health, education, and agriculture.

The Constitution also provides for a system of checks and balances between the central and state governments. The central government has the power to override state laws on subjects listed in the Concurrent List, and it can also take over the administration of a state in case of a

[6] BHUT NATH METE VS THE STATE OF WEST BENGAL (1974 SCR (3) 315)

breakdown of constitutional machinery. The state governments, on the other hand, have the power to reject or modify central laws on subjects listed in the Concurrent List.

In addition, the Constitution provides for the establishment of various institutions to facilitate cooperation and coordination between the central and state governments. For example, the Inter-State Council was established to promote coordination between the central and state governments on matters of national importance, while the Finance Commission was established to recommend the distribution of financial resources between the central and state governments.

2.2 Dr. B.R. Ambedkar and the Constituent Assembly:

"A Dead Letter of the Constitution." Dr. Bhimrao Ambedkar, the chairman of the Indian Constitution and chairman of the Drafting Committee, expressed his view that Article 356 was not a positively viable provision and was a mere dead letter in the Indian Constitution. He believed that this provision could be misused for political purposes, and thus, it was not suitable for implementation. If the President were to consider using Article 356, Dr. Ambedkar suggested that necessary precautions should be taken beforehand, and only if these measures failed, should Article 356 be used.

"I share the sentiments that such articles will never be called into operation and they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article."

- Dr. B.R. Ambedkar

Dr. B.R. Ambedkar understood the reasoning on why the members of the Constituent Assembly were sceptical of the inclusion of such a provision which would provide almost a blank cheque to the President, with the signature of the Governor, providing any and all amount of control over the functioning of all the Legislature and Executive of that state. This is the

very reason that he gave the two precautionary measures for the President to follow, before invoking this provision:

1. A warning shall be provided to the province that has erred, that the things are not going on in accordance with the Constitutional Machinery.

2. An order shall be passed for an election to be held, that would provide an opportunity for the people of the province, to take an active role in the settlement of the matters themselves.

It was only then, when both the alternatives are exhausted and yet there are no conclusive results that have remedied the situation, that the President shall invoke the powers vested to him, by Art. 356. Though Dr. Ambedkar may have managed to cut short the debate, which had already taken over five hours, by seeking a vote on the assumption that the provision would remain a dead letter, the debate since then has been unending with Article 356, a provision unique to India, throwing up new challenges and posing fresh questions whenever invoked.

The Constituent Assembly was very vocal about the reasoning provided by Dr. B.R. Ambedkar. With all due respect to the greatness of the man, the safeguards as stated by Dr. Ambedkar do not provide a substantive answer to the contentions of the other members. In fact, when there was an attempt to draw a distinction between the Constitution of Australia and America to justify the presence of Art. 356, and the very *verbatim* of Art. 356, there were scathing speeches made by great Constitutional luminaries such as Shri. H.V. Kamath. But before delving into the Constituent Assembly Debates, and quoting the speeches, it is important to first look at the origin of this law, and then look at the dissent of the various esteemed members of the Constituent Assembly.

2.2.1 The Government of India Act, 1935:

Section 93 of the Government of India Act, deliberates upon the Powers of the Governor to Issue Proclamations. The Section goes as follows:

Sec. 93: Powers of the Governor to Issue Proclamations

(1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this

Act, he may by Proclamation—

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.[7]

2.2.2 Sec 119 of Australian Constitution

The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.[8]

The Constitution of Australia though has a provision for the safeguard of the State against External Aggression, and Domestic Violence, a report of 1998, has stated, that

"The mechanism provided for in Section 119 of the Constitution has been of little practical importance".

As far as the application of Sec. 119 is concerned to test the justification of Art. 356, the internal aggression as mentioned in Art. 356 can be drawn as a parallel, on a stretch, of course, to the *Domestic Violence* mentioned in Sec. 119.

The second part of the Section, "domestic violence" is not explicitly defined, but it is commonly understood to refer to any type of local disturbance, rebellion, or disorder that occurs within a particular state's borders. This could include incidents of civil unrest, insurrections, or uprisings

[7] " encyclopedia of India. . encyclopedia.com. 12 Apr. 2023 . Encyclopedia.com, https://www.encyclopedia.com/international/encyclopedias-almanacs-transcripts-and-maps/government-india-act-1935 (last visited Apr 27, 2023)

[8] The australian constitution - section 119 The Australian Constitution - Section 119, https://www.ausconstitution.org/home/chapter-5-the-states/section-119 (last visited Apr 27, 2023)

that arise due to tensions or conflicts between different groups within a community. The phrase is not limited to any specific form of violence, but rather encompasses any type of conflict or disorder that occurs within a state's boundaries.

2.2.3 The Constituent Assembly and Its opinions.

Article 278 was one of the provisions in the original draft of the Indian Constitution that dealt with the imposition of President's rule in states. However, the Constituent Assembly was not satisfied with the wording and implications of this provision. They felt that it gave too much power to the central government and could be misused to undermine the authority of state governments

In response to these concerns, the Drafting Committee, led by Dr. B.R. Ambedkar, revised the language of Article 278 and renumbered it as Article 356 in the final draft of the Constitution. Despite these changes, some members of the Constituent Assembly still expressed reservations about the provision, particularly regarding the potential for abuse of power by the central government.

2.2.3.1 Shri H.V. Kamath

In what was perhaps the most scathing speeches given in the Constituent Assembly on the issue of Art. 356, Mr. Kamath wanted the President to act only on the report of the Governor, and not on the advice of any other member, including himself. He also pointed out the shallow waters and grave dangers the Assembly was swimming in, if the proposed amendment were not to be accepted, *'we are laying ourselves open to snare and traps in our path wherein we shall be caught beyond any rescue[9]'.* In some time, we shall be looking at the prophetic justice as bestowed by the Oracle of Delphi herself, as what Dr. Kamath prophesised came true.

The speech itself goes,

"Reading all these Articles since yesterday and the amendment moved today, it seems to me that we are not going about the business in an honest fashion." "This is a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided

[9] Constituent assembly debates: Official report (Lok Sabha Secretariat) (2014) p. 138

for in this Constitution, and I shall pray to God that He may grant sufficient wisdom to this House to see the folly, the stupidity and the criminal nature of this transaction."

2.2.3.2 Dr. P.S. Deshmukh

Dr Deshmukh brought in the one perspective which the entire constituent assembly was pondering upon. The comparison between the Constitution of Australia and America to draw a parallel with that of India when it comes to imposition of State emergency, was proven to be a folly by Dr BR Ambedkar. As it was rightly mentioned in his speech, Dr Deshmukh pointed out that there cannot be a parallel drawn between these two Constitutions as they do not imply the same thing. The wording of the Australian Constitution in Section 119, could be more appropriate to justify and draw a parallel between the said provision and Article 352 of the Indian constitution, but not 356. The speech goes as follows:

"My learned Friend, Dr Ambedkar, has quoted the American and Australian Constitutions in support of Article 278 present Article 356. Fortunately, or unfortunately there is no mention of any emergency either in the Australian or American Constitution. He quoted them probably to show that there will be no encroachment from the Centre so far as the units are concerned .... If we mean this Constitution to work, the Centre will have to respect the autonomy of the provinces whether we specifically say so or not .... There was therefore hardly any point in the Honourable Doctor trying to derive support from foreign Constitution. It would have been some consolation if he could have cited an appropriate parallel to the whole scheme now unfolded for the first time. That he could not do. Here we are taking away all the powers of the Provincial Governors and Provincial Administrations; I do not think, Sir, this is wise or likely to work well or be in the interest of sound and beneficial administration."[10]

This entire subsection suggests that while Dr. Ambedkar was not happy about the inclusion of Article 356 in the Constitution, as the Chairman of the Drafting Committee, he had no choice but to support it. He expressed his hope that such provisions would never need to be enforced and would remain ineffective. He believed that if at all the power granted by Article 356 was to be exercised, it should be done sparingly, and only if the constitutional machinery in a state had failed.

[10] Constituent assembly debates: Official report (Lok Sabha Secretariat) (2014) p. 177

Dr. Ambedkar was a staunch believer in democracy and the rule of law, and he always stressed that the principles of democracy should be based on fair play. He was very clear that the power under Article 356 should not be used for political purposes by the Union government

Despite his hopes that Article 356 would not be abused, Dr. Ambedkar's fears were realized when the first instance of abuse was seen in 1959, when the Communist government in Kerala was dismissed by Jawaharlal Nehru. This process of abuse of Article 356 was further evident in the more recent past, when it was used by Narasimha Rao to dismiss state governments in Uttar Pradesh, Rajasthan, Himachal Pradesh, and Madhya Pradesh.

2.3 Sarkaria Commission Reports

The Sarkaria Commission, officially known as the Commission on Centre-State Relations, was a high-level commission established in 1983 by the Government of India to examine the relationship between the central government and the states. The commission was named after Justice R.S. Sarkaria, a former judge of the Supreme Court of India, who was appointed as its chairman

The main objective of the Sarkaria Commission was to provide recommendations on various aspects of Centre-State relations, including the distribution of powers and responsibilities between the central government and the states, the role of the Governor in the state administration, the nature and scope of emergency provisions in the Constitution, and the working of various inter-state bodies and councils.[11]

The Commission submitted its report in 1988, after five years of extensive research and consultation. The report contained a detailed analysis of the issues and challenges faced by the Indian federal system, as well as a set of recommendations for reform and improvement. The Sarkaria Commission report is considered to be one of the most comprehensive and authoritative documents on Centre-State relations in India.

2.3.1 Stand on Art. 356

"…each and every breach of a constitutional provision, irrespective of its significance, extent

[11] India. commission on centre-state relations cool hit counter, https://thepranitas.com/update/commission-on-centre-state-relations/ (last visited Apr 27, 2023)

and effect, cannot be treated as constituting failure of constitutional machinery."

The Sarkaria Commission recommended that the use of Article 356 should be extremely rare. The Commission believed that the framers of the Constitution intended Article 356 to be an exception to the rule, as it is the duty of the Union government, under Article 355, to ensure that state governments are functioning in accordance with the provisions of the Constitution.

In legal terms, the Commission upheld the constitutional principle that the Union government has a duty to ensure that state governments are working within the framework of the Constitution. The Commission recognized that Article 356 was a powerful tool that should only be used in exceptional circumstances.

The Sarkaria Commission recommended amending Article 356 to require a clear statement of material facts and grounds for invoking the provision. This would enable more effective judicial review of the use of Article 356, including on the grounds of mala fides. The Commission also recommended that the Governor's Report, which is required before the President can issue a Proclamation under Article 356, should contain a clear and precise statement of all material facts and grounds on which the President may satisfy himself of the emergency situation. This document should be made public through all media channels. By requiring greater transparency and accountability in the use of Article 356, the Commission aimed to strengthen the checks and balances on the Union Executive and prevent its misuse for political purposes.

3. S.R. Bommai Vs Union of India[12]

'After the Supreme Court's judgment in the S. R. Bommai case, it is well settled that Article 356 is an extreme power and is to be used as a last resort in cases where it is manifest that there is an impasse and the constitutional machinery in a State has collapsed.'

- Soli Sorabjee

3.1 Facts of the Case:

The Governor of Karnataka received nineteen letters by the council of ministers stating that

[12] SR BOMMAI VS UOI (AIR 1994 SC 1918) para.434

they are withdrawing the support from the ruling party and hence due to the non-majority Governor forwarded a report to the president about the defection of Council of Ministers from the party in ruling. The Governor stated in the report that the existing Chief Minister Mr. S.R. Bommai failed to call in majority for the majority of assembly and thus the president's rule should be imposed in the State under Article 356(1) of the Constitution of India.

The very next day of sending the report, seven out of the nineteen ministers complained about the misrepresentation in their respective letters and Hence Mr. S.R. Bommai, the Chief Minister and the Law Minister visited the to summon the assemble same day in order to prove the Majority of his government in the assembly. The report of the same was forwarded to the President but again on the same day, the President received another report from the Governor which states that Mr. S.R. Bommai, the then Chief Minister of Karnataka has lost his confidence of Majority and has requested the president to proclaim the emergency in the state under Article 356. On the basis of this report, the president proclaimed the emergency.

A writ petition was filed challenging the validity of the proclamation in the special 3 judges bench of Karnataka High Court but it was dismissed and thus he preferred this appeal.

3.2 Held of the Case:

The beauty of the S.R. Bommai case, was the amount of similarities it had with the recommendations of the Sarkaria Commission. The held of the S.R Bommai case can quite efficiently explained by quoting the golden paragraph of the judgment, Para 434.

Para 434 of the S.R Bommai case gave an 8-point ruling, extensively explaining the shortcomings, and the scope of Art. 356.

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

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

recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 do merit serious consideration at the hands of all concerned.

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

(4) The Proclamation under clause (1) can be issued only where the situation contemplated by the clause arises. In such a situation, the Government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State Government in office. There cannot be two Governments in one sphere.

(5) (a) Clause (3) of Article 356 is conceived as a check on the power of the President and also as a safeguard against abuse. In case both Houses of Parliament disapprove or do not approve the Proclamation, the Proclamation lapses at the end of the two-month period. In such a case, Government which was dismissed revives. The Legislative Assembly, which may have been kept in suspended animation gets reactivated. Since the Proclamation lapses -- and is not retrospectively invalidated - the acts done, orders made and laws passed during the period of two months do not become illegal or void. They are, however, subject to review, repeal or modification by the Government/Legislative Assembly or other competent authority. (b) However, if the Proclamation is approved by both the Houses within two months, the Government (which was dismissed) does not revive on the expiry of period of the proclamation or on its revocation. Similarly, if the Legislative Assembly has been dissolved after the approval under clause (3), the Legislative Assembly does not revive on the expiry of the period of Proclamation or on its revocation.

(6) Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the Court from calling upon the Union Council of Ministers (Union of India) to disclose to the Court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice

was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice. Article 74(2) and Section 123 of the Evidence Act cover different fields. It may happen that while defending the Proclamation, the Minister or the official concerned may claim the privilege under Section 123. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of Section123.

(7) The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds. The deletion of clause (5) [which was introduced by the 38th (Amendment) Act] by the 44th (Amendment) Act, removes the cloud on the reviewability of the action. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action. Even if part of the material is irrelevant, the court cannot interfere so long as there is some material which is relevant to the action taken.

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

3.3 **Constitutional and Administrative machinery**

Mere failure in Administrative Machinery cannot be construed as a failure in Constitutional Machinery and that cannot be grounds for the imposition of President's Rule under Art. 356.

There is a clear distinction between the failure of constitutional machinery of a state and administrative machinery of a state.

When there is a failure of administrative machinery, the simple meaning is that the government

in question does not hold the majority that it was supposed to hold to form a government. This further means that there are two options to resolve this issue.

1. To conduct a floor test to see if the party in question truly holds majority in the house.

2. If the ruling party does not hold majority, then as suggested by BR Ambedkar to conduct an election and let the people of the particular state or province decide for themselves, who shall be the next government.

It is only when both these means fail that there is a failure in administrative machinery of the state and still this may be a ground to continue the previous government as a temporary government until the newly elected party assumes office. In the SR Bommai case we saw the introduction of a hung parliament as the aftermath of the judgement. Further, this goes on to prove that mere administrative failure was seen in the state of Karnataka as an error apparent of the governor to fail to notify the president about the conducting of floor test which was rejected by the Governor when requested by the law minister, and the chief minister of Karnataka then.

The understanding of the failure of constitutional machinery in a state can be defined if there is an erroneous mistake by the functioning of the state that is prima facie violative of the principles established in the Constitution. In the SR Bommai case there was no such violation of any constitutional principles by the plaintiff party. In fact, if anything the failure of the governor to do his duties of conducting a free and fair floor test as requested by Sri SR Bommai was rejected and this action of the Governor. He is rather a failure of his constitutional duties as established in the role of governor. Therefore, we can conclude that there has been no failure of constitutional machinery and the entire fiasco of the governance in shambles can merely be grounds for administrative discrepancy and not constitutional failure.

3.4 Executive Discretion: A look at the Malaysian Constitution[13]:

The Malaysian Constitution has a unique approach to executive discretionary powers, particularly in relation to emergency provisions. The country's constitutional structure is quite similar to that of India, with a bicameral division of Parliament and a Westminster model of

[13] Constitution of Malaysia 1957, https://www.jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf (last visited Apr 26, 2023)

separation of powers, including an independent judiciary. However, Malaysia differs from India in having a monarch, known as the Yang di Pertuan Agong, who serves as the equivalent of the President. Another key difference is that the Malaysian Constitution recognizes Islam as the official religion of the country, while India's Constitution is secular.

Under the Malaysian Constitution, the Yang di Pertuan Agong has significant powers to suspend fundamental rights such as the liberty of person, life, and freedoms of speech, expression, and movement within a state or the country as a whole. These powers are concentrated in the area of emergency provisions, allowing the executive to take swift action in response to crises or threats to national security.

While both the Malaysian and Indian Constitutions are modeled on the Westminster system, there are notable differences in the ways they approach executive discretionary powers, particularly in relation to emergency provisions

Article 150(2A) of the Malaysian Constitution grants the Yang di Pertuan Agong the power to issue a new Proclamation of Emergency, even when a previous Proclamation is already in effect. This provision differs greatly from the Indian Constitution, which places limitations on the power of the President to issue Proclamations of Emergency. The Malaysian Constitution also differs from the US National Emergencies Act, which imposes certain limitations on the duration and scope of emergency powers.

One of the most significant differences between the Malaysian and Indian Constitutions is the level of judicial review allowed for the executive's exercise of emergency powers. Under the Indian Constitution, the President's satisfaction as to the existence of an emergency situation is not entirely immune from judicial review. However, in Malaysia, the satisfaction of the Yang di Pertuan Agong enjoys a high degree of immunity from judicial review under Article 150(8)(a) of the Constitution.

4. Conclusion

The very presence of Article 356 in the constitution of India is the presence of a noose which is slowly yet very strongly choking the very essence of democracy until one fine day, it will be too late and democracy shall be smothered under the suffocation of the exploitative quasi federal structure which is further powered by the presence of articles such as Article 356.

The utilization of Article 356 by the Centre, which results in the imposition of President's rule, should not be done hastily and without making an effort to control the situation in the State. Any such action should be taken with utmost care to prevent damage to the federal structure of the Constitution. The Governor's role, as a mere constitutional head acting upon the advice of the Council of Ministers, is appropriate when the ruling party is the same at both the Centre and the State level. However, when the State Government is led by a different party, the discretionary power of the Governor comes into play. In such cases, there have been instances where the Governor has acted as an agent of the Centre.

However, the repeal of Article 356 is not advisable because the Indian polity is rife with crises and there has to be some contingency against a constitutional deadlock in a State. Therefore, the most practical course left open may be to let history take its course. For now, we must be content with sporadic protests against the Union Executive's capricious use or non-use of Article 356, that unpredictable lever which can uproot a democratically elected government or leave it stranded, like a ship at the mercy of unpredictable tides.