# Preserving Federalism: Examining the Clash between Political and Constitutional Purpose in State of Rajasthan v. Union of India 1977

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The germination of Article 356 of the Constitution can be found in the abhorred Section 93 of the Government of India Act, 1935, which established British dominance over Indian nationalist aspirations. The power here was accorded to the Governor to proclaim an emergency on his satisfaction that the state is not being governed in accordance with the provisions of the Constitution. Section 93 essentially reflects the federalism envisioned in the Indian context where states though not entirely amputated from or absorbed within the Union, enjoy a limited sense of autonomy from the Union.

With the scope of "Union of States", the constitution negates the possibility of cessationist tendencies of the State. However, this cohesion cannot be attributed to an imaginary identical nature of the Union and the State. The federal units, in regards to the electoral system, can have a different ruling party than the Union, with radically different political manifestos. Yet the sincerity of Article 356 of the Constitution to keep this federal system intact has not remained aloof from doubts.

Either on a report of the Governor of any of the States or otherwise, the President can issue a proclamation of emergency under Article 356(1). Where there is no report, the President can act on other methods which includes but is not limited to the advice given to him by the Council of Ministers. According to the Privy Council in *Bhagat Singh v. The King Emperor* [1], the drastic action necessitated by the chaotic state of matters in a particular State can be promulgated by the Governor-General alone. The President in our Constitution being a constitutional head, is bound to act on the advice of the Council of Ministers. This position was made explicit by the 42nd amendment which had the effect of equating the decision of the President as the decision of the Council of Ministers under Article 74.

It is not impossible to envision a scenario where every provision of the constitution which empowers the Union to override the states' mechanism can be abused or employed for political purposes. Despite the lurking danger, the lack of any other

[1] (1931) 33 BOMLR 950.

alternative in case of failure of constitutional machinery pushed the Constitution makers to adopt this article. Article 356 was supposed to be invoked only for an exceptional and threatening situation. The socio-political experiences of the past raised the importance and awareness about the security of the nation and its stability.

The need to limit the ill consequences of such Section 93 of Government of India Act 1935 was felt by the Constituent Assembly, as it was referred to as a reincarnation of the "imperial legacy" multiple times. Therefore, to counter the use of a constitutional power for advancement of political purposes, its exercise was hedged by the provision of President satisfaction. The satisfaction of the president is sine qua non for the imposition of a state emergency that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. Before the deletion of Clause 5 by the 44th amendment, the satisfaction of the President was wholly subjective. The courts could not make an objective assessment on the advice tendered by the Council and whether the decision arrived at by the President was right or wrong.

It can be easily inferred that the Article does not prevent advancement of political ideals or agendas under the guise of advice tendered to the President. But such immunity from judicial review does not continue when a course of action is taken by the Union Executive which is opposed to the very tenor and spirit of the Constitution. Political henchmenship is ancillary to the true and proper purpose of Article 356. The only instance where the stamp of finality of Clause (5) can be retracted is when an order is passed based on grounds which have no reasonable nexus to the purpose for which the President's satisfaction is wanted.

## Judicial piercing of the "political thicket"

It is settled law that a question of a purely political nature cannot be subject to judicial review until it involves determination of any constitutional or legal right or obligation. However, merely because a legal issue is riddled with political connotations, the court cannot shirk off its duty from discharging its functions. The Constitution is supreme lex and it is the sole duty of the Court to uphold the constitutional and democratic values and to enforce the limitations. A manifestly unauthorized exercise of power cannot strip the court's powers to intervene.

Prima facie, the question whether the situation in a particular state has arisen where it has become impossible to administer the state in accordance with constitutional provisions, is of a constitutional nature. Concerning the allocation and exercise of governmental power, the quasi-political nature of the problem does not make it non-justiciable in the court.

## The macro-perspective of justiciability of political questions in international jurisdictions

Charles Black in Perspectives in Constitutional Law[2] opines that it is erroneous to separate Constitutional law from politics; the legal document is a matter of purest politics and an authority in describing the structure of power. The US Supreme Court in *Baker v. Carr*[3] established the jurisdiction of federal courts in a case of apportioning of legislative districts which is wholly political. As long as a constitutional entity acts ultra vires of the powers imposed on it by the constitution, it can indubitably be decided by the judiciary.

Similarly, the evolution of judicial review in British jurisprudence has made it impossible to say that "no power – whether statutory or under the prerogative – is no longer inherently non reviewable". The House of Lords in *Council of Civil Service Unions v Minister for the Civil Service*[4] established that the nature of the government's powers and not their source determines whether they are amendable to an objective assessment by the judiciary. While the power existed for the government of Britain to suspend writ of habeas corpus during the Second World War, it was not suspended[5]. In the absence of an enumerated list of immutable rights, the power of the court as a counterweight to the government is not great but the British courts have been acknowledged to do a great deal during the war years for curbing administrative excesses.[6]

[2] 37 University of Chicago Law Review 196 (1969).
[3] War and civil liberties 52-29 (1946).
[4] [1984] 3 All ER 935.
[5] Koppell, G. O. "The Emergency, The Courts and the Indian Democracy" *Journal of the Indian Law Institute* 8, no. 3 (1966).
[6] Federal court in Keshav Talpade v Emperor; Emperor Shib Nath Banerji.

Hence, the American standard of primary justiciability has no application in the United Kingdom where matters are heard on their merits and boundaries for the interference by the courts are decided which are not insurmountable.

## Politics of Article 356 and intervention by the judiciary

J. Chandrachud and J. Beg confine the jurisdiction of the court to determine whether the limits on the power conferred by the Constitution have been observed or there is transgression of such limits, and the only limit is satisfaction of the President. However, it is crucial to clarify that such satisfaction has to be regarding the breakdown of constitutional machinery in the state. If it is malafide or based on wholly extraneous and irrelevant grounds, it would be equated to having no relevant President's satisfaction which is a constitutionally invalid exercise of power.
The challenge to the President's decision is not to the justification or modus operandi of his satisfaction; rather it is alleging that there is no appropriate satisfaction at all. For example, where the President declares a state emergency on the ground which prima facie discloses the intention of the ruling party to overthrow democratically elected governments of other political parties, the so called satisfaction is no satisfaction at all and it can be challenged on a malafide ground.

J. Bhagwati confirms that this narrow area is subject to judicial review. However, the conclusion derived from the application of such principle to the factual matrix in *State of Rajasthan v Union of India* [7] is where we differ. It is not possible to accede to the reasoning of the Court that ousting legislative assemblies of certain states which have ceased to reflect the will of the electorate is not an extraneous ground. There is no reasonable nexus between suffering defeat in the Lok Sabha elections and the carrying of the Government of the State in accordance with the provisions of the Constitution. In fact, the concept of federalism in India clearly establishes the possibility of one party at the center and another in the states. It is not an absurd phenomenon where the electorate democratically elects one party to the Lok Sabha while simultaneously electing another party to the Legislative Assembly.

The power to duly dismiss the elected government of the state using the provisions of emergency to advance its political ideas in instances where the state government enjoys

[7] 1977 AIR 1361.

a majority in Legislative Assembly ceases to be purely political and becomes justiciable to the court. The doctrine of political question affirms the classical idea of separation of powers and prescribes certain yardsticks which excludes certain issues from being taken up for consideration by courts. For Indian courts, it would be impossible to lay down rigid standards to test the justiciability of political questions as no rigid separation of powers exists in the Constitution

The apex court held that the circumstances surrounding State of Rajasthan v UOI did not detail an ordinary defeat. Not a single seat was acquired by the ruling party in the plaintiff States. However, it was erroneous to hold that such a situation is axiomatic to the abject failure of constitutional mechanism in the state.

Therefore, it can be easily concluded that alienation between the Legislative Assemblies and the people is wholly extraneous to the purpose of Article 365 and does not have a reasonable nexus with the matter in regard to which the President is required to be satisfied before taking action under Article 356 a.(1). Even though political henchmenship is prima facie not forbidden by virtue of Article 356 which immunized both the basis of such decision (Article 74(1)) and the actual decision itself, nothing prevents the court from intervening in situations of gross violation of constitutional power.

Hence, notwithstanding clause (5), situations may arise where the jurisdiction of the court is not completely ousted. The prohibited area as mentioned by the apex court, which was protected due to its inherent political nature, becomes completely penetrable on evidence of mala fide satisfaction of the President. In *RC Poudyal v. Union of India*[8]Justice Venkatachalia elaborated on the jurisdiction of the court to adjudicate upon matters which are eminently political in nature. The case discussed the union's power to admit a new territory into the union of India. Even though such powers of the Union are "guided by political issues of considerable complexity", it cannot be concluded that the Article confers unfettered powers on the central government which is immune to judicial review. Fundamental precepts of the Indian constitution restrict and bind such exercise of power. Even if the absence of satisfactory criteria makes the issue an intrinsically political one, it will still be amenable to the review of courts.

[8] 1993 AIR 1804.

Further, as pointed out by the Supreme Court in *AK Roy*, the proposition of hesitation of courts to enter the "political thicket" laid down in Rajasthan v. UOI has now been made redundant by the deletion of clause (5) which made the President's satisfaction immune to judicial questioning.

## Acceptable Judicial inroads into Article 356

While between the organs of the State, judiciary stands alone as the only institution whose directives and powers can be immediately put into review by the advancement of appeals[9]. However, the decision of the executive cannot be put to any such check in terms of immediacy, these actions are in review through the electoral system which happen every five to six years, thus eliminating instant review or addressal.
The consent of the people forms the essential foundation of the electoral system, however in a case where the executive action eclipses over the scope of consent of that people express through democratic process election of state government, it then becomes the issue of utmost importance of the judiciary to reinstate and give way to the expression of such consent of the people.

In his work on Presidential rule in India, Scholar Bhagwan D. Dua[10]stated that in cases like the present owing to the "excessive use of presidential rule", the autonomy of the state has been reduced to a farce". Thus, advancing such excessive centralizing tendencies that are subject to no judicial interpretation and curtailment lead to a conflicting ethos of federalism in nature.

## Re-installation of sanctity of Federalism within Constitution Purpose

The introduction of the 44th amendment subsequent to the judgments of the Court in *State of Rajasthan v. UOI*[11] express the urgent need of the legislation to differentiate the advancement of political purpose from the Constitutional purpose. The Statement of Objects and Reasons of the 44th amendment[12] closely associates its introduction to ensuring that the people themselves are an elective voice in determining the form of

[9] Ramanat, N.V. (2022) "7," in *Rule of law in democracy*. EBC.
[10] Dua, B.D. (1979) in *Presidential Rule in India: A Study in Crisis Politics*. Asian Survey.
[11] 1977 AIR 1361.
[12] The Constitution, 44th Amendment Act (1978).

government under which they are to live. Thus, extending the federalism envisioned where the people can elect different representatives for themselves as a Regional and the Union level.

Where the notion of the intention of the framers cannot be extrapolated upon in terms of originalism to draw reliable conclusions on the misuse of Article 356 to topple the federal structure, the action of the legislature through the introduction of the 44th amendment reinstates the federal structure that was envisaged by the framers of the Constitution. This amendment brought by the legislature clearly reflects their displeasure with the Court's decision regarding political henchmanship to not be unconstitutional. The original Article 356 read along with the amendments to the article provides textualist backing to the legislature's attempt to reinstall the sanctity of federalism within the constitutional purpose.

The amendment was further discussed and substantiated during the arguments advanced in the judgment of *S.R.Bommai Vs. UOI.*[13] The deletion of clause 5 of article 356 by the amendment negated the conclusive power of the President to impose emergency without any scope of judicial interference. Thus rendering the 'satisfaction of the president' under Clause 1 of Article 356 judicially reviewable.

H.R. Seervai in his commentary of "Constitutional Law of India'[14] negates the argument that emergency provisions do not dilute the principles of federalism, however he contests that the abuse of these provisions has detached from the principles of federal government. The judgment considered that doctrine of federalism within the Constitution to be the basic feature in the Union of India, which is indestructible in nature[15]. Therefore establishing that the federalist nature assigned to the country cannot be toppled by instances of political hedgeman ship to topple an opposition led State government.

[13] 1994 AIR 1918

[14] Seervai, H.M. (2020) *Constitutional law of india: A critical commentary*. Mumbai: M.J. Pocha, S.P. Madon and N.H. Seervai.

[15] 1994 AIR 1918

## Interpretation of "breakdown of constitutional machinery"- A valid ground for de-federalisation

The Constitution in terms of the ground of "breakdown of constitutional machinery" in Article 356 is not defined in the constitution nor does it envisage the mere breakdown of the administrative machinery but the breakdown of the whole Constitutional settlement.
In the report presented by Sarkaria Commission, the commission then pointed out that 'failure of constitutional machinery' can be examined under four heads, namely, (a) political crisis, (b) internal subversion, (c) physical breakdown and (d) non-compliance with constitutional directions of the Union Executive.[16]

In an instance where a public disorder of a significant magnitude is responsible for endangering the security of the stage it is the duty of the State Government to inform the Centre of such development and if it fails to do so, it may again invoke article 356, subject of course to prior warnings. It is important to under the concept of prior warnings to the state mentioned here.. This idea elucidates that the central government in cases of public disorder cannot immediately initiate an action for the enforcement of an emergency proclamation without offering prior warnings to the state government as their integrity and independence exists according to the federal character of the constitution.

The duty according to Article 355 is to protect the state from any incident of external aggression or any kind of internal disturbance which will be discharged in accordance with article 356. In an incident where the Union government has to maintain the constitution it can be acknowledged that there should be an absence of any kind of intention to interfere with the independence of the state as provided and it is the duty of the central government has to protect the states from external aggression and internal disturbances for the proper working of the constitution for both, the state and the central. If it works in accordance with what it should for the former there is no question of interference unless it is completely violating the directions provided under 256,257, or 339(2) or under 353 during an emergency.

[16] National Commission to Review the Working of the Constitution "A consultation paper on Article 365 of the Constitution", (National com May 11, 2001)

The aforementioned proposition can be backed by the ruling of the Supreme court in the case of *S.R Das J.Keshavan v. State of Bombay*[17] which supported that the provisions of Article 356 should be interpreted literally and in a narrow sense. It stated that an argument founded on the spirit of the Constitution has a powerful appeal to sentiment and emotion but it has to be gathered from the language of the Constitution. It cannot prevail if the language of the Constitution disapproves of the view. The framers of the constitution formulated these provisions not being subject to the minimal grant of overriding powers to the Union over the States. It is supposed to be an ultimate assurance of maintaining or restoring representative government in States responsible to the people.

The courts have attempted to retain a certain degree of control over executive actions, indicating the dangers which may result from granting unfettered discretion to the executive. Removal of ambiguity through elimination of clauses like "presidential satisfaction" and greater clarity in terms of the clause of "breakdown of constitutional machinery" evidently signifies the essential role played by the judiciary to bring to life the vision of the constitutional framers. This ignites a hope for the future where the judiciary upholds federalistic structure envisaging autonomy of state politics from the Union politics. As the socio-political environment of India becomes less liberal, federalism will be an automatic casualty. Wherever the 'cult of strongmen' prevails, centralisation leads to the weakening of federalist nations globally. Ergo, even though abrogation of Article 356 would be nearly impossible in the present times, it is crucial to be aware that this is yet another means of usurpation. It might not be illegal but it significantly destroys the last vestiges of opposition and dissent in a democracy.

[17] 1951 AIR 128