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# Regional Emergencies under Article 356: The Extent of Judicial Review

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## I. Introduction

In *Rameshwar Prasad v. Union of India*,[1] the Supreme Court reviewed the constitutional validity of the Union's dissolution of the Bihar State legislative assembly and the proclamation of President's rule under Article 356 of the Constitution. The Court held that the dissolution of the State assembly and the proclamation of President's rule was unconstitutional and declared that it had the power to restore a dissolved assembly in an appropriate case. However, as elections to the Bihar assembly had been notified prior to the decision of the Court, it refrained from restoring the State assembly in this case. *Rameshwar Prasad* does not significantly alter the scope of judicial review of proclamations of regional emergencies under Article 356.[2] However, there is some concern about the Court's interpretation of when a legislative assembly is legally constituted and therefore when it may be legally dissolved. In this case, the legislative assembly was dissolved soon after the conduct of elections and before it met for the first time. The Court held that when the Election Commission notifies the election results and the assembly is "duly constituted" as per Section 73 of the Representation of People's Act, 1951, the assembly comes into existence.

In a recent critique of this decision, Shubhankar Dam focuses on the issue of when a legislative assembly is validly constituted, *i.e.* when it comes into "being".[3] He argues that the Court in *Rameshwar Prasad* incorrectly identified the stage at which a legislative assembly comes into existence, and "introduced a hierarchy into the Constitution that made a legislative assembly dependent on the executive".[4] According to Dam, a textual and functionalist reading of the Indian Constitution indicates that a legislative

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1. AIR 2006 SC 980 [hereinafter, *R. Prasad*].
2. *Infra* n. 12.
3. Shubhankar Dam, *Can a Legislative Assembly Function without an Executive Government under the Indian Constitution*, Pub. L. 224 (2008) [hereinafter, Dam]. Dam is Assistant Professor of Law, Singapore Management University; LL.M., Harvard Law School, B.C.L., University of Oxford; B.A., LL.B. (Hons.), National University of Juridical Sciences, Kolkata.
4. *Id.* at 225.

assembly comes into existence at its first meeting. He concludes that as the assembly had never been convened in *Rameshwar Prasad*, it had not been validly constituted and thus could not be dissolved under Article 356.

In this paper, we respond to Dam's claim on how this decision impacts the relationship between the executive and the legislature. We show how the Court's concern in *Rameshwar Prasad* is limited to the chronological sequence in which the executive and legislative wings of government come into existence after an election. We argue that the relationship between the executive and the legislature under the Indian Constitution is not determined by this case but by other well established precedents. We argue that the significance of the decision in *Rameshwar Prasad* is the nature of remedies available to a court under Article 356 and demonstrate how *Rameshwar Prasad* is the strongest application till date of the proposition that courts can review the exercise of power under this provision. The most remarkable aspect of the decision in *Rameshwar Prasad* is that it confirms that Indian courts can offer a rare public law remedy: the revival of a dissolved assembly. We conclude with some critical observations about the nature of constitutional interpretation in such cases. Dam argues that Sabharwal C.J. provided insufficient reasons for preferring one interpretation of "duly constituted" over the other, and could be characterised as "qualified silence".[5] We propose that constitutional adjudication must proceed by giving adequate weight to justifying reasons which pay attention to the text of the Constitution, the institutional framework and political principles embedded in the Constitution. Judged in this light, the interpretative methodology in *Rameshwar Prasad* may not be as vacuous as Dam suggests.

## II. Judicial Review under Article 356

Article 356 enables the President, acting on the advice of the Union government, to proclaim a regional emergency when "a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution." Article 356(1) provides that if the President is "satisfied", on the basis of a report from the Governor or otherwise, that such a situation exists, he has the power to issue a Proclamation and act in one of three ways: firstly, to directly exercise the executive powers of the State government; secondly, to transfer the legislative powers of the State legislature to Parliament; and, thirdly, to make any incidental or consequential provisions to give effect to the above. The provision also vests in the President the power to suspend wholly or partially the provisions of the Constitution

5. *Id.* at 225.

relating to any authority in the State.

Initially, a proclamation under Article 356 was considered to be the exercise of a prerogative power[6] by the executive branch of government and therefore beyond constitutional judicial review. In *Rao Birinder Singh v. Union of India*,[7] the Punjab and Haryana High Court held that it had no jurisdiction to review the material upon which the President was "satisfied". Similarly, the High Court of Andhra Pradesh held that the exercise of power under Article 356 was not justiciable.[8] When the issue came up to the Supreme Court in *State of Rajasthan v. Union of India*,[9] the Court unanimously dismissed the suit and held that the exercise of power under Article 356 was beyond the scope of judicial scrutiny. The Court also highlighted the broad scope of Article 356, noting that such a proclamation could be "either a preventive or a curative action",[10] and stressed that the President's satisfaction under Article 356 was subjective in nature, and thus could not be assessed with reference to any test. However, the Court conceded that the exercise of the power may be challenged on the ground that satisfaction was *mala fide* or based on "wholly extraneous and irrelevant grounds" as this would signify that there had been no satisfaction at all.[11] Importantly, Article 356 at the time contained clause (5) that made the President's satisfaction "final and conclusive". This was an important justification for the court's decision denying judicial oversight over the executive decision. Subsequently, this provision was repealed through the Constitution Forty-fourth Amendment Act, 1978.

In *S.R. Bommai v. Union of India*,[12] the Supreme Court developed the extent and scope of judicial review under Article 356. The Court held, *inter*

6. On prerogative powers, see generally Adam Tomkins, Public Law 81-83 (2003) (Oxford University Press).
7. AIR 1968 Punj 441.
8. *In re A. Sreeramulu*, AIR 1974 AP 106.
9. AIR 1977 SC 1361.
10. *Id.* at 1380.
11. *Id.* at 1422, 1441. For a detailed analysis of the decision, see Alice Jacob & Rajeev Dhavan, *The Dissolution Case: Politics at the Bar of the Supreme Court*, 19 J. Indian L. Inst 355, 375 ("At the end of the day, one is left with the impression that while the judges wanted to limit very severely the scope of judicial review and the interpretation of the "political question" doctrine, some of the judges' own views on the action taken by the union government appears to have found its way into their judgments").
12. AIR 1994 SC 1918 [hereinafter, *Bommai*]. See generally, Soli J. Sorabjee, *Decision of the Supreme Court in S.R. Bommai v. Union of India: A Critique*, 3 Sup. Ct. Cases J. 1 (1994); Gary Jeffrey Jacobsohn, *Bommai and the Judicial Power: A View from the United States*, 2 Indian J. Const. L. 38 (2008); O. Chinnappa Reddy, The Court and the Constitution of India: Summits and Shallows 224-227 (2009) (Oxford University Press).

*alia*, that the power under Article 356(1) was reviewable on several grounds. It inquired into whether relevant data was considered and the reasoning was justifiable and not *mala fide*. In this case, the Court applied the entire range of administrative law grounds for the review of executive action to an Article 356 proclamation and no longer treated it as a prerogative power. Further, it suggested that such proclamations were subject to basic structure review to ensure that they did not damage or destroy basic features of the Constitution. Applying these tests, the court invalidated three proclamations that had been issued under Article 356(1). It further asserted that so long as a State was performing its duty in conformity with the Constitution, there was no question of issuing a proclamation under Article 356(1) merely because a different political party was in control of the Union Government.

*S.R. Bommai* significantly expanded the scope of judicial review by holding that Article 356 was to be exercised under certain guidelines which were subject to judicial review. In *Rameshwar Prasad*, the Court marginally extended the *Bommai* holding. *Rameshwar Prasad* arose as a result of the elections in the State of Bihar in 2005 which delivered a fractured verdict. As a consequence of a hung assembly, the Governor recommended that President's rule be imposed under Article 356. Subsequently, political shuffles ensued between parties and the National Democratic Alliance (NDA) claimed to have the requisite numbers to form a government. The Governor, however, wrote to the President informing him that financial incentives had made politicians switch their support, and then submitted a final report to the President recommending dissolution of the assembly.[13] The assembly was dissolved and the constitutionality of the dissolution was challenged before the Supreme Court. With respect to judicial review of the proclamation under Article 356, Sabharwal C.J. reiterated *Bommai* and held that though "the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from material is certainly open to judicial review".[14] He further held that "it is open to the Court... to examine the question whether the Governor's report is based upon relevant material or not; whether it is made *bona fide* or not; and whether the facts have been duly verified or not".[15] Applying these standards to the facts of the case, the proclamation was found to be unconstitutional. Significantly, the Court confirmed its power to revive the dissolved assembly. This issue is considered more fully in the next part of this paper.

13. See Special Correspondent, *President Kalam signs Proclamation in Moscow to dissolve Bihar Assembly*, THE HINDU, May 24, 2005, available at http://www.thehindu.com/2005/05/24/stories/2005052410010100.htm.

14. *R. Prasad*, at para 118.

15. *Id.* at para 133.

## III. The Remedy in *Rameshwar Prasad*

In *Rameshwar Prasad*, the Court declared the proclamation issued under Article 356(1) to be unconstitutional. The question arises as to what public law remedy courts may provide in this situation. Ordinarily the legislature is considered to be a self-governing institution with autonomy vis-à-vis the courts and the executive. In this part of the paper, we examine the relationship between the courts and the legislature and go on to consider the executive-legislature relationship in the next part. The Indian Constitution incorporates this principle of self-regulation in Article 194 which provides that, *inter alia*, courts may not interfere in legislative proceedings. The Court has reinforced this view in cases where the exercise of parliamentary privileges conflicts with fundamental rights. Most recently the Court reiterated this principle in *Raja Ram Pal*.[16]

*Rameshwar Prasad* departs from this principle of self-regulation in so far as the Court claimed the power to revive a legislature which has been dissolved. The authority of courts to provide such a remedy was first suggested in *Bommai* and has been subsequently confirmed in *Rameshwar Prasad*. Although the court in *Rameshwar Prasad* recognized its power to issue "an order of *status quo ante* as prevailing before dissolution",[17] the Court chose to refrain from granting this remedy in light of the unusual circumstances of the case. In doing so, it highlighted the distinction between the liability and remedial roles of the Court.[18] The Election Commission had declared elections in the State of Bihar and since the process was already underway, the Court thought it best to not revive the Legislative assembly and to allow the ongoing election process to be completed. The Court's approach in *Rameshwar Prasad* rests on the premise that most public law remedies are discretionary in character. In English law, public law remedies have been regarded as discretionary in a range of scenarios.[19] These include situations where the remedy can provide no useful purpose,[20] as well as instances where certain adverse public consequences would result from the decision.[21]

16. *Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha,* (2007) 3 SCC 184.
17. *R. Prasad*, at para 161.
18. As Sturm notes, "The nature of the court's liability task – interpreting norms and determining parties' responsibility – differs in important respects from the remedial task – implementing those norms in a particular context. We insist on developing uniform, general rules at the liability stage, but recognize that different contexts may require different remedial approaches to implement those norms". See Susan P. Sturm, *A Normative Theory of Public Law Remedies*, 79 GEO. L.J. 1355, 1445 (1991).
19. See Lord Justice Bingham, *Should Public Law Remedies be Discretionary*, PUB. L. 64 (1991).
20. See *Eastham v. Newcastle United Football Club Ltd*., [1964] Ch. 413.
21. See *R. v. Monopolies and Mergers Commission, ex p. Argyll Group plc*, [1986] 1 W.L.R. 763.

Sabharwal C.J.'s decision not to revive the Legislative assembly is, to an extent, a combination of these two considerations. Recognizing the financial and administrative cost that had already been incurred as a result of fresh elections, and understanding the political reality that a revived Legislative assembly will continue to be unstable due to the fractured political mandate, the Court moulded the public law remedy to respond to this situation.

## IV. The Relationship between the Executive and the Legislature

The constitution of a legislative assembly after an election and the executive proclamation of emergency which dissolves an elected assembly requires a complex interaction between the executive and the legislative branches of government. The constitutional relationship between the executive and the legislature is worked out in cases such as *U.N.R. Rao v. Indira Gandhi*[22] and *Samsher Singh v. State of Punjab*.[23] In *U.N.R. Rao*, the Supreme Court dealt with whether an executive government could exist if the legislature had been dissolved. Referring to Article 74(1) of the Indian Constitution, under which there "shall" be a Council of Ministers to aid and advice the President, the court held that the Council of Ministers would remain in office even when the House of the People (Lok Sabha) had been dissolved. The Court reasoned that if Article 74(1) was interpreted as merely directory in nature (*i.e.* if it was interpreted to mean that there "may" be a Council of Ministers), then it could create a situation where the President may function independently without a Council of Ministers. Hence, even where the assembly was dissolved for any reason, the parliamentary form of government under the Indian Constitution requires a democratically elected executive branch that advises the President. This conclusion is supported by the premise that the presidential form of government had been expressly rejected by the Constitution framers.

In *Samsher Singh*, the Supreme Court dealt with the Governor's power to recruit persons to the judicial service under Article 234 of the Constitution. The petitioners argued that the Governor should act in his personal capacity and not under the aid and advice of the Council of Ministers. The Court held that the Indian Constitution embodies the parliamentary or cabinet form of government that exists in the United Kingdom, and thus the President or Governor is merely a formal head in the Indian constitutional scheme.

22. AIR 1971 SC 1002.
23. (1974) 2 SCC 831.

The Court reiterated its position in *Ram Jawaya Kapur v. State of Punjab*[24] where it had held that before the executive can perform its duties it must have the confidence of the legislature and that executive action takes place subject to the control and authority of the legislature.[25] This view has been confirmed in later decisions such as *S.R. Bommai*.

In his article, Dam cites Bagehot[26] and Jennings[27] to illustrate the ideal relationship between the executive and the legislature in a parliamentary democracy and suggests that *Rameshwar Prasad* does not align with this understanding.[28] Dam emphasizes that "in a representative democracy, it is the elected members of the assembly that validate the executive... the cabinet evolves from the assembly and not the other way round".[29] The decisions discussed above reveal that the general position in Indian law are in line with what Bagehot and Jennings posit to be the relationship between cabinet government and the legislature.

*Rameshwar Prasad* does not deal specifically with the cabinet in any way; it is concerned with the relationship between the executive branch of government and the legislative assembly in the context of the formation of a new government after an election. Dam interprets Sabharwal C.J.'s statement that "the Constitution does not postulate a live assembly without an executive government"[30] to suggest that the court creates a hierarchy where the legislature is dependent upon the executive. However, the force of the argument in *Rameshwar Prasad* as set out by Sabharwal C.J. is that the Constitution does not envisage a scenario where if no party can form a government due to a fractured verdict, the Governor can neither appoint an executive government (for want of majority strength) nor dissolve the assembly (since there has been no meeting)! If this paradox were allowed to come about, then an assembly would exist even where there is no possibility of the formation of executive government, and the Governor would not have the power to resolve the situation. Hence, *Rameshwar Prasad* merely sets out the chronological sequence of events after an election by which the legislature is duly constituted even before an executive government is formed. At no time does the case posit a relationship between these two branches of

24. (1952) 2 SCR 225.
25. *Id.* at 236-237.
26. Walter Bagehot, The English Constitution 9-12 (1867) (Oxford University Press).
27. Sir Ivor Jennings, The Law and the Constitution 180-181 (5th edn. 1959) (University of London Press).
28. Dam, at 230.
29. *Id.*
30. *R. Prasad*, at 37.

government. Sabharwal C.J., in fact, cites with approval Justice Reddy's view in *Bommai* that "what is necessary is that that Government should enjoy the confidence of the house"[31] thereby confirming the relationship between the executive and the legislature in India's Parliamentary democracy. The root of Dam's criticism of the *Rameshwar Prasad* doctrine seems to rest in his limited account of the 'textual' and 'functional' character of constitutional interpretation. This is what we turn to in the next part of this paper.

## V. Constitutional Interpretation

In Dam's discussion of *Rameshwar Prasad*, the focus is on the manner in which Sabharwal C.J. chose to interpret the phrase "due constitution". The ambiguity surrounding the phrase could be resolved by two possible interpretations: that the phrase meant that the legislative assembly had come into existence, as Sabharwal C.J. held, or that it merely indicated a successful completion of the electoral process, as Dam contends. Dam argues that Sabharwal C.J. offered few reasons for his interpretation – "he spoke as much through silence as he did through speech"[32] – and that his interpretation "led to absurd consequences, rested on arbitrary assumptions and depended on bare opinions".[33] In this part, we will consider whether Sabharwal C.J.'s interpretation was indeed deficient in so many respects. Before we do so, we need to outline our approach to the task of constitutional interpretation more generally.

Raz approaches the problems that arise in legal interpretation by categorizing disputes into two categories: "regulated" and "unregulated".[34] Cases that fall in the former category are those in which the law provides an answer to the dispute. In the latter category, however, there is ambiguity in text and doctrine, and the law provides no definite solution to the dispute. According to Raz:[35]

> "Most law-making decisions are concerned with extending existing doctrines, successively adjusting them to gradually changing technological, economic, or social conditions and introducing small alterations to avoid the unreasonable and unintended consequences of applying rules to circumstances which were not foreseen when those rules were laid down."

31. *R. Prasad*, at para 129.
32. Dam, at 233.
33. *Id*.
34. For a detailed discussion, see Joseph Raz, The Authority of Law: Essays on Law and Morality 180-209 (1979) (Oxford University Press).
35. *Id.* at 200.

In cases of unregulated disputes, such as *Rameshwar Prasad*, judges provide justifying reasons for advancing the claim that one interpretation is better than the other. According to Dam, Sabharwal C.J.'s failed to justify his interpretation that when the Election Commission declares an assembly to be "duly constituted", the assembly has come into "being":

> "Presumably, Sabharwal C.J. posed the following question: was there any provision stipulating that the phrase 'due constitution' appearing in Art. 327 was limited for the purposes of the Election Commission? Admittedly, there is no such provision. But the premise on which Sabharwal C.J. built his conclusion is itself an assumption. He assumed that the absence of any provision limiting the relevance of 'due constitution' to the powers of the Election Commission was in itself a reason to conclude to the contrary. To put it differently, Sabharwal C.J. could have just as validly asked: is there any provision – constitutional or statutory – that required a common attribution of 'due constitution' to the Election Commission and the Governor? Again, admittedly, there is no such provision... there is no obvious reason for preferring the former question over the latter. Nor did he give any reasons for doing so. And to the extent that Sabharwal C.J. did prefer one question over the other, his method of interpretation was nothing more than what may be regarded as a form of qualified silence – the willingness to overlook (deliberately or otherwise) an equally plausible alternative."[36]

We have quoted Dam extensively above to carefully assess his understanding of constitutional interpretation. Dam seems to recognize that there is some ambiguity in the constitutional text and doctrine about when a legislative assembly is "duly constituted". However, he is unclear about how this ambiguity may be resolved: at some points in his article he suggests that the interpretation which results in the most pragmatic outcome must be adopted while at other points he suggests that ambiguity may be resolved by reference to other provisions of the Constitution. We will examine each of these in turn.

In any unregulated dispute, the range of justifying reasons are potentially wide-ranging and such reasons may have different justifying effect. In *Rameshwar Prasad*, the justifying reasons in support of a particular

36. Dam, at 226-227.

interpretation include the promotion of political morality in the operation of coalitions and the appropriate judicial regulation of the Union's power to dismiss State governments. Most importantly, the justifying reasons in a case like *Rameshwar Prasad* focus on enabling the Governor to perform his constitutional functions. These considerations ground Sabharwal C.J.'s reasoning in the case, and Dam's argument regarding "qualified silence" is surprising. Sabharwal C.J. did articulate reasons for his decision by making it clear that he sought to avoid an interpretation where if no party was in a position to form a government due to insufficient strength, the Governor would neither have the power to appoint an executive government nor dissolve the assembly.[37]

Dam argues that this conclusion allows the Governor to neither convene nor dissolve the assembly as the Constitution does not provide him a time-frame for convening the assembly.[38] Hence, a "duly constituted" assembly may exist for over ten years without ever meeting since under Article 172 of the Constitution the term of an assembly is for a maximum period of five years from its first meeting.[39] This argument was raised by the petitioners and considered by the Court,[40] which is rehearsed by Dam without acknowledging its source or further refining its effect. Importantly, there is a crucial difference in the points that Sabharwal C.J. and Dam are making. The former favours an interpretation that aims to prevent a political scenario where the Governor, despite his best intentions, would be unable to act and give effect to the scheme

37. *R. Prasad*, at para 37.
"The acceptance of the contention of the petitioners can also lead to a breakdown of the Constitution. In a given case, none may come forth to stake claim to form the Government, for want of requisite strength to provide a stable Government. If petitioners' contention is accepted, in such an eventuality, the Governor will neither be able to appoint Executive Government nor would he be able to exercise power of dissolution under Article 174(2)(b)".

38. Dam, at 228.

39. It should be noted that Article 174(1) will not serve to rebut the situation envisaged by Dam. In *Special Reference No. 1 of 2002*, AIR 2003 SC 87 at paras 42-45, the Supreme Court observed: "Conceptually, Article 174 deals with a live legislature. The purpose and object of the said provision is to ensure that an existing legislature meets at least every six months, as it is only an existing legislature that can be prorogued or dissolved... Article 174(1) shows that it does not provide that its stipulation is applicable to a dissolved legislature as well. Further, Article 174 does not specify that interregnum of six months period stipulated between the two sessions would also apply to a new legislature vis-à-vis an outgoing legislature. If such be the case, then there was no need to insert the proviso to Article 172(1) and insertion of the said proviso is rendered meaningless and superfluous... it would mean that Article 174(2) is controlled by Article 174(1) inasmuch as the power has to be exercised under Article 174(2) in conformity with Article 174(1). Moreover, if the House is dissolved in fifth month of the last session, the election will have to be held within one month so as to comply with the requirement of Article 174(1) which would not have been the intention of the framers of the Constitution."

40. *R. Prasad*, at para 31.

of governance envisaged in the Constitution. The latter, however, favours an interpretation that aims to prevent a political scenario where the Governor chooses not to perform his constitutional role (of convening the assembly). Thus, while one interpretation prevents the Governor from performing his duty, the other responds to his failure to do so.

Sabharwal C.J. cited with approval Aharon Barak's view that constitutions aim to "provide a continuing framework for the legitimate exercise of governmental power"[41] and his interpretation furthers this goal by allowing the Governor to perform his constitutional functions. Moreover, constitutional safeguards exist to ensure that the Governor performs his role in accordance with political, legal and constitutional standards. Article 159, provides that the Governor undertakes an oath to "preserve, protect and defend" the Constitution. Non-performance of the same can and may well attract removal of the Governor by the President, thereby providing a political safeguard against abuse. Further, the courts may exercise judicial review to remedy instances where the Governor has acted without jurisdiction or authority. Hence, the Constitution is equipped to respond to a situation where the Governor would choose not to convene the assembly. Dam's concern is for this reason misplaced, and he fails to recognize the scope and limits of the Governor's role. At one stage he contends that "the Governor does not have an obligation to convene an assembly",[42] while later he concedes that "the Governor must convene the assembly... the duty to convene a notified assembly... is mandatory".[43]

We now turn to his attempt to resolve ambiguity by reference to other provisions of the Constitution by briefly considering two issues raised by Dam on the interpretation of Article 176 and 188 respectively. Interpreting Article 176 strictly, Dam suggests that since it provides that it is the Governor's duty to address the first session of a legislative assembly, it presumes that the assembly should meet at least once. Hence, he concludes that the effect of Article 176 is that there is no possibility of the assembly being dissolved before its first meeting as was the case in *Rameshwar Prasad*. This argument seems to misunderstand the force of Article 176. It is not the Governor's speech that makes the meeting of the assembly mandatory, rather it is the meeting of the assembly that makes the Governor's speech mandatory. So it

41. Aharon Barak, *A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 16, 68 (2002). For a more detailed account of Barak's views, see AHARON BARAK, THE JUDGE IN A DEMOCRACY (2006) (Princeton University Press).

42. Dam, at 228.

43. *Id.* at 229.

is unconvincing to use Article 176 to interpret the scope of permissible executive action under Article 356. As per Article 188, members of the assembly are required to take an oath before they begin performance of their duties. Members take their oaths at the assembly's first meeting and till such time they have no powers or authority. Dam argues that if Sabharwal C.J.'s interpretation of when the assembly is validly constituted is accepted, then the assembly would exist even though it would have no authority. This is another instance where Dam seeks to draw implications from a provision that has no relationship to the issue to be resolved in *Rameshwar Prasad*. The futility of this approach is easily demonstrated. We may read Article 188 in a manner that confirms the correctness of Sabharwal C.J.'s conclusion. As Article 188 provides that, "Every member of the Legislative Assembly... shall, before taking his seat, make and subscribe before the Governor... an oath or affirmation", it is reasonable to assert that a person is a member of a legislative assembly before he takes the oath of office. However, if an assembly does not exist prior to the first meeting, as Dam argues, then how can a person be its member? Hence, with the notification of election results by the Election Commission the assembly does exist in some sense even though its members have not taken the oath of office under Article 188. In any event, both arguments by Dam are neither conclusive nor compelling. Moreover, the key problem lies in Dam's understanding of the nature of constitutional interpretation and kinds of justifying reasons that may help us resolve ambiguity in such cases. We conclude in the next part by outlining the extent to which multi-provisional implication can eliminate ambiguity and the need for substantive arguments to buttress such conclusions.

## VI. Conclusion

In this article, we have argued that *Rameshwar Prasad* is significant for its confirmation of the remedies available in a judicial review challenge to a proclamation for a regional emergency under Article 356. Initially articulated in *Bommai*, *Rameshwar Prasad* affirms the power of courts to revive a dissolved legislative assembly. We respond to Dam's arguments in a recently published article to show that he mischaracterizes the core of the judgment to be about the relationship between the executive and legislative branches of government. This institutional relationship is not the focus of *Rameshwar Prasad* and is best discerned from other relevant and important decisions of the Supreme Court.

We conclude by developing a sound approach to constitutional interpretation that helps us better analyze and understand decisions such as

*Rameshwar Prasad.* One of the key techniques used by the Court is to draw simultaneous inferences from diverse provisions of the Constitution in order to resolve ambiguity in the provision which determines the decision in the case. Such an approach is neither novel nor very controversial.[44] Multi-provisional implications are useful in constitutional interpretation and contribute significantly to an effort to read the Constitution as a document with integrity. However, there are constraints on the manner in which this should be done. The analytical and inductive inferences sought to be drawn from several provisions must be integrated with the support of constitutional principles. In other words, it is the constitutional principles drawn from constitutional provisions that may exert a gravitational force on the preferred interpretation of other ambiguous constitutional provisions. The effort to resolve linguistic ambiguity at the textual level by supplementing this with the linguistic resources of other textual provisions fundamentally misunderstands the nature of constitutional interpretation. In order to carry out constitutional interpretation with any conviction, advocates, courts, and commentators need to move beyond playing games with rules and bring substantive constitutional principles to offer justifying reasons to choose one constitutional interpretation over another. Dam's failure to do so leads to a skewed and unhelpful analysis of *Rameshwar Prasad*. In this article, we have identified those constitutional principles which have a bearing on the judicial review of Article 356 proclamations and conclude that they adequately support the Court's decision in *Rameshwar Prasad*.

44. For a discussion on multi-provisional implications, *see* SUDHIR KRISHNASWAMY, DEMOCRACY AND CONSTITUTIONALISM IN INDIA: A STUDY OF THE BASIC STRUCTURE DOCTRINE 178-183 (2009). *See also* Akhil Reed Amar, *Intratextualism*, 112 HARV. L. REV. 747 (1999). *But see* Adrian Vermeule and Ernest A. Young, *Hercules, Herbert, and Amar: The Trouble with Intratextualism*, 113 HARV. L. REV. 730 (2000).