

ಪತ್ರಿಕಾ ತುಣುಕುಗಳು  
PAPER CLIPPINGS

(2) Court Matter

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# SC finds HC order on A.P. govt. 'disturbing'

Attempt to look into 'constitutional breakdown' stayed

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NEW DELHI

The Supreme Court on Friday stayed an Andhra Pradesh High Court order intending to embark on a judicial inquiry into whether there is a constitutional breakdown in the State machinery under the Jagan Mohan Reddy government, requiring a declaration of President's rule.

"Has anybody seen an order like this before... As the apex court, we find this disturbing. We are staying this order... We will take up this case immediately after the vacations," Chief Justice of India Sharad A. Bobde, heading a three-judge Bench, observed.

Solicitor General Tushar Mehta asked why the High Court "should go into whether there is a constitutional breakdown in the State". The government, represented by advocate Mahfooz Ahsan Nazki, said it was not up to the High Court to enquire and recommend President's rule in a State.

## Bone of contention

On October 1, the Andhra Pradesh High Court passed an interim order which said "on the next date, the learned senior counsel appearing on behalf of the State may come prepared to assist the court as to whether in circumstances, which are prevailing in the State of Andhra Pradesh, the court can record a finding that there is constitutional breakdown in the State or not". The order was passed in *habeas corpus* petitions

### What the State argued

The order was "replicated" in 14 writ petitions of *habeas corpus* or allegations against the police interfering in civil disputes

Judiciary has no role in deciding whether there is a constitutional breakdown in a State, necessitating President's rule. This power is vested in the executive under Article 356 of the Constitution

HC order is a "serious encroachment" on the powers of the executive as enumerated under the Constitution and is thus violative of the doctrine of separation of powers



"It is Article 356 that deals with failure of constitutional machinery in a State... This power [to impose President's rule] exclusively vests in the Executive. The power in this regard, like sending a report either to the Hon'ble

President or to the Hon'ble Governor or to record a finding in that regard, cannot be exercised by the judiciary," the petition filed by the government said.

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## SC finds HC order on A.P. govt. 'disturbing'

The "unprecedented" order of the High Court, on October 1, came while deciding habeas corpus petitions filed by relatives of persons remanded in judicial custody or on bail.

The High Court had *suo motu* summoned the State counsel to assist it in deciding "whether in circumstances prevailing in the State of Andhra Pradesh, the court can record a finding that there is constitutional breakdown in the State or not".

The State said an application to recall the October 1 order was not taken up by the High Court, compelling the government to move the

top court. The government said the High Court's observation violated the Basic Structure doctrine of the Constitution.

"Under the constitutional framework, it is not for the courts to decide as to whether there is a constitutional breakdown in a State. The said power has been specifically conferred upon a different constitutional authority - and rightly so. It is needless to mention that the constitutional courts do not have any judicially discoverable and manageable standards to determine if there has been a constitutional breakdown," the petition contended.