



SC Stays Andhra HC Order to Examine Constitutional Breakdown

Why in News

Recently, the [Supreme Court](#) (SC) has stayed an **Andhra Pradesh High Court** (HC) order intending to embark on a **judicial enquiry into whether there is a constitutional breakdown in the State machinery**, requiring a declaration of [President's rule](#) (Article 356).

- A three-judge bench headed by **Chief Justice of India S A Bobde** found the order **disturbing** and will take up the matter later on after vacations.

Key Points

▪ Andhra Pradesh High Court's Move:

- While hearing a clutch of [habeas corpus](#) petitions in **October 2020**, it ***suo motu* summoned the State counsel** to assist it in deciding "whether in circumstances prevailing in the State, the **court can record a finding that there is constitutional breakdown or not**".
 - **Habeas Corpus** is a **Latin term** which literally means '**to have the body** of'. Under this the court issues an order to a person who has detained another person, to produce the body of the latter before it.
 - This [writ](#) is a **bulwark of individual liberty against arbitrary detention** and can be issued **against both public authorities as well as private individuals**.

▪ State Government's Appeal:

- The HC **framed the question in an unprecedented manner** and **without any basis or pleadings** by any of the parties to that effect.
- It highlighted that **Article 356**, which deals with **failure of Constitutional machinery in a State**, is a **power exclusively vested in the executive** and **not the judiciary**.
- Under the Constitutional framework, it is **not for the Courts to decide** as to whether there is a Constitutional breakdown in a State as they **do not have any judicially discoverable and manageable standards to determine** so.
- The said fact is **essentially an executive function and is necessarily required to be based on a detailed factual analysis**.
- The HC order is a **serious encroachment on the powers of the executive** as enumerated under the Constitution and is **violative of the [doctrine of separation of powers](#)** and thus, **violative of the [basic structure of the Constitution](#)**.
 - Separation of powers is the **division of the legislative, executive, and judicial functions** of government.
 - Since the sanction of all three branches is required for the making, executing, and administering of laws, it **minimises the possibility of arbitrary excesses by the government**.
 - The constitutional demarcation **precludes the concentration of excessive**

power by any branch of the government.

President's Rule

- It implies the **suspension of a state government** and the **imposition of direct rule of the Centre**. It is also known as '**State Emergency**' or '**Constitutional Emergency**'.
- The SC in **Bommai case 1994** enlisted the situations where the exercise of power under Article 356 could be used.
 - One such situation is that of '**Hung Assembly**', i.e. where after general elections to the assembly, no party secures a majority.
- The President's rule is imposed through the invocation of **Article 356** of the Constitution **by the President on the advice of the Union Council of Ministers** (executive).
 - If the President, upon **receipt of the report from the Governor of the State** or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.
- **Parliamentary Approval and Duration:**
 - A proclamation imposing President's Rule **must be approved by both the Houses of Parliament within two months** from the date of its issue.
 - The approval **takes place through simple majority** in either House, that is, a majority of the members of the House present and voting.
 - **Initially valid for six months**, the President's Rule can be **extended for a maximum period of three years** with the approval of the Parliament, every six months.

[Source: TH](#)

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