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## PRINCIPLE OF SUSPENDED ANIMATION: A CASE OF MISSING GOVERNMENT IN DELHI

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**Abstract:-** A Constitution controls the political behavior of claimants with political ingenuity. The issue of dissolution of an assembly elected democratically discussed in the paper draws the attention from different angles. The angles which ultimately strike at the structural root of the system defined expressly or impliedly by the Constitution. Judicial vision enshrined in many cases after two decades of the commencement of the Constitution has enough guidance for those who are supposed to protect the very basic value of federalism. But shifting of adherence from principle to rule drags the enough guidance reliance to those years when federal principle was used to do imbalance to get political benefit beyond the constitutionalism. After an analysis, the paper looks beyond the rule and advocates an adaption of suspended animation as principle.

**Keywords:** suspended animation, federalism, principle, rule.

### INTRODUCTION

The provision under Art. 356 of the Indian Constitution had unbridledly been a Constitutional weapon in the hands of Central government to attain its political favour till 1994, the year in which the Supreme Court evolved the modus operandi to use this weapon in Bommai's case. The President rule history in India shows that till *State of Rajasthan vs. Union of India* the Courts were not willing to entertain the petition challenging the constitutionality of President rule. The Courts branded this a political question and kept distance and repeatedly said that this can only be resolved on the floor of the legislature. The latter case is known as a turning point of the history of political question. The Court examined various aspects of President rule as mixed issue of political and judicial determination. The Constitutional expert saw the ray of hope of survival of co-operative federalism. The former case is a culminating point of judicial journey in Part XVIII of Indian Constitution. The Court in this case evolved the mechanism comprising the various guidelines to be followed by the Governor when government comes into minority and even at the time of the formation of government in a State.

Hung house emerged after election in Delhi. Arvind Kejriwal took an oath as chief Minister of the State of Delhi. For forty nine days, the newly formed government stayed in. On February 14, 2014, the chief minister resigned and simultaneously the outgoing cabinet recommended to Lieutenant Governor of Delhi that Delhi Assembly be dissolved. The President issued a proclamation under Article 239 AB of the constitution placing the Assembly in suspended animation- a principle brought forth in Bommai and confirmed in Rameshwar Prasad.

Delhi is not a sole example of President rule history in India. The other examples are; in the month of Feb. 2007, it was the State of UP and earlier to this, there were instances of Bihar, Jharkhand and Goa. On 14th Feb. 2007, the SC disqualified 13 Uttar Pradesh MLAs who extended support to Samajwadi Party (SP) to enable Mulayam Singh Yadav to form government in August 2003. The Governor recommended to the centre to impose President's rule in the State whereas Mr. Yadav enjoyed the full confidence in the House. The Central Government tried its best to impose the President's rule. It could succeed but for two set-backs: Bommai's ruling to conduct a floor test, and coalition formation of the Government.

The States like Bihar, Jharkhand and Goa- remained examples of hung house of the year 2005. The Governor Sibtey Razi under his Constitutional power invited Shivo Shoren leader of Jharkhand Mukti Morcha (JMM) to form government in Jharkhand and stated to prove his majority on 15th march 2005 by giving him more time than appeared

to be reasonable. This was challenged in the Supreme Court. The Apex Court at the interlocutory stage made an order to advance from 15th march to 11th march 2005 with fixing time, date and manner of conduct of proceeding in the Assembly with Videography. The Court while making this order touched the very basis in *S.R. Bommai* and *Jagdambika Pal*. In Bihar, there was a fractured mandate in Assembly Poll. The Governor recommended the President for use of Art. 356 of the Constitution. On 7th march 2005, the President's rule was imposed and Assembly was kept in suspended animation, one of the guidelines of Bommai's case.

#### **Suspended animation:**

Principle of suspended animation enunciated in *Bommai* in 1994 by the Apex Court is to retain, maintain and promote the basic value of the Constitution like parliamentary system and federalism. Federalism has been designated as a basic value in Indian Constitution. To promote Parliamentary system of government, the Court has insisted that the question whether the incumbent State Chief Minister has lost majority support or not, must be decided on the floor of the house and not by the Governor himself. It was also said by the Court that the Governor ought to explore ministry before reporting failure of the Constitutional machinery in the State to the President.

It is a provision of the Constitution that if a proclamation of the President is issued in a State, such proclamation is required to be approved by the Parliament within two months from the date of issuance. If the proclamation is not approved within two months by both the houses of the Parliament, it automatically lapses. If the assembly was dissolved, what would be constitutional fate of the dissolved assembly? In *State of Rajasthan v. Union of India*, it was held that the proclamation is valid when issued under Article 356 (1) and State legislature can be dissolved by the Centre without waiting for its approval by both the houses. But Bommai disagreed with this view and for good reasons. If the proclamation is not approved by the Parliament, it automatically lapses after two months. How is the State government to run thereafter? It would be inevitable that the dissolved assembly be revived for no fresh elections can be held for the house within the short period of two months.

It was also contemplated that if the proclamation is approved by the Parliament and it lapses at the end of the six months or it is revoked earlier, neither the dismissed state government nor the dissolved legislature will revive. Further, if the Court invalidates the proclamation, even if approved by the parliament, the action of the President becomes invalid. The State government, if dismissed is revived and the State assembly, if dissolved will be restored.

To meet the above situation, *Bommai* came with the principle of suspended animation and held in that the dissolution of the assembly prior to the approval of the proclamation by the Parliament under Article 356 (3) will be per se invalid. The State assembly should be kept in suspended animation in meantime. From perceptive point of view it is contextual herewith to make it clear that *Bommai* should not be treated in ordinary parlance of meaning of the rule or guidelines. The Guidelines in *Bommai* is solely addressed to tone up the values upon which the formal system is understood to be founded. To treat suspended animation as a rule will not justify the constitutional sanctity attached by the Supreme Court in *Bommai*. Therefore, it is desirable on the basis of the operational aspects of guidelines in *Bommai* to remove the foul play being emerged with the time that suspended animation should be adapted as principle not as a mere rule since both are different from each other. The principles have a dimension that rules do not. Here in treating the suspended animation as principle the Dworkin's theory of rules and principles is pertinent.

#### **Governor:**

Governor- a Constitutional authority- is the Constitutional head of the State. The Governor is appointed by the President under Art. 155 of the Constitution on aid and advice of the Council of Ministers under Art.74 (1) of the Constitution. The concerned aspect is that the Governor can remain in his/her office during the pleasure of the President. The Governor who is so-called factor of co-operative federalism which requires two desires – a desire for national unity and a desire to maintain the independence of each man's separate State. This is such a key office of the Federal Nation that is probably the most defied and abused. The Governors have been given powers equivalent to the President.

The Governor is not elected, therefore, he is not representative of the people of the State, but an agent of the Centre. So, it is truthfully deducted that he bears loyalty to the ruling party at the Centre and appeared to be more political. Thus, this office remains politically contentious, as reflected in decisions of Governors in Goa, Jharkhand, Bihar and UP which have been in big controversy. Governors performed the role of Centre's hatched man. The States have no role to play in their appointment or removal. Governors can remain in the office "during the pleasure of the President". Given the fact, the pleasure of the President, is the pleasure of the Union Cabinet. So all Raj Bhavan's occupants know whom to keep humoured.

#### **Article 356 :**

Just preceding Article i.e. 355 provides a duty of the Union to ensure that the government of every State is

carried on in accordance with the provisions of the Constitution. The President is empowered to make a proclamation, when he is satisfied that the Government of the State can not be carried on in accordance with provisions of the Constitution either on the report of the Governor or otherwise.

In addition to this, such proclamation may also be made by the President where any State has failed to comply with or to give effect to any direction given by the Union, in exercise of executive power to the State under Art. 365. Another instance, wherein Art.356 could be invoked is where a State does not co-operate with the Centre in defence of situation arisen under Art.352. Thus, here is a wide range wherein the Centre can take the reign of the administration of the State. But it is very much clear that to achieve political purpose, the Constitutional provision is violated or the situations are toned up with the sound of the flute of the Centre. 121st times Art. 356 has been used since independence, but 'not a single example, we can find to ask in which the Article other than political purpose, has been used.

#### **Judicial attitude:**

Prior to 1967, all Centre and State differences were resolved within the structure of the Congress itself. The problem came when India started emerging a federation since opposite parties came into rule in the States. At this juncture, a resort of Art. 356 was treated as an instant weapon by the Centre to suppress political wish of the State ruling party.

Prior to State of Rajasthan v. Union of India, the Courts remained almost unwilling by branding the situation as "political question". The Supreme Court, in this case, took cognizance of the dispute for the first time by stating that "if satisfaction is malafide or based upon wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied. After a long judicial journey, the Apex Court in *Bommai* clearly laid down the following propositions :

- Presidential proclamation dissolving State Legislative Assembly is subject to judicial review.
- Burden lies on the Government of India to prove that relevant material existed (to justify the issue of proclamation)

- Courts would not go into the correctness of the material.
- If the Court strikes down the proclamation it has the power to restore the dismissed State Government to the office.
- A state Government pursuing in anti-secular politics is liable to action under Art.356.

In addition to these, the Governors are required to follow propositions like legislature to be kept in suspended animation as above said and floor test methods etc. Before recommending the President's rule in the State as the Apex Court in *Jagdambika Pal* ordered the Governor in U. P. to conduct floor test before recommending the President rule. Till this Uttar Pradesh episode, it is much more clear that judicial propositions laid down in *Bommai's* case are required to be followed and wishes and whims of the Governors can not so freely be tolerated now.

#### **Presidential proclamation in Delhi and suspended animation:**

A debatable constitutional issue emerged when proclamation was issued in Delhi and assembly kept in suspended animation. Also the attention was drawn on not to accept the advice by cabinet of *Kejriwal* for dissolution of the house. It was arguable that when the chief minister resigned, he was the head of the government with majority support. His request to Lieutenant Governor to dissolve the Delhi assembly and call for fresh election has become a subject matter of debate in the light of *Bommai's* suspended animation and constitutional conventions. The arguments knocked at the basis of minority or majority government. The argue that Congress extended its issue based support. So to decide whether it was minority or majority government we have to calculate the issues. Consequently, will it be appropriate to say that the majority character of the government was confined to the number of issues? Is the refusal of the advice correct? However, Hours before the request to the Lieutenant Governor, the government passed the money bill and Congress was committed to support him. At the end of the day, it appears that this confidence of the house lost its character in Lieutenant Governor's decision of proclamation and suspended animation. Therefore, no debate. However, it is established practice borrowed from convention from Britain that a majority government has a right to dissolution whenever it wants. Mrs Margaret Thatcher dissolved early in 1983 and 1987 whilst Tony Blair did so in 2000 and 2005. So too did Indira Gandhi in 1971. Even an instance of October 1974 shows that Harold Wilson's six-month-old minority government sought an early dissolution and the queen immediately granted it. Thus it is an issue inviting several questions.

As far as suspended animation is concerned, *Bommai* has been followed. But for how long and for what reason? It is truly established that no house should be dissolved if an alternative government is possible and its viability

is established. The question: can another government be formed? remained unresolved. To keep the assembly in suspended animation for a long provides an opportunity for horse trading. Horse trading is one of the cancers that affects democracy. No doubt this suspended animation will provide fertile ground for it to sprout. So the retention of suspended animation for a long in case of Delhi is an example of politically charged application of the principle which is against the very value for which it was meant. An earlier example of application of this is State of U. P. In October 1995, the President rule was imposed in the State. The State assembly was first suspended and then dissolved ahead the ratification of the proclamation by the Parliament. There was a congress government headed by P. V. Narsimha Rao at the Centre. The ostensible reason given for the step was that there was a possibility of 'horse trading' of MLAs in case of suspended assembly. The real reason was a political decision which was not in consonance of the principle of suspended animation. Going through the above example, one can legitimately assess that suspended animation has been treated as mere rule not principle by the Governor who was never expected by Supreme Court and founding father too. *Bommai* is addressed to the constitutional institutions like Governor and President whose obligations are to protect, sustain and promote the constitutional value. Governor is not designation but a derivation from cooperative federalism. Hence, *Bommai* should not be treated as mere guideline or rule but principle.

#### CONCLUSION:

Invoking suspension of assembly is not a mere formality to fill the gap between proclamation and approval by the Parliament. Democratic rights of the citizen obligate the Governor to explore every possibility of a popularly elected government emerging from the duly elected legislative assembly. The role of the Governor is expected to satisfy the contents of suspended animation principle constitutionally not mere formality keeping in view the political benefits of his master. To keep compliance a norm formally is different from that of constitutionally. Latter is an obligation of constitutional statesmanship to sustain the sanctity of federal value. In this context a wide gap has been seen and accordingly the Sarkaria Commission recommended various steps to be taken while appointing the Governor like Governor must not be in active politics, should be outside the State, should be appointed in consultation with State Chief Minister, Vice-President of India and the Lok Sabha speaker. The Guidelines provided by the Apex Court in *Bommai* should be inserted by making an amendment in the constitution. The third aspect is that the President of India should take aid and advice of the Council of Ministers carefully in case of invoking the power under Art. 356 as former President K.R. Narayanan took a step in 1998 in case of Bihar by establishing a precedent by the President. He sent back the recommendation of imposing President's rule in the state for reconsideration under proviso of Art. 74 of the Constitution. If the advice is sent back without consideration by the council of minister, the President is bound constitutionally to act even though the President is convinced that such advice is not in conformity with the spirit of the Constitution. But he can generate a message to the people. So by adopting these methods, these Constitutional crises could hopefully be diminished.

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- 1.S. R. Bommai v. Union of India, AIR 1994 SC 1918.
  - 2.State of Rajasthan vs. Union of India, AIR 1997 SC 1361.
  - 3.See The Hindu Feb. 18, 2014.
  - 4.If the President, on receipt of a report from Lieutenant Governor or otherwise, is satisfied— (a) that situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239 AA or of any law made in pursuance of that article; or (b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of article 239AA or of all or any 'of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering, the National Capital Territory in accordance with the provisions of article 239 and article 239AA.
  - 5.Rameshwar Prasad v. Union of India (2006) 2 SCC 1.
  - 6.Hindustan times, New Delhi Feb. 16, 2007, p. 10.
  - 7.Rajendra Singh Rana v. Swami Prasad Maurya (2007) 4 SCC 270.
  - 8.Supra note 1.
  - 9.Jagdambika Pal v. Union of India (1999) 9 SCC 95.
  - 10.AIR 1977 SC at 1319, Beg. C. J.
  - 11.Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

12. 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.

13. Article 156(1) says, 'The Governor shall hold office during the pleasure of the President'

14. (a) assume to himself all or any of the functions of the Government of the state and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;.....”

15. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

16. Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.



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