

### **Direction of Centre to the State under Article 356 and 365**

No chapter of the Constitution has been subject of more acrimonious attack by the critics than those dealing with the emergency provisions. The constituent Assembly witnessed one of its most agitated scenes during the discussion of these provisions. Many prominent members of the assembly opposed the inclusion of these provisions in the constitution as they thought they were inconsistent with the democratic provisions embodied elsewhere. The majority of members, however favored the inclusion of these provision, although reluctantly as a precautionary measure against possible disruptive forces destroying the newly established union.

The constitution provides for three different categories of emergency and in each case the president is empowered to declare the emergency.

National Emergency – due to war, external aggression or armed rebellion (Art 352)

State Emergency - due to the failure of constitutional Machinery in state (Art 356)

Financial Emergency (Art. 360)

### **Failure of constitutional Machinery in State- Article 356**

Article 356 says that if the president, on receipt of report from the governor of a state or otherwise is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provision of the constitution, he may issue a proclamation, by that proclamation—

- 1) The president may assume to himself all or any of the powers vested in or exercisable by the governor to anybody or authority in the state.
- 2) The president may declare that the powers of the legislature of the state shall be exercised by or under the authority of Parliament.
- 3) The president may make such incidental and constitutional provisions as may appear to him to be necessary or desirable for giving effect to the object of proclamation.

The president cannot, however assume to himself any of the powers vested in High court or suspend the operation of any provision of the constitution relating to the High court.

### **Article 365 of the Indian Constitution—**

“where any state has failed to comply with, or to give effect to any directions given in the exercise of the executive powers of the union under any of the provisions of this constitution, 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 this constitution”

The crucial words in this regard are “any directions given in the exercise of the executive powers of the union under any of the provision of the union under any of the provision this constitution” In other words the meaning of the expression “any direction” Must be understand to mean that any directions issued under any of the provision of this constitution in the exercise of the executive power of the union.

**Thus this article can validly be invoked only if—**

- 1) any direction is given by the union in the valid exercise of its power under any of the provision of the constitution and
- 2) such direction has not been complied with or given effect to by the state.

The word “it shall be lawful for the ‘president to hold’ occurring in Article 365 do not impose an obligation. They only confer power the exercise of which is a matter of discretion with the president on every non-compliance with the union direction, irrespective of its extent and significance, the president (in effect the council of Minister) is not bound to hold that a situation has arisen in which the government of the non-complying state cannot be carried on in accordance with the constitution.

The president should exercise this drastic power in a reasonable manner with due care and circumspection and not Mechanically. He should give due consideration to all relevant circumstances, including the response, if any of the state government to the direction. In response to the directions the state government might satisfy the president that the direction had been issued wrong facts or misinformation or that the required correction has been effected.

The president should also keep in mind that every insignificant aberration from the constitutional path or a technical contravention of constitutional provisions by the functionaries of the state government would not necessarily and reason ably lead one to hold that the government in the state cannot be carried on in accordance with the constitution.

Thus Article 365 acts as screen to prevent any hasty resort to the drastic action under Article 356 in the event of failure on the part of a state government to comply with or to give effect to any constitutional direction given in the exercise of the executive power of the union.

**Article 365, Sawant J. in S. R. Bommai V/s Union of India. —**

Observed that Article 365 is more in the nature of a deeming provision. He further stated that failure to comply with or to give effect to the directions given by the union under any of the provisions of the constitution is one of the situations contemplated by the expression “Government of the state cannot be carried on in accordance with the provision of this constitution” occurring in Article 356.

Rejecting the contention that only situation in which the power under Article 356 can be invoked by the president is the failure of the state government to comply with or to give effect to the directions given in the exercise of the executive power of the union under any of the provisions of the constitution and not in any of the provisions of the constitution and not in any other case.

**Jeevan Reddy J. observed that-**

Article 360 is a “permissible” provision. It merely sets out one instance in which the president may hold that the Government of the state cannot be carried on in accordance with the provision of the constitution. It cannot be read as exhaustive of the situation where the president may form the said satisfaction. He reasoned that the expression “it shall be lawful for the president” occurring in Article 365 vests discretionary power in the president which has to be exercised fairly. Each and every failure requisite situation contemplated by Article 356. The President has to judge in each case whether the requisite satisfaction has arisen or not.

Analysis- so, far, there have been four occasions when emergency was proclaimed by the president- 1962 (Chinese aggression), 1965 (Indo-Pakistan War), 1971 (Indo-Pakistan War before the emergence of Bangladesh) and 1975 (Internal emergency).

An analysis of these instances would indicate the purpose and the Manner in which, in actual practice, a proclamation of emergency in the states will be made by the president. These may be summed up in the following terms—

- The essential condition for the intervention by the centre is the political instability of the state, that is the virtual breakdown of the parliamentary system of the Government.
- The union will watch the situation of instability with utmost caution and provide every opportunity for the formation of an alternative Ministry.
- The proclamation of emergency will only be the last resort when (i) the existing ministry does not have the confidence of the legislature; and (ii) no alternative ministry can be formed.
- During the period of emergency, the legislative work of the state will be transferred to parliament delegation of such work to any administrative Body will be reduced to that Minimum.
- As soon as the political situation within the state becomes conducive to a responsible government, it will be restored.

#### **In state of Rajasthan V/s Union of India.**

The States filed suits challenging the validity of the directives issued by Home Minister to the Chief Ministers to dissolve their Assemblies and seek a fresh mandate . The latter disclosed the sole ground for the proclamation under Art. 356 and that such a proclamation and the dissolution of their legislative Assemblies upon the grounds given in the letter has outside the scope of Art. 356 of the Constitution.

It was argued that the questions which arose for gauging the existence of a situation calling for action under Article 356 was non-justifiable. More intimation of some facts did not justify prohibition to act in future on other facts. It could not be predicted non what other facts may arise in future.

A seven members constitution Bench of supreme court by an unanimous judgment rejected the petitioner's petition and uphold the centers action of dissolving there assemblies under Art. 356 as constitutionally valid the court held that the satisfaction of president under Art. 356 could not be questioned. The president does not act only on the report of the governor but on otherwise. This means that the satisfaction can be based on Material other than Governor's report.

The court observed that if the satisfaction is malafide or is based on wholly extraneous and irrelevant grounds the court would have jurisdiction to examine it because in that case there would be no satisfaction of the president.

#### **S.R. Bommai v/s union of India – Judicial Guidelines for imposing president's Rule**

In a landmark judgment in S.R. Bommai v/s union of India hearing the appeal from the judgment of the Allahabad High court a nine member constitution Bench of the supreme court held that the dismissal of the BJP Government in Madhya Pradesh, Rajasthan and Himachal Pradesh in the wake of the Ayodhya incident of Dec.6,1992 was valid and imposition of the president's Rule in these states was constitutional. The court held that secularism is a basic feature of the constitution and any state government which acts against that ideal can be dismissed by the president.

It has held that in matters of religion the state has no place. No. political party can simultaneously be a religious party as well as political party.

### **Use of Article 356 –**

The Sarkaria Commission on center state relation examined this issued in chapter six of its report it pointed out in the first instance that the use of article 356 has been rising with the passage of time where as between 1950 and 1954, it was invoked only on 03 occasions, it was invoked on 09 occasions during the period 1975 and 1969, it rose to 21 instances during the period 1975-1987.

In Kerala in July 1959 an instance of the exercise of the powers under Article 356 took place. Thought the communist Government Commanded the confidence in the government Breakdown a law and order was visible evidence of this.

The central government advised the Ministry to ask the governor to dissolve the legislature. So that fresh elections may be held. However this advice was not taken. There upon, the president issued a proclamation taking over the administration of the state under Art. 356.

It was argued that a Ministry that has the majority support in the legislature, functions within the purview of what Art. 356 calls in accordance with the provisions of the constitution. However it was maintained that the action was justified by the breakdown of law and order assuming such proportions as was beyond the resources of state and warranted the intervention under Article 356(i), Besides it was also said that the word 'provisions' referred also to the preamble of the constitution which calls for constituting India as a sovereign democratic republic therefore the president could suspend a ministry for subversion of democratic values.

### **The Significance of Article 365-**

The incorporation of Article 365 in the constitution is not without significance. The Constitution has not provided for separate federal laws. If the union is to implement them through the state government by issuing direction to that the union must have necessary power to seek obedience from the state for the implementation of union directions to achieve this objective power is given to the president under Article 365 But inconsiderable use of these direction can upset the constitutional balance between the union-state relationship.

The Sarkaria Commission cited the following illustration as an indication of break down of the constitutional Machinery in a state due to non compliance with the directions issued by the union government.

- Where a directions issued by the union in the exercise of its executive power under any of the provisions of the constitution, such as article 256, 257 and 339 (2) or during an emergency under Article 353 is not complied with by the state government in spite of adequate warning and opportunity and the president there upon hold under Article 365 that a situation such as that contemplated in Article 356 has arisen.
- If public disorder of any Magnitude endangering the security of the state take place, it is the duty of the state government to keep the union government informed of such disorder and if the state fails to do so such failure may amount to impeding the exercise of the executive power of the union government and justify the latter giving appropriate directions under Art 257 (1) is not complied union executive under Art 257 (1) is not complied with in spite of adequate warning the president there upon may hold the situation such as contemplated in Article 356 has Arisen.

Article 365 is intended not only to supply an additional ground for the president's action under Article 365 but also to restrict and confine the scope of the word "otherwise" in Article 365 to the grounds Mention in Article 365.

Article 365 is a permissible provision under which president has disolutionary power to judge whether a particular situation falls within the campus of this article or not he has to exercise this disolutionary power fairly so as to limit the scope of Article 365 by taking into consideration the federal principle underlying the constitution.