

Topic: Judicial Review On The Discretion Of The President To Declare Or Not To Declare Emergency

Name of the Case: Minerva Mills v. UOI, AIR 1980 SC 1789

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice N.L. Untwalia, Justice P.S. Kailasam

Fact of the Case: Section 4 and 55 of the Constitution (42nd Amendment) Act, 1976 was challenged on the ratio of the majority judgement in Kesavan Bharati case, namely, though by Article 368 of the Constitution, Parliament is given the power to amend the Constitution, the power cannot be exercised so as to damage the basic structure of Constitution or so as to destroy its basic structure.

Judgment: Justice Bhagwati mentioned that whether the president in proclaiming the emergency under Article 352 has applied his mind, or whether he acted outside his power, or acted mala fide in proclaiming the emergency, could not be excluded from the scope of judicial review.

The Supreme Court observed that 38th Amendment which seeks to protect the satisfaction of President from being called into question in a court could be declared unconstitutional as being violative of the basic structure of the Constitution. Further, after the Supreme Court decision in S.R. Bommai, in which the Supreme Court did go into validity of a proclamation issued by the President under Article 356, it can now be safely asserted that a proclamation of emergency under Article 352 is reviewable by the court on the ground mentioned by Justice PN Bhagwati as under:

The Court to control the exercise of power to proclaim an emergency in two ways:

The President must act on the advice of the Central Cabinet and not in his own subjective satisfaction and also not on the advice of Prime Minister alone. Thus, the power to declare an emergency lies with the Cabinet.

The democratic control over the executive power in respect of proclaiming an emergency has been strengthened in so far as Parliamentary approval is necessary for the proclamation immediately after it is made and, then, after every six months.