

**GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA**

UNSTARRED QUESTION NO:5713
ANSWERED ON:03.05.2005
SUPREME COURT JUDGEMENT ON ARTICLE 356
Paraste Shri Dalpat Singh;Purandeswari Smt. Daggubati

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) whether the Supreme Court in its judgment in S.R. Bommai case made several suggestions to be incorporated in Article 356 of the Constitution;
- (b) if so, the details thereof;
- (c) whether the Sarkaria Commission has also made somewhat similar suggestions;
- (d) if so, the details thereof;
- (e) whether these suggestion have been implemented and incorporated in Article 356;
- (f) if not, the reasons therefor; and
- (g) by when these suggestions are likely to be put in place by a suitable amendment of Article 356?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI MANIKRAO HODLYA GAVIT)

(a)to(g): A statement is attached.

STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (g) OF LOK SABHA UNSTARRED QUESTION NO. 5713 FOR 3.5.2005 REGARDING SUPREME COURT JUDGEMENT ON ART. 356

In the case of S.R.Bommai Vs. Union of India, a 9-Judge Bench of the Supreme Court of India has had the occasion to interpret the provisions of Article 356. Some of the salient features of the Bommai's Judgement delivered on 11th March, 1994 are as follows:

- i. Though the power of dissolving of the Legislative Assembly can be said to be implicit in clause (1) of Article 356, it must be held, having regard to the overall constitutional scheme that the President shall exercise it only after the proclamation is approved by both Houses of Parliament under clause (3) and not before.
- ii. Article 74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.
- iii. The proclamation under Article 356(1) is not immune from judicial review.
- iv. Secularism is one of the basic features of the Constitution.

The Sarkaria Commission on Centre-State relations had also examined the scope and effect of this Article 356 and made 12 recommendations in Chapter VI of its report on "Emergency Provisions". The Supreme Court, in the Bommai's case, observed that the recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 do merit serious consideration at the hands of all concerned. The main recommendations of the Sarkaria Commission on Article 356 are as follows:

- (i) Article 356 should be used very sparingly.

(ii) A warning should be issued to the errant State, in specific terms, that it is not carrying on the Government of the State in accordance with the Constitution.

(iii) In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue.

(iv) The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356 (1) has been laid before parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

(v) To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356 (1) is invoked should be made an integral part of the proclamation issued under that Article.

(vi) The report of the Governor should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

The Inter-State Council, in its eighth meeting, discussed the recommendations of the Sarkaria Commission at length and made certain recommendations to the Ministry of Home Affairs. These recommendations were considered by the Ministry of Home Affairs in the light of views of the Inter-State Council thereon. While most of these recommendations have been accepted and are being implemented, however, it is found that these do not necessitate amendment in Article 356 of the Constitution. The Supreme Court judgement in Bommai case is always kept in view while considering the issuance of Proclamation under Article 356 in relation to any State.