

Misuse of Article 356 & Judicial Activism

Why in news?

- Recently Andhra Pradesh High Court ordered the state government to come prepared on debating about the breakdown of constitutional machinery.
- This opens up the possibility of misusing Article 356 by the judiciary itself.

What is Article 356?

- It empowers the President to impose president's rule in a state if he is satisfied from the report of the governor of the state or 'otherwise'.
- No liberal democratic Constitution in the world has this provision excepting India and Pakistan.
- Both the countries borrowed this provision from the Government of India Act, 1935.

What are the Constituent Assembly debates on Article 356?

- In the Constituent Assembly debates, members were divided in their opinions on Article 356.
- The main bone of contention was the use of word "Otherwise" and subjected to lot of interpretations.
- The member Alladi Krishnaswami justified the provision in the name of representative government at the Centre.
- Another member Shibban Lal Saksena agreed with Parliament's power to ratify President's Rule in States.
- But he mentioned that this provision reduces the autonomy of the states.
- Laxmi Kant Maitra & T Prakasam argued that Indian Governors would not behave like British Governors who acted as agents of the Centre.
- The rest of the members were mostly taking a stand against it.
- H.V. Kamath said the term "Otherwise" can include anything including a presidential dream of breakdown of constitutional machinery in a state.
- Naziruddin Ahmad stated that drafting committee had become a 'Drifting Committee' as it had gone against the original draft.
- P.S. Deshmukh too favoured deletion of the term 'otherwise' as it will be misused by the union government.
- Later this provision was incorporated in the Constitution in the name of democracy, federalism and stability.

- B.R. Ambedkar assured that article 356 would remain a dead letter but it was used/misused more than 125 times.
- Subsequent decades proved all of them wrong both in respect of Governors as well as the central government.

What are the previous instances of using article 356?

- In 1951, Jawaharlal Nehru removed the Gopi Chand Bhargava ministry in Punjab though he enjoyed the majority.
- In 1959, it was used against the majority opposition government of the E.M.S. Namboodripad government in Kerala.
- Indira Gandhi used this Article 356 for 27 times.
- In most of the cases she removed majority governments on the grounds of political stability, absence of clear mandate or withdrawal of support, etc.
- Subsequent governments too acted in similar fashion.
- The most notable case of “non-use of Article 356” was the refusal of the P.V. Narasimha Rao government though it was fully aware of a breakdown of constitutional machinery in Uttar Pradesh.
- The Narendra Modi government which invoked Article 356 in Arunachal Pradesh on Republic Day itself, in 2016.

How did the Presidents responded to the Cabinet recommendations?

- All Presidents signed presidential proclamations without any objection except K.R. Narayanan.
- He returned the cabinet’s recommendation on October 22, 1997 in respect of the Kalyan Singh government in Uttar Pradesh.
- Again in September 25, 1998, he returned the cabinet’s recommendation in respect of the Rabri Devi government in Bihar.
- In this, he refuted all the charges made by the Governor Sunder Singh Bhandari of Bihar.
- Later Patna High Court Bench observed that the Governor’s report was not conclusive regarding the invocation of Article 356.
- It also observed that the High Court could also report to the President about the breakdown of constitutional machinery in the State.
- Hence in almost all cases it was used for political considerations rather than any genuine breakdown of constitutional machinery in the States.
- Supreme Court in S.R. Bommai v. Union of India (1994) has clearly laid the situation for applicability of article 356.

Is Andhra Pradesh High Court order a judicial overreach?

- The Court passed such order due to the term ‘otherwise’ in article 356 but

Supreme Court stayed this order.

- Today collegium's recommendations on transfer of judges and chief justices looks more like an executive order.
- Constitutional experts view that the judiciary is increasingly becoming more executive-minded than the executive itself.
- It is seen in the recent Andhra Pradesh High Court order.
- Hence the word 'otherwise' should be deleted from Article 356 & it must be used sparingly.
- Judicial activism may be good as a rare exception but an activist judiciary is neither good for the country nor for the judiciary itself.

Source: The Hindu

