

 ISSN NO. 2320-5407	Journal Homepage: - www.journalijar.com INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR) Article DOI: 10.21474/IJAR01/15331 DOI URL: http://dx.doi.org/10.21474/IJAR01/15331	
---	--	---

RESEARCH ARTICLE

THE CONDITIONS OF THE IMPOSITION OF THE PRESIDENT'S RULE ON THE GROUND OF ARTICLE -356

Dr. R. Bagri

Assistant Professor in the Department of Political Science, Ram Lal Anand College, University of Delhi, India.

Manuscript Info

Manuscript History

Received: 05 July 2022

Final Accepted: 09 August 2022

Published: September 2022

Key words:-

State Emergency, Article-356 of Indian Constitution, Misuse of Article-356, President's Rule, State Emergency' or 'Constitutional Emergency'

Abstract

Article 356 gave the Central government wide powers to stamp its clout on the state legislatures. Despite the fact that it was implied exclusively as a way to safeguard the uprightness and solidarity of the country, it had been utilized obtrusively to expel state legislatures who were controlled by political rivals of the middle. It was utilized without precedent for 1951 in Punjab.

Copy Right, IJAR, 2022,. All rights reserved.

Introduction:-

Discussion:-

As is evident from the provisions of Article 356, three conditions have to be fulfilled before the President exercises his power under it. The conditions are as follows:

1. A report from the Governor of the State, or otherwise;
2. Satisfaction of the President as to the existence of a situation arises in which the Government of a State cannot be carried out in accordance with the provisions of the Constitution, i.e. the constitutional machinery in a State has failed, and
3. Proclamation by the President.

The first requirement of any action under Article 356(1) is a report from the Governor of the State concerned because he is the executive head of the State and he takes the oath, prescribed by Article 159, to preserve, protect and defend the Constitution. The Supreme Court made it clear in the S.R. Bommai case (1994) that the Governor's report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such a report. So the report of the Governor should contain some facts, on the basis of which the President would be able to form his opinion whether or not a situation contemplated in the Article has arisen.

The word 'Otherwise' in Article 356 gives a 'prima fade' impression that in all cases, and irrespective of the grounds which cause the 'situation' required under the Article for the President's action, the President may frame his 'satisfaction' even on the receipt of information from the Union Council of Ministers and without a report from the Governor.

The power conferred by Article 356 is a conditional power: it is not an absolute one. The existence of relevant material is a precondition to the formation of satisfaction. In the State of Rajasthan Case (1977) the Supreme Court made it clear that "The satisfaction of the President is a condition precedent to the exercise of power under Article

Corresponding Author:- Dr. R. Bagri

Address:- Assistant Professor in the Department of Political Science, Ram Lal Anand College, University of Delhi, India.

356, Clause (1) and if it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid.”

In the S.R. Bommai Case (1994) the Supreme Court also held, “The Court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action” The exercise of the power is made subject to the approval by both the Houses of Parliament. Clause (3) is both a check on the power and a safeguard against abuse of power.

Clause (1) of Article 356 requires the President to be 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. There is no explanation given in the Constitution about the situation of failure of constitutional machinery in a State. However, a very specific and categorical answer is contained in Article 365 which says that when a State fails to comply with the Union’s directions (under Articles 256 and 257), it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. The non-compliance or violation of the Constitution should be such as to lead to or give rise to a situation where the government of the State cannot be carried on in accordance with the provisions of the Constitution of India.

Since State Governor cannot himself take any action of the nature contemplated by Article 356(1), he reports the matter to the President and it is for the President to be satisfied on the basis of the said report or otherwise. In fact, the President, under the Constitution, being what may be called a Constitutional head, is obliged to act upon the aid and advice of the Council of Ministers [whose aid and advice is binding upon him by virtue of clause (1) of Article 74]. However, the President may send this advice to the Council of Ministers for its reconsideration. But the President must act according to the advice tendered after such reconsideration by the Council of Ministers [Article 74(1)]. The satisfaction referred to in Article 356(1) really means the satisfaction of the Union Council of Ministers with the Prime Minister as its head. The advice tendered by the Council of Ministers under Article 74 (1) to the President shall not be required into in any Court [Article 74(2)]

On the contrary, the Supreme Court made it clear in the SR. Bommai case (1994) that Article 74 (2) incorporating the Union Council of Minister's advice to the President in relation to the imposition of President’s Rule in a State is not a bar against the judicial scrutiny of the material on the basis of which the President had arrived at his ‘satisfaction’. The Supreme Court held that “Since reasons would form a part of the advice tendered to President, the Court would be precluded from calling for their disclosure but Article 74 (2) is no bar to the production of all the material on which the ministerial advice was based.”¹⁰⁸ For instance, President A.P.J. Abdul Kalam (2005), refused to disclose the letter, in which the then President, K.R. Narayanan, had given advice to the Council of Ministers headed by AR. Vajpayee (NDA) on the widespread communal riots in Gujarat consequent upon the Godhra Carnage (February 2002), in view of the confidentiality of advice under Article 74 (2). The UPA Government did not take strong steps for disclosing K.R. Narayanan’s letter. This is not justified.’

Conclusion:-

It is indeed difficult, nor is it fitting, to list what is going on which might emerge and which would be involved inside statement (1) of Article 356. It would be more fitting to manage substantial cases as and when they emerge. MV. Pylee noticed, "What are the elements of such a circumstance? Except if these are explicitly definite, the dubiousness will proceed and it will undoubtedly be taken advantage of to suit the political convenience of the Party in the power at the Centre."

References:-

1. S.R. Bommai Vs. Union of India, All India Reporter, 1994, Supreme Court, p. 1928.
2. State of Rajasthan vs. Union of India, AIR, 1977, Supreme Court, Vol. 64, p. 1362.
3. S.R. Bommai vs. Union of India, op. cit., p. 1932.
4. Government of India (1991), Article 74 (1) and (2), The Constitution of India, Legislative Department: New Delhi, p.20.
5. S.R. Bommai Vs. Union of India, All India Reporter, 1994, Supreme Court, p. 1928.