



# ROLE OF S.R BOMMAI CASE V.S UNION OF INDIA (1994) WITH REFERENCE TO ARTICLE-356

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## **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.

## **Key words:-**

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

## **Introduction**

Provisions relating to president's rule are crux of the entire centre-state Relationship. The repeated use and misuse of the provisions president's rule under Article-356 creates tension in the centre- state relations in most of the cases, Article 356 was used to dislodge the state Governments ruled by a Political party or coalition other than the party in power at the centre. The left parties (CPI, CPI-M, RSP and Forward Block) and regional parties DMK, TDP, Akali dal, National conference etc. raised protest against the misuse of Article 356 for partisan interests and some of them demanded deletion of Article 356 from the constitution of India. Considerable debates were held about Article 356 among political parties constitutional experts, Political scientists and scholars. The union Government constituted various commission and committees for reviewing the centre-state relations including provisions of president's rule and to suggest suitable changes for healthy centre –state relations and check upon misuse of provisions regarding the president's rule. We can discuss the recommendations of S.R. Bommai case, which are as follow.

## **S.R. Bommai V.S Union of India (1994)**

In karnataka (1989) the Janta dal Government led by S.R. Bommai was thrown in to constitutional crisis owing to breaking away of a dissident group of the party. However, the chief minister reported to the Governor that he was prepared to prove his majority on the floor of the house. But the state Governor did not give him a chance to prove his majority in the state Legislative Assembly. Consequently, the S.R. Bommai ministry was dismissed and president's rule was imposed on April 21, 1989 along with the dissolution of the state Legislative Assembly S.R. Bommai filed a write petition and challenged the constitutionality of the

proclamation of president regarding the imposition of president's rule in Karnataka on April 21 1984. Also appeals from the decisions of the Guwahati, Karnataka, and M.P High Court and the writ petitions filed in the Rajasthan and H.P. High Court, which were transferred to the Supreme Court were heard by a nine number. The constitutional bench of the Supreme Court S.R Pandian, A.M. Ahmadi. Kuldip Singh, J.S. Verma. P.B. Sawant. K. Ramaswamy, S.C. Agrawal, Yogeshwar Dayal and B.P. Jeevan Reddy J.J., were the members of Constitutional bench of the Supreme Court.

The apex Court declared, by a majority of 5:4, as unconstitutional the imposition of Resident s Rule in Nagaland (1988), Karnataka (1989) and Meghalava (1991). But the Court unanimously upheld the dismissal of the BJP state governments of Madhya Pradesh, Rajasthan and Himachal Pradesh in December 1992- because their activities were inconsistent with secular character of the Constitution of India.

The Court ruled that democracy and federalism are the part and parcel of basic structure of Constitution of India. Justice P.B. Sawant and Kuldip Singh held that "Democracy and federalism are the essential features of our Constitution and are part of its basic structure. Any interpretation that is placed on Article 356 must therefore help to preserve and not subvert their fabric."

The Court ruled that Secularism is a basic feature of the Indian Constitution and nobody has any right to violate it. B.P Jeevan Reddy. S.C. Agrawal. SR. Pandian, J.J., held that "Secularism is one of the basic features of the Constitution... In matters of State religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State Government which pursues unsecular policies or unsecular course of action acts contrary to the Constitutional mandate and renders itself amenable to action under Article 356."

The legal experts have different opinion on the judgment of the Supreme Court on the Bommai Case (1994) regarding secularism. Fali S. Nariman opined that secularism is a basic feature of the Constitution and it is a welcome development. The definition of the concept of secularism is reasonable and would 'serve as a good starting point' or further judicial refinement. P.P. Rao was of the view that the significance of the judgment stemmed from the fact that it accords to secularism its rightful place-as a necessary condition for the survival of the Indian Nation-State. He observed. "If a State government cannot uphold secularism, it is in violation of the Constitution." On the contrary, K.K. Venugopal was not entirely convinced of the merits of the judgement which lie finds as inconsistent in parts.<sup>1</sup> Prashant Bhushan was unimpressed by the status accorded to secularism as a basic feature. Soli J. Sorabjee also expressed the view regarding secularism is a basic feature. Re queried. "Basic features are not static and there is no unanimity about their content and number even amongst lawyers and judges. Will judicial review be available in such ease or will it be declined because there are no judicially discoverable and manageable standards?"

Similarly, the Political Parties took divergent views of the Bommai's judgement. The BJP president Lal Krishan Advani said that Courts could not be 'ideological ombudsmen' and decide which brand of secularism was right and which one wrong but he did agree that secularism was a part of the basic structure of the Constitution. The verdict was erroneous for only the BJP governments were singled out for dismissal on the ground of law and order where the situation in Gujarat and Maharashtra was worse. The ruling Congress (I) was expectedly vague in its response to the judgement. However, the CPI (M) political bureau member Prakash Karat described it a landmark verdict, which needed to be widely publicized and disseminated, and could serve as a weapon in future struggles against the politics of communalism. He observed, the judgement could be the basis for further enactments to strengthen existing provisions of law on the separation of religion and politics.

The Court stressed that Article 356 should be used very sparingly and as a last measure. S P. Pandian and H.P. Jeevan Reddy, J.J. held. The power under Article 356 should be used very sparingly and only when the President is fully satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Otherwise, the frequent use of this power and its exercise are likely to disturb the Constitutional balance.

The Court interpreted Article 356 and ruled that the failure of State Government to comply with or to give effect to directions issued by the Union Government are not the only grounds. B.P. Jeevan Reddy and S.C. Agrawal J.J. held that "Article 356 merely says that in case of failure to comply with the directions given. 'it shall be lawful' for the President to hold that the requisite type of situation has arisen... the President has to judge in each case whether it has so arisen. Article 356 says it is permissible for him to say so in such a case. The discretion is still there and has to be exercised fairly."

The Court ruled that the Legislative Assembly of a State coming under President's Rule should not be dissolved until Presidential Proclamation is approved by the Parliament, till this approval, the President can only suspend the Assembly. P.B. Sawani and Kuldip Singh, J.J., held that "The President shall exercise the Governor's power of dissolving the Legislative Assembly till at least both the Houses of Parliament have approved of the Proclamation issued by him under clause (1) of the Article 356. The dissolution of the assembly prior to the approval of the proclamation by the Parliament under clause (3) of the said Article will be per se invalid. The President may however, have the power of suspending the Legislature under sub-clause (C) of clause (1) of the said Article."

The Court laid down the principle for the State Governors that a Ministry's strength should be tested on the floor of the State Legislative Assembly and not anywhere else. B.P. Jeevan Reddy, S.C. Agrawal and S.R. Pandian, J.J., held "Whether the council of ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The Principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter

within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. The only exception is an extraordinary situation where because of all pervasive violence, the Governor comes to the conclusion and records the same in his report – that for the reasons mentioned by him, a free vote is to possible in the House.”

P.B. Sawant and Kuldip Singh, J.J., also held that “In case where the ministry loses majority support because of withdrawal of support by some legislators, the holding of floor test is compulsory before the Governor could send report to President recommending action under Article 356. In all cases where the support to the ministry is claimed to have been withdrawn by some Legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeing openly and objectively the claim and counter claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President it is capable of being demonstrated and ascertained publicly in the House. Hence when such demonstration is possible it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides. It is possible that on some rare occasions, the floor test may be impossible, although it is difficult to envisage such a situation. Even assuming that there arises one, it should be obligatory on the Governor in such circumstances, to state in writing the reasons for not holding the floor test.”

On the other hand, K. Ramaswamy, J., held that “The floor test may be one consideration which the Governor may keep in view but whether or not to resort to it would depend on the prevailing situation and possibility of horse trading also to be kept in view with regard to the prevailing political situation. It is not possible to formulate or comprehend a set of rules for the exercise of the power by the Governor to conduct floor test. The governor should be left free to deal with the situation according to his best judgement keeping in view the Constitution and the conventions of the Parliamentary system of Government.”

The affirmation by the Court is very sound and pays due regard to the principles of natural justice and democracy, and prevents the dismissal of democratically elected governments on flimsy grounds that the Ministry has lost the confidence of the House. Now the Court established the principle that the loss of majority or the proof of majority should be established on the floor of the House. However, we cannot underestimate aspect of power politics. In the world of power politics it is an undisputable fact that incumbency is the key factor which decides the outcome of floor test. For instance, Suresh Mehta’s Ministry in Gujarat in 1996 won the confidence of the House amidst violence in the Assembly. One month later, many of the MLAs who had voted for Suresh Mehta started supporting the Shankar Singh Vaghela Ministry.

The Court ruled that the validity of Proclamation issued by the President imposing President's Rule is judicially reviewable. P.B. Sawant and Kuldip Singh, J.J., held, "The exercise of power by the President under Article 356(1) to issue Proclamation is subject to judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution. The legitimacy of inference drawn from such material is certainly open to judicial review." Justice B.P. Jeevan Reddy also supported this opinion. He observed. "The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds."

The Court ruled that in appropriate cases the Court can grant requisite interim relief and issue injunction restraining holding of fresh elections. P.B. Swant and Kuldip Singh, J.J., held the "The Court in appropriate cases will not only be justified in preventing holding of fresh elections but would be duty-bound to do so by granting suitable interim relief to make effective the constitutional remedy of judicial review and to prevent the emasculatation of the Constitution. The grant of interim relief would depend upon various circumstances including the expeditiousness with which the court is moved, the prima facie case with regard to the invalidity of the proclamation made out, the steps which are contemplated to be taken pursuant to the proclamation etc."

The Court ruled that if the proclamation of President's Rule is found to be invalid the Court can restore the dissolved Council of Ministers and the State Legislative Assembly. P.B. Sawant and Kuldip Singh, J.J., held that "If the proclamation issued is held invalid, then notwithstanding the fact that it is approved by both Houses of Parliament, it will be open to the court to restore the status quo ante to the issuance of the proclamation and hence to restore the Legislative Assembly and the Ministry."

B.P. Jeevan Reddy and S.C. Agarwal, J.J., also held that "If the court strikes down the proclamation. It has the power to restore the dismissed government to office and revive and re-activate the Legislative Assembly wherever it may have been dissolved or kept under suspension. In such a case, the court has the power to declare that acts done, orders passed and laws made during the period the proclamation was in force shall remain unaffected and the treated as valid. Such declaration, however, shall not preclude the government/Legislative Assembly or other competent authority to review, repeal or modify such acts, orders and laws."

The Court observed that judicial review by Supreme Court of the acts done by Executive or Legislative is a basic feature of the Constitution. Justice K. Ramaswamy held that "Judicial review is the basic feature of the Constitution. The Supreme Court has constitutional duty and responsibility, since judicial review having been expressly entrusted to it as a constituent power, to review the acts done by the coordinate branches, the executive or the legislature under the Constitution, or under law or administrative orders within

the parameters applicable to a particular impugned action.... The action of the President under Article 356 is a constitutional function and the same is subject to judicial review.”

It is obvious that the action of the President under Article 356 is judicially reviewable and Court can restore the status quo ante. As Durga Das Basu observed, it is clear that judicial review of a Proclamation under Article 356 would lie on any of the grounds upon which an executive determination which is founded on subjective satisfaction can be questioned, e.g. (a) It was issued on the basis of no material at all, (b) Where there is no ‘reasonable nexus’ between the reasons disclosed and the satisfaction of the President, (c) That the exercise of the power under Article 356 has been mala fide, because a statutory order which lacks bona fides has no existence in law.”

The judgement of Bommai Case (1994) is a land mark judgement, which strengthens the principles of federal democracy in the country the political significance of the judgement is that it will act as bar on arbitrary dismissal of duly elected State governments by the Union Government for fulfilling its political ends. As K. Suryaprasad observed, the general principles and guidelines which have been laid down by Supreme Court in the Bommai case will help to strengthen national unity and integrity, to sharply limit the constitutional power vested in the union government to dismiss State Governments and to prevent the arbitrary and whimsical use of the power of the governors in the name of exercising their discretionary power conferred by the Constitution and conventions.

### Conclusion

It may be concluded that the presidential rule proclamation under Article 356 of the constitution has come under judicial review. The Supreme Court and the High Courts can strike down the proclamation when it is mala fide or based on irrelevant material and restore the status quo ante, i.e. Restore the legislative Assembly and the ministry of the state concerned. The court can also stress that question of majority of the council of the ministers of the state must be decided on the floor of the Assembly and the anywhere else. Therefore, the union Government cannot act arbitrarily. As A.G. Norani Pointed out “Once the doors to judicial review are thrown open, everything will be exposed to the scrutiny of the courts and the glare of public opinion. No government of India can act arbitrarily as was the case with governments in the past. This does not weaken the authority of the presidents it fortifies it.”

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