

Implementation of Art 356 of the constitution and the Judicial Review

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ABSTRACT

It is the duty of the Centre to ensure that the government of every state should carry in accordance with the provisions of the constitution (Art 355). The President is empowered to make a proclamation when he is satisfied about the government of a state is not carried on either on the report of Governor of state or otherwise (Art 356). The President also make such Proclamation where any state has failed to comply with or to give effect to, any directions given by the Centre, in the exercise of its executive power to the state .The duration of such proclamation shall ordinarily for 2 months. The two months duration of such Proclamation can be extended by resolution passed by both houses of parliament for 6 months, subject to a maximum duration of 3 years.(Art 356 (3)). By inserting 44th amendment Act, 1978 the duration can be extended beyond one year after fulfilling two other conditions.

By the 42nd Amendment act 1976 the president satisfaction for making such proclamation under art 356 was made immune from judicial review but after 44th amendment of 1978 the court may interfere if such proclamation is mala fide. In S.R.Bomma case the court clearly subscribed the view that this power under Art 356 is an exceptional and to be used occasionally to meet the emergency of special situations .If the court holds the proclamation to be invalid then the court may order that the dissolved ministry and assembly will be revived. The legislative assembly of a state can not be dissolved before the proclamation is approved by both houses of parliament.

1. Introduction

It is the duty of the union to see that the government of every state should carry in accordance with the provisions of the constitution (Art 355) Art 356 provides that on receipt of the report from the governor of a state or otherwise is satisfied that the government of a state can not be carried on in accordance with the provisions of the constitution the President is empowered to make a Proclamation of state emergency. It is to be noted that the word satisfaction in art 356(1) does not mean the personal satisfaction of the governor but it is the satisfaction of the cabinet. The satisfaction can be challenged on two grounds

1. It has been executed on mala fide
2. It is based on wholly extraneous and irrelevant grounds

Dr. S.R Bommaivs Union of India ¹ the Karnataka High Court held that the proclamation used under Art 356 is not wholly outside the Judicial Scrutiny and the court can examine whether the reasons disclosed for issuing such proclamation has rational nexus with the satisfaction reached under Art 356.Under Art 356 the president can act on a report of the governor or other wise means that the president can act even without the report of governor.Inview of the centre ultimate responsibility to protect the constitutional machinery of the state , the president can act without the governors report if he is satisfied that such event occurred in the state.

¹ AIR 1990 kant 5

The proclamation issued under Art 356 shall be placed before each house of parliament and shall remain in force for a periods of 2 months unless before the expiry of that period it has been approved by both houses of Parliament Art 356 (c1.3) If the parliament is approved such proclamation it will remain in force of 6 months but no such proclamation shall in any case remain force for more than 3 years.By the 42nd amendment 1976,the president satisfaction for the making of proclamation under Art 356 had been immune from judicial review , but the 44th amendment of 1975 has removed that fetter and the court may interfere, if the proclamation is mala fide ². After Bommai case it is settled that till the proclamation is approved by both houses of parliament it is not permissible to the president to take any irreversible action under class(a.) (b) (.c)of Art 356(1) so the legislative assembly of astatecan notbe dissolved before the proclamation is approved by the both houses.

If the court holds that the proclamation to be invalid inspite of the fact it was approved by parliament , the court has power to restore in itsdiscretion status Quo ante(ie)thecourt may order the dissolved ministry and assemblywill be revived.

The following situation amount to failure of constitution machinery of a state which is decided in S.R. Bammai case and on report of Savarkar Commission and the court has laid down the following guidelines.

1. Presidentialproclamationdissolving a state legislation assembly is subject to judicial review.
2. If the state government works against secularism president rule can be impsed

² S.R. Bommai v 407 1994 3 scc 1

3. Wholesale dismissal of opposition ruled states government when a new political party assumes power at the center
4. Imposition of the president rule and dissolution of state assembly can not be done together.
5. If the president rule is imposed only on political consideration court can restore the assembly

Since the commencement of the constitution the president rule has been imposed under art 356 on more than 100 times. In most of the cases it has been imposed in which a stable minority could not be formed.

In 1977, in dissolution of 9 assembly of Rajasthan, U.P, M.P, Punjab, Bihar, HP, Orissa, W.B and Haryana, the Court observed that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds the court has jurisdiction to examine it.

In 1989 again art 356 was invoked by the congress government and the dissolution order did not mention any reason due to the fear that if reasons were given it might be challenged in the court of law. In majority Decisions of the court, it can be observed that the court can put a check on arbitrary dismissal of state governments in future and strengthen

federal structure of the Indian policy which has been damaged on several occasions particularly when different political parties were in power at the centre and the states.

2. Conclusion

The judiciary has clearly subscribed the view in S.R Bommai case that the power under Art 356 is an exceptional power and should be resorted only occasionally to meet the exigencies of special situation. The court quoted that the Sarkaria Commission report to give example of situation when such power should not be used. It made it clear that Art 356, can not be invoked for superseding a duly constituted ministry and dissolving the ministry on the sole ground that in Lok Sabha election the ruling party in the state suffered a massive defeat. It is therefore to be always remembered that the provision for drastic power was defended by Dr. Ambedkar on the plea that the use of such drastic power would be a matter of the last resort and they would remain a dead letter, if at all it should be brought in to operation the president empowered with the power will take proper precaution before actually suspending the administration of state and making such proclamation.