

# Exercise Of Powers To Invoke Article 356 Of The Constitution Vis A Vis The Mandate Of Constitutional Morality - Critical Analysis Of Indian Scenario

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## **Abstract**

Oath of office is not meant to be a formality, but in reality it is being so. There are sacred texts of oath, but despite the sanctity attached to the oath, the principles of constitutional morality are disregarded for the sake of political interests. Exercise of powers under Art. 356 of Indian Constitution may be aptly described as an example of disregard of Constitutional Morality and breach of oath. The role of Judiciary therefore assumes crucial importance.

**Keywords:** -, Constitutional Morality, Rule of Law, Sanctity of Oath of Office, Article 356

## **1. Introduction**

In order that there is Constitutionalism and Rule of Law in the state, it is imperative that the principles of Constitutional Morality woven in the fabric of Constitution are observed by those who are mandated to put the provisions of Constitution into operation. Political considerations should not override principles of Constitutional Morality. Administration of Oath to incumbent of an office before assuming that office is therefore meant to be a significant step in ensuring that incumbent of office undertakes to discharge his duties as per Law and Constitution. Oath of office is not to be a mere formality but it is contemplated to be an appeal to the conscience of person taking the oath. It is pertinent therefore to examine in the Indian scenario whether principles of Constitutional Morality have been followed by the executive in exercise of powers to invoke Article 356 of the Constitution.

## **2. Significance of Constitutional Morality for Constitutionalism-**

Constitutional Morality means adherence to or being faithful to bottom line principles of constitutional values. Constitutional morality in the modern sense means to abide by the substantial moral entailment that the Constitution carries. Constitutional Morality basically means to bow down to the norms of the Constitution and it is the very soul of the Constitution. Earliest definition of constitutional morality was given by George Grote<sup>1</sup>, which he described as a form of supreme obedience to the various aspects of the Constitution of the land. According to Grote, Constitutional Morality implied certain obligations for both the citizens as well as the authority namely –

1. Respecting the Constitution and all forms of authorities deriving their command from it.
2. Right to free speech, Right to criticize and hold accountable all those officials acting in pursuance of their constitutional duties.

3. Obligation of public officials to act within the powers given to them by the Constitution.
4. People contesting for political power should have reverence for the Constitution.

Grote thus held a view that 'Self-Restraint' formed the basic principle of Constitutional Morality. Dr. Ambedkar, Chairman of the drafting committee of the Constituent Assembly of India, also held the same view as highlighted by his following observation made while speaking in the Constituent Assembly on 25 November 1949-

"...However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics."<sup>2</sup>

Dr. Ambedkar also emphasized on 'Self-Restraint' exercised by those who are called to implement it and at the same time pointed out that however good a Constitution may be, it will prove to be bad if those who are implementing it are not good, i.e. people and the political parties who disregard the principles of Constitutional Morality as use the provisions of Constitution as instruments to carry their wishes and their politics. Thus views of both Grote and Dr. Ambedkar highlight that Constitution will turn out to be good only if those who implement it abide by the substantial moral entailment that the Constitution carries.

### **3. Significance of oath of office for enforcement of Constitutional Morality-**

Oath of office administered to incumbent of an office before assuming office and it serves a useful purpose. It counterbalances the prejudices and interests and makes the official mindful of what he asserts on oath. Oath of office is therefore not meant to be an empty formality or a mere ceremony. Administration of oath is meant to be an appeal to the conscience of official taking oath. Constitutional provisions relating to administration of oath to occupiers of Constitutional posts are meant to counterbalance the prejudices and political interests and obligate the official to discharge the duties as per Law and the Constitution. Thus Constitutional oath of office is of utmost significance for enforcement of Principles of Constitutional Morality to ensure that officials rise above the party politics and discharge duties as per Law and the Constitution.<sup>3</sup>

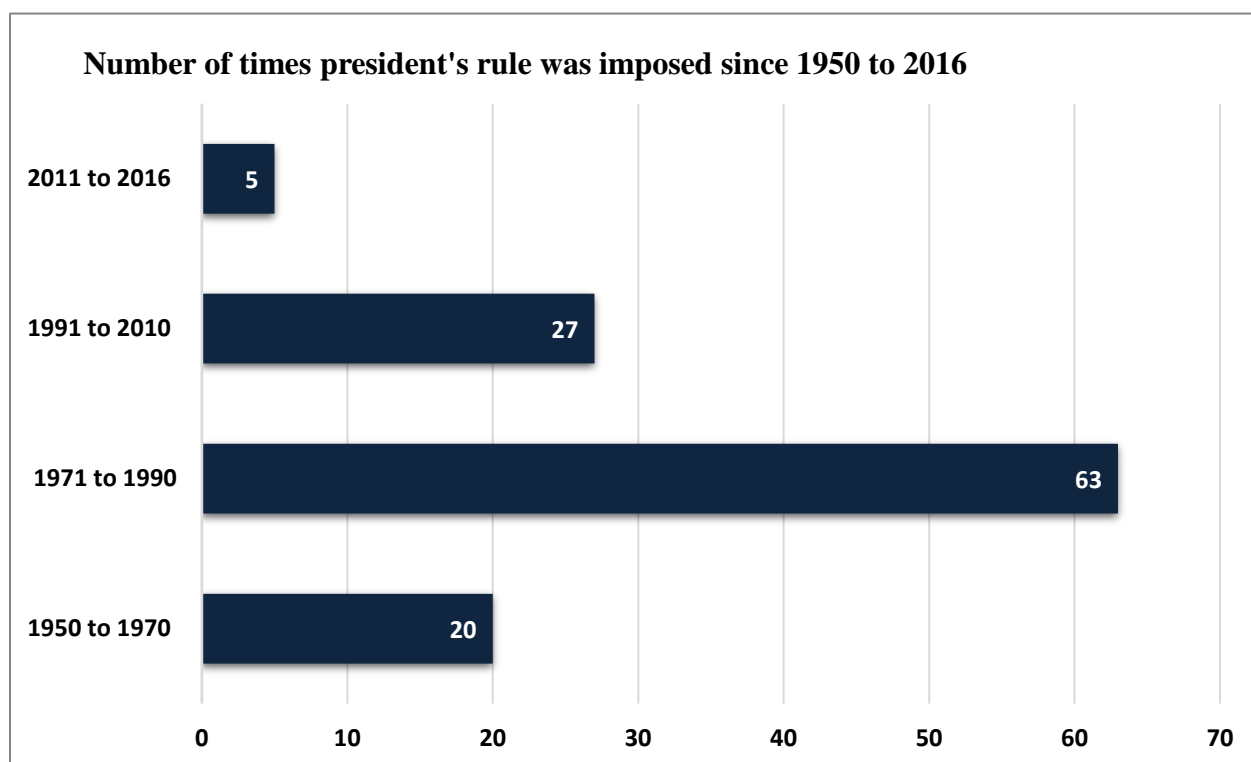
An example of form of oath of office for a Minister for the Union<sup>4</sup>, form of oath or affirmation by the President<sup>5</sup> form of oath or affirmation by the Governor<sup>6</sup> all precisely highlights that they shall discharge duties in accordance with the Constitution and the Law, without fear or favour, affection or ill-will, they shall bear true faith and allegiance to the Constitution of India as by law established, preserve, protect and defend the Constitution and the Law. There is sanctity attached to the oath and incumbent are obligated to discharge their duties conscientiously with due regard to the Principles of Constitutional Morality.

### **4. Constitutional Morality vis a vis Exercise of powers to invoke Article 356**

Framers of the Constitution had contemplated a positive role for the union to assume executive and legislative powers of the state if there is failure of constitutional machinery in the State<sup>7</sup>. However since the adoption of Constitution in 1950, there has never been a single instance when centre invoked Article 356 against the state governments ruled by same political party as at centre, and it has always been invoked by centre

against state governments which are ruled by other political parties. It clarifies that Article 356 proved to be an example of Malafide exercise of powers and as an example of most abused provision of the Constitution. It also clarifies that the offices of Governor and President, Council of Ministers headed by the Prime Minister have not given due regard to the principles of

Constitutional Morality though there is constitutional duty cast upon them by oath of office to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will, to preserve, protect and defend the Constitution and the Law.



## 5. Conclusion

After 44<sup>th</sup> Constitutional amendment, significant limitations were imposed on Government's powers to invoke Article 356. Apex court in *S.R. Bommai vs Union of India*,<sup>8</sup> held that President Rule invoked in states of Meghalaya, Karnataka, and Nagaland was unconstitutional. With a full majority, the court stated that the dismissal of state governments in Rajasthan, Madhya Pradesh, and Himachal Pradesh was not in accordance with the secular nature of the Indian Constitution. Apex Court held that Presidents satisfaction under Article 356 as regards forming opinion to the effect that constitutional machinery in the

state has failed is not subjective but capable of objective assessment. Decision in *Bommai* case is described by constitutional experts as high water mark of judicial review for the reason that in *Bhup Nath vs West Bengal* <sup>9</sup> apex court held that invocation of Article 356 is a political question and therefore taken an approach of 'judicial restraint' saying that 'challenge should be to the Polls and not to Courts'. However in *Bommai Case*, court held the powers of President's powers under Article 356 to be judicially reviewable and capable of objective assessment.

Invocation of Article 356 for political interests highlight the fact that mere administration of oath of office has not prevented the officials from exercising powers mala fide. As rightly pointed out by Dr. Ambedkar himself -

“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil which is essentially undemocratic.”<sup>10</sup>

Dr. Ambedkar rightly emphasised that our people are yet to learn it. Till the time our people learn it, Judicial Review which is held to form essential part of basic structure of the constitution in *Keshavananda Bharati vs Union of India*<sup>11</sup> and judicial decisions like *Bommai* which reiterates the same are the ray of hope when the incumbent makes a departure from standards of Constitutional Morality and commits breach of oath of office.

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