ARTICLE 356 – COALITION GOVERNMENTS

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Perhaps the most abused provision of our Constitution appears to be Article 356, the justification for its incorporation in our Constitution being that such a drastic provision is necessary in a Democratic Republic, which is Federal in character with distribution of powers between the Union Government and the State Government. A similar provision was enacted under Article 4 Section 4 of the American Constitution and found its way in Section 45 and 93 of the Government of India Act, 1935. The Article was not intended to give supervisory powers to the Union Government to ensure good governance by the State administration but to ensure good governance by the State administration to ensure that the breakdown of the Constitutional Machinery of the State did not result in distortion and destruction of a political system wedded to a democratic form of Government which is a basic feature of a Republican Constitution. The provision was intended to be resorted to only in extreme and exceptional situations with due regard to the right of the federating states to administer themselves through their own representatives duly elected by the people of the State.

When this Article was taken up for debate in the Constituent Assembly, Dr. Ambedkar expressed the fond hope that this Article *"would be a dead letter"* and that before invoking his power under this Article the President would first issue a warning to the state that the administration was not being carried on in accordance with the provisions of the Constitution and that in the event of the warning not yielding results, the President would order elections to the State Legislature so that the people might settle matters by themselves and resort would be had to the provision only in the event of both the remedies failing, in the sense that the failure of the Constitutional machinery in the State still persisted. The view expressed by Dr. Ambedkar on the President ordering election to the State Legislature before resorting to the provisions to impose President's Rule in the State emphasizes the

significance of the Sovereign Power of the people finding its expression through elections as the foundation for a democratic, republican form of Government.

But the political developments of India over the last five decades has demonstrated that the Party in power at the Centre has abused this extraordinary power to advance its own political interests in the power oriented political drama that is being enacted in the name of the people of this country by all the political parties involved. Resort to this provision has been taken on more than 100 occasions for purely political purposes and the challenge to these proclamations in the Constitutional Courts are far and few. However a few aspects touching the scope and dimensions of the power under this Article have been the subject matter of three important decisions of the Supreme Court in what are familiarly known as the *Rajasthan Case, S.R. Bommai case* and *the Bihar case* to which I will advert later.

An analysis of the substantive provisions of Article 356 shows that in order to enable him to assume to himself any of the functions of the Government of the State and all or any of the powers exercised by the Governor or anybody or authority in the state other than the Legislature of the State, the President has to be satisfied on receipt of a report from the Governor of the State or otherwise that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The reference here to the 'satisfaction of the President' is not to the personal or subjective satisfaction of the President, but to that of the Union Council of Ministers and this satisfaction although to an extent subjective must be based on cogent material and relevant facts. Such a satisfaction may be arrived at on the basis of a report made by the Governor or by the Union having in its possession material and relevant facts available from other sources also to come to the conclusion that an occasion has arisen to exercise this extraordinary power under the Constitution. The phrase *"the Government of the State cannot be carried on in accordance with this Constitution"* has been broadly understood and judicially interpreted to refer to failure of the Constitutional machinery in the State and not to instances of breach of any one or more of the several Constitutional provisions by the State Government. Thus understood, it confers a power on the Union Government to assume to itself the administration of the Federal State concerned where the Government of the day is unable to carry on the administration in a democratic manner either for want of majority support from the legislators or for other valid reasons like abject breakdown of law and order in the State

or non-adherence to a secular administration of the State, Secularism being one of the essential and basic features of our Constitution. The Assembly however, cannot be dissolved until and unless the proclamation has been approved by the Parliament. *(S.R. Bommai Vs. Union of India)*

The leading case in which Article 356 came up for consideration was the one decided by the *Supreme Court in State of Rajasthan Vs. Union of India*. In the elections to the House of People held in 1977 after the lifting of the emergency by Mrs. Indira Gandhi, the Congress party suffered a huge defeat in the northern states of India. Not a single Congress candidate was returned to the Parliament from Bihar, Uttar Pradesh, Punjab, Haryana, and Himachal Pradesh, whereas in Madhya Pradesh and Rajasthan the Congress party secured one seat each out of total of 61 seats. The Janatha Party won more than 2/3 majority in Parliament and the ministry headed by Sri. Moraji Desai as Prime Minister assumed Office.

Sri. Charan Singh, the then Home Minister addressed a letter to the 9 States referred to above to advise the Governors of the States to dissolve the Assemblies and seek a fresh mandate from the people. This Directive was challenged by some of the States by filing Suits in the Supreme Court praying for a declaration that the letter of the Home Minister was illegal and *ultra vires* the Constitution and not binding on the States and for an injunction restraining the Central Government from resorting to Article 356 of the Constitution. A 7 Judge Bench of the Supreme Court dismissed the suits and upheld the Letter Directive issued by the Home Minster on the reasoning that the satisfaction of the President either on the ground of insufficiency of the grounds or the existence of the satisfaction of the President fall outside the Court's power of judicial review, although the question of *malafides* and fact of satisfaction being based on wholly extraneous and irrelevant grounds was open to judicial review to very limited extent. The Court further held that the dissolution of Assemblies could be resorted to even before the Proclamation was approved by both the Houses of Parliament. However the view of the Court about the dissolution of the House even before the Proclamation was approved by Parliament was overruled in *S.R. Bommai's case*, which was decided by a Bench of 9 judges of the Supreme Court. Bommai ruling also disagreed with the decision in Rajasthan case that the massive success in the elections to Parliament by a political party which was not in power in the Federal State was sufficient ground to uphold the Exercise of Power by the President under Article 356.

In the case of Sri Bommai, power under the Article 356 was exercised to dismiss the ministry headed by Sri. S.R. Bommai on the ground that it had lost majority in the State Assembly on the basis of letters of withdrawal of support by some of the Legislators belonging to the Janatha Party without a floor test being held in this behalf to prove the majority support or otherwise to the government. The Supreme Court held that the only test or finding out whether the Government enjoys the majority support of the Legislators was by a test on the floor of the House and not otherwise. The proclamations in respect of both Karnataka and Nagaland wherein also no floor test was conducted were declared to be unconstitutional. But the Assembly was not restored in both the States as fresh elections had already taken place and a new Government had assumed office at the time of Judgment of the Supreme Court. The Supreme Court was not called upon to consider any other question relating to the satisfaction of the President in invoking its powers under Article 356 in respect of these two States. However, in the case of Madhya Pradesh, Rajasthan and Himachal Pradesh where large scale breakdown of law and order ensued the demolition of Babri Masjid, the Supreme Court upheld the Proclamations, holding that Secularism being a basic feature of the Constitution, failure of the administration in the State to preserve Secularism would amount to a breakdown of the Constitutional machinery in the State.

It was in the case of *Rameswar Prasad Vs. Union of India* that two important aspects relating to the exercise of power under Article 356 by the President arose for consideration after the results of elections to the Bihar Assembly were declared on 4th March 2005 with no political party having secured majority to form the Government on its own. On 07-03-2005 by a Proclamation under Article 356, the Assembly was kept in suspended animation. However, a group of Legislators belonging to different parties and independents came forward to form a coalition Government to be headed by Sri. Nitish Kumar under the name of National Democratic Alliance. The Governor did not call upon Sri. Nitish Kumar to form the Government on the ground that, the changing alignments of the members of the political parties so openly made a mockery of our democracy as it was attributable to unprincipled and opportunistic realignments from time to time and that in the facts and circumstances, there was no possibility of a stable Government being formed in the State. He also referred to various elements within the party and outside the party being approached through various allurements like money, caste, posts, etc. and that this was a disturbing feature affecting the Constitutional provisions and safeguards built therein. He recommended that the people should be given another opportunity to give their fresh mandate. Immediately on receipt of

the said report of the Governor and on the same day i.e., 22-05-2005, the Union Cabinet met at about 11p.m. and decided to accept the report of the Governor and sent a fax message to the President who had already left for Moscow recommending the dissolution of the Legislative Assembly of Bihar. The President of India approved the recommendation and on 23-05-2005 the Bihar Legislative Assembly was dissolved even before its first meeting by a Presidential Proclamation under Article 356 of the Constitution. When the Proclamation was challenged, a Constitutional Bench of 5 Judges of the Supreme Court declared that the Governor acted *malafide* in recommending the dissolution and that his conclusions were not based on cogent, relevant and material facts to arrive at the conclusion that the proposed Government to be formed by Sri. Nitish Kumar could not be democratic and stable. There are sufficient indications in the Judgment that notwithstanding the existence of numerical strength for formation of coalition Government, it is open to the Governor to conclude that the proposed Coalition Government cannot be run on democratic principles and to provide a stable Government. Sri. Sabharwal, Chief Justice, speaking for the majority observed:

> *"Undisputedly, a Governor is charged with the duty to preserve, protect and defend the Constitution and the laws, has a concomitant duty and obligation to preserve democracy and not to permit the "canker" of political defections to tear into the vitals of the Indian democracy. But on the facts of the present case, we are unable to accept that the Governor by reports dated 2-.04-2005 and 2-.05-2005 sought to achieve the aforesaid objective. There was no material, let alone relevant, with the Governor to assume that there was no legitimate realignment of political parties and there was blatant distortion of democracy by induced defections through unfair, illegal, unethical and unconstitutional means".*

> *"The recommendation for dissolution of the Assembly to prevent the staking of claim to form the Government purportedly on the ground that the majority was achieved by distortion of the system by allurement, corruption and bribery was based on such general assumptions without any material which are quite easy to be made if any political party not gaining absolute majority is to be kept out of governance. No assumption without any basis whatsoever could be drawn that the reason for a group to support the claim to form the government of Nitish Kumar, was only the aforesaid distortions. That stage had not reached. It was not allowed to be reached. If such a majority had been presented and the Governor formed a legitimate opinion that the*

party staking claim would not be able to provide stable Government to the State, that may be a different situation."

However, these aspects have not been elaborately discussed and a final conclusion expressed whereas some of the observations of the same Judge in the course of his Judgment seem to suggest that once a majority is presented before the Governor, he has no choice but to allow the formation of a Government. The law on these aspects is yet to develop.

Given this legal background, the question arises as to when a Government can be said to be not carried on in accordance with the provisions of the Constitution. There cannot be any rigid rule or formula to decide this question and define the set of situations when alone power under Article 356, can be justified as no two situations can be alike. Each situation, therefore, will have to be considered on the facts and circumstances of the case. In my opinion, apart from situations like the one in Sri, S.R. Bommai's case and the Bihar case, the following instances may afford a basis for the invocation of the power by the President of India.

1. When the Government of a State cannot be carried on along democratic lines in the sense that the elected representatives of the people do not reflect the will of the people who are the real sovereigns in democracy. This situation may not arise for consideration when a single political party obtains numerical majority in the election to the State Assembly, but in case of hung assemblies then the formation of a Government by a coalition becomes inevitable to avoid immediate elections or when the Ruling Political party loses its majority on large scale defections permissible under the 10th Schedule to the Constitution. When such a situation arises, a heavy responsibility is cast on the Governor of the State to explore the possibilities for formation of a democratic stable Government. Even if a proposed coalition can claim majority support, does the coalition arrangement between two political parties with dramatically opposite ideologies followed by political scorn and contempt for each other and ruled by bitterness and hatred at the level of the party workers and supporters, really be a Coalition reflecting the will of the people? In forming such a coalition Government to suit their personal interests and selfish motives if a group of Legislators join hands in order to prevent a dissolution of the Assembly and avoid going to the people for a fresh mandate, can the Legislators be said to carry with them

the seal of approval of the people for such coalition arrangements without any reference to them? Can such unprincipled coalition alignments based on the whims and fancies of the Legislators changing minute by minute, hour by hour, and day by day with scant respect to the avowed political ideology and stand of the party on whose ticket they were elected by the people be accepted as providing a Government to be run on Democratic Principles? Can the Democratic form of Government which is a basic structure of our Constitution be allowed to be hijacked by the Legislators to quench their thirst for power in the name of the Mandate and Will of the people? The question has not arisen for authoritative pronouncement of the Supreme Court so far. The Political developments in Karnataka after 3rd October 2007 when the JD(S) contrary to its avowed promise failed to hand over power to BJP after a lapse of 20 months and both BJP and JD(S) openly indulged in mudslinging and acrimonious mutual accusations and abuses but suddenly decided to join hands again did indeed provide an opportunity to the people to express their will only through the ballot box without surrendering their rights in favour of the Legislators to join hands with each other on selfish, motivated, unprincipled equations. But, this unprecedented opportunity was lost when the Central Government, for its own political reasons decided to revoke the Proclamation and allow the BJP and JD (S) to form a coalition Government despite the patent incongruity in its decision and the immense damage caused to the sovereignty of the people. The question still remains unanswered. Have we opted for a Democratic Republic or rule by a handful of autocratic Legislators? Have we surrendered our Right to have a say in the formation of a coalition Government to the Legislators however unprincipled and opportunistic their decisions be about alignment or realignment of political parties for serving their own interests?

2. The other question relating to the assurance of stability of a proposed coalition, though dependent on several imponderables, may not be dismissed as not being capable of judicial assessment in any case. Any reasonable inference on the aspect of stability cannot be based on only apprehensions and conjectures. But, if in a given situation relevant and irrefutable material bearing on the question of stability exist leading to a reasonable inference that the proposed Government cannot be a stable one having regard to its own inherent contradictions, the President, in my opinion, would be justified in invoking the powers under Article 356 of the Constitution and order the dissolution of the Assembly and fresh elections. This aspect did indeed

present itself for serious consideration in the light of the developments in Karnataka but escaped judicial scrutiny and pronouncement as a result of the politically convenient decision taken by the Union Government. The unedifying struggle for political power being what it is today in our nation another situation like the one in Karnataka to-day, albeit undesirable and unimaginable may present itself in future for decision by the Supreme Court and herald the development of Constitutional Law on new and unexplored lines.