CHAPTER-7
JUDICIAL RESPONSE TO THE USE OF ARTICLE 356

The power to issue President's Rule in a State is basically a political issue, and the Constitution of India neither explicitly provides for nor does exclude the judicial review of President's power under Article 356. The basic problem is that the Constitution does not enumerate the situations on the basis of which the President's Rule is imposed in a State and in most of the cases the President's Proclamation does not disclose the grounds of imposition of this rule. So the Supreme Court and High Courts have limited scope for Judicial review of the Proclamation of President's Rule. This power has been challenged several times and the question of judiciability arose for consideration on many occasions. In this regard, the judgements of the Courts fall into two categories. We can show the categories of the judgements of the Courts regarding Proclamation under Article 356 by the following chart.

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THE FIRST CATEGORY: PROCLAMATION UNDER ARTICLE 356 NOT JUDICALLY REVIEWABLE

The first category includes cases decided as per the opinion that the President having issued the Proclamation pursuant to his Constitutional power under Article 356 and it not being an executive act of the Union government. The Constitution does not enumerate the situations on the basis of which the President’s Rule was to be imposed. The issuance of a Proclamation under Article 356 is a personal satisfaction of the President, who is directed by the Union Council of Ministers; it is basically a political issue and beyond the reach of the Courts. The Court had no jurisdiction to demand for disclosure of material forming the basis of satisfaction of President. The first category includes K.K. Aboo, Rao Birendra Singh, Sreeramulu and Bijayananda cases. These cases are critically analysed as follows:

1. **K.K. Aboo vs. Union of India (1965)**

   In this first Case the Kerala High Court considered the legality and constitutionality of the Presidential Proclamation of dissolving the Kerala Legislative Assembly after elections in March, 1965 without giving a chance to the assembly to be assembled. The facts in this Case are that a general election of Legislative Assembly was held in February / March, 1965, for the purpose of constituting a new Legislative Assembly in the State, but it led to an inconclusive result as it gave no clear majority to any political party. The CPI(M) had won forty seats in the House of 103 and had emerged as the single largest party. The then Governor of Kerala, A.P. Jain, after a brief discussion with leaders of various political parties regarding the formation of a ministry, reported to the President that no political party could form a stable government in the existing circumstances. Consequently, President’s Rule was imposed in Kerala on March 24, 1965 along with the dissolution of the State Legislative Assembly.¹ This action was challenged in the Kerala High Court. The following points were raised by the petitioner: could State legislature be dissolved without meeting at all? Could a Proclamation under Article 356 be issued when the state concerned was already under President’s Rule? What is the necessity of having a sitting Legislative Assembly at the time of Proclamation?

The Kerela High Court ruled that Article 356 empowered the President to proclaim the President's Rule when he is satisfied that a Constitutional Government is not possible in the State and that Article does not prescribe any condition for use of this power. Speaking for the Court M. Madhavan Nair J., held that the validity of Proclamation under Article 356, cannot be challenged in Courts. It is matter of personal satisfaction of the President, who is Constitutional head. It can be questioned in Parliament which can withhold its approval. Thus, the Court refused to go into the Constitutionality of the Proclamation.

M. Madhavan Nair J., held that “Article 356 of the Constitution does not prescribe any condition for the exercise of powers thereunder by the President, except the satisfaction of the President ‘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 Court also ruled that the power to dissolve the State Legislature is implicit in clause (1) (b) of Article 356 itself and there is no need for the President to read the provisions of Article 356(1) (a) with Article 172 or Article 174 to dissolve the State Legislative Assembly. The Court held that “Article 356 (1) (b) empowers the President, whenever he is satisfied of a constitutional breakdown in the State, to issue a Proclamation declaring, inter alia, ‘that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament’. That necessarily implies a power to dissolve the State Legislature. No resort therefore need be had by the President to the provisions of Article 356 (1) (a) read with Article 172 or Article 174 to dissolve the State Legislative Assembly. The power to dissolve the State Legislature is implicit in clause (1) (b) of Article 356 itself”.

The Court ruled that he could not go into the allegation of prejudice of the leaders of the Centre (Union Council of Ministers), because they are answerable to the Parliament for every action including the imposition of President’s Rule in a State. The Court held that “A mere allegation of bias or prejudice on the part of ‘big leaders’ – the character and conduct of leaders can only be such as secure a large volume of public confidence in them – or with a responsible Government,

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2 K.K. Aboo vs. Union of India, All India Reporter, 1965 Kerala, 231.
3 ibid. p. 230-231.
answerable to and requiring the approval of the Parliament for the very action concerned, does not carry conviction to any extent.”

The validity of Proclamation under Article 356 cannot be challenged in Courts. It is a matter of personal satisfaction of the President, who is the constitutional head. However, it can be questioned in Parliament which can withhold its approval. The Court held that “The President who is an integral part of the Parliament (vide Article 79) may not be the executive head but the constitutional head of India. If that be the correct view, a challenge of his Proclamation under Article 356 behind his back cannot be heard in a Court of law”.

The Court ruled that only sanctions available in the Constitution of India against the arbitrary act of the President is an impeachment under Article 61 or the non-approval of his action under Article 356 (3). The Court held that “It is not open to the Courts to question the validity of a Proclamation under Article 356. Even otherwise, if the promulgation of a Proclamation under Article 356 is a matter of personal satisfaction of the President who is not personally amenable to the Court’s jurisdiction, the same result would follow. The only sanctions against a capricious act on the part of the President would then be what the Constitution itself has provided: namely, an impeachment under Article 61 or the non-approval of his action under clause 3 of Article 356.”

The petition was dismissed without any interim relief as prayed for by the petitioner and all grounds of challenge to the Proclamation were struck down thereby upholding the Constitutionality of the Proclamation. The Court enumerated the principle that the Proclamation under Article 356 is not justiciable, because it is depend on the personal satisfaction of the President, who was a Constitutional head. So the Court cannot not inquire the Constitutionality of that Proclamation. However, the Parliament can inquire the Proclamation regarding President’s Rule.

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4 ibid. p.232.
5 ibid. p.232.
6 ibid. p.232.
2. Rao Birendra Singh vs. Union of India (1968)

In Haryana (1967), the Congress Party formed the Government, but it got ousted from power owing to defections of the MLAs. Then, the SVD leader Rao Birendra Singh formed the government in the State. Defections and counter-defections continued in both the Congress and the SVD. Consequently, the Governor of Haryana sent a report to the Centre about the political situation of the State. The Governor highlighted the need for a clean and efficient administration and stated in his report that a fresh election under the President's Rule was the only solution of political instability in the State. The Centre considered the Governor's report and the President's Rule was imposed on November 21, 1967 along with the dissolution of the State Assembly. The outgoing Chief Minister, Rao Birendra Singh, challenged the decision of the imposition of President's Rule in Haryana and claimed that he had a majority in the Legislative Assembly, hence President's Rule could not be imposed.\(^7\)

The Punjab and Haryana High Court dismissed the writ petition challenging the Proclamation. The petitioner challenged the President's Proclamation on the following grounds. (i) The petitioner commanded majority in the Legislative Assembly and as long as he had the majority, the Union Government was not competent to issue the Proclamation under Article 356, (ii) The satisfaction of the President while issuing the Proclamation under Article 356 in fact means the satisfaction of the Union Home Minister. The Proclamation is not clear as to whether the report of the Governor has been accepted by the President, (iii) when admittedly the enjoys majority in the House the action to dissolve the Assembly can only be styled as mala fide etc.\(^8\)

The Punjab and Haryana High Court ruled that the President issued the Proclamation under his constitutional power (Article 356). So, the President is out of jurisdiction of the Court in view of Article 361. Thus, the Court cannot go into the validity of his Proclamation. The Parliament can discuss the grounds of the Proclamation on the question of approval or otherwise of the Proclamation. The

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Court held that "The President having issued the Proclamation pursuant to his constitutional power under Article 356 and it not being an executive act of the Union, and the President not being amenable to the jurisdiction of this Court in view of sub-article (1) of Article 361, this Court cannot go into the validity or legality or propriety of his Proclamation... If there is any substance in those grounds, those would be the basis for a debate in both the Houses of Parliament on the question of approval or otherwise of the Proclamation." 9

The Court ruled that the Parliament can reconsider the Proclamation and it is out of the jurisdiction of this Court. The Court held that "The reconsideration of the Proclamation has specifically been vested by the Constitution in Parliament and that, in my opinion, excludes the jurisdiction in this Court in so far as the Proclamation is concerned in that respect. Nothing has been said against the power of Parliament to approve or to withhold approval of the Proclamation".10

The Court ruled that he cannot enquire into any advice of the Union Council of Ministers rendered to the President regarding the issue of Proclamation under Article 356 in view of Article 74 (2). The Court held that "This Court has no jurisdiction in view of Article 74 (2) even to inquire whether he rendered any advice to the President in regard to the issue of the Proclamation".11

The Court ruled that any inference drawn by the Governor and the conclusions reached by him cannot be questioned in the Court. The Court held that "Any inference drawn by the Governor and the conclusions reached by him cannot be questioned in Court either... within two months of the date of the Proclamation for Parliament to consider the constitutionality, legality and propriety of it".12

The Court ruled that the Proclamation was not open to consideration by the Court and the Court had no jurisdiction to require disclosure of material forming the basis of the satisfaction of the President. The Court held that "The Proclamation

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10 ibid., p. 450.
11 ibid., p. 450.
12 ibid., p. 450.
not being open to consideration by this Court. It cannot question the President's recital in regard to the basis of his satisfaction. The Court had no jurisdiction to require disclosure of material forming basis of the satisfaction of the President.13

Thus, the Court dismissed the petition here again. The Court considered that the Proclamation under Article 356 is not-justiciable, because the satisfaction of the President regarding Article 356 is out of jurisdiction to the Court.

The scope of Article 356 was considered in 1974 by the Andhra Pradesh High Court. Here the Presidential Proclamation under Article 356 was challenged on that President's Rule was imposed in Andhra Pradesh on January 18, 197 exploring the possibility of the formation of an alternative ministry; when Minister resigned under the instruction of Congress High Command. Th crisis in the leadership of the State Congress legislature party: the le Narasimha Rao had lost the confidence of the majority of members beca partisan attitude on the Mulki Rules issue.14

The petitioner alleged that the Proclamation was mala fide, because there were no circumstances whatever which could have led the President to that a situation had arisen in which the Government of the State could not on in accordance with the provisions of the Constitution. The petition claimed that the President's Proclamation had been issued to stifle any expression of opinion by the Legislature of Andhra Pradesh on the burning question of bifurcation of the State of Andhra Pradesh into two states.15

The Andhra Pradesh High Court ruled that the Constitution of India enumerate the situations and there is not 'satisfactory criterion for determination' of what are relevant considerations and it makes the satisfaction of the President a political question. Thus, the satisfaction of the President

13 ibid. p. 450.

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Jurisdiction of the Court. The Court held that "The Constitution does not enumerate the situations and there is no 'satisfactory criteria for a judicial determination' of what are relevant consideration. The very absence of satisfactory criteria makes the question one which is intrinsically political and beyond the reach of the Courts. The considerations which are relevant for action under Article 356 and the weighing of those considerations appear to be clearly matters of political wisdom, not for judicial scrutiny".16

The Court ruled that the Parliament is the final arbiter of the satisfaction of the President, and that the Court can never review the Proclamation regarding the President's Rule. The Court held that "The President is the Head of the State that is entrusted with the discharge of the duty and the fact that it is the Parliament that is the final arbiter lead to the inevitable conclusion that the Court can never go behind the proclamation issued by the President."17

The Court ruled that the power of Article 356 is provided to the President, who is highest dignitary of the realm and embodiment of the unity of the country. The power is subject to review by Parliament, which includes representatives from all States. The people of the country should resist despotic tendencies of the President or majority party in the Parliament and it is out of the Jurisdiction of the Court. The Court held that "The President is not only the 'highest dignitary of the realm but the embodiment of the unity of the country'. The power is subject to review by an elected Parliament which includes representatives from all States. And, after everything is said and done, it is the people of the country that should resist despotic tendencies on the part of the President or the Majority party in the Parliament and it is scarcely a matter for the Courts".18

The Court ruled that he cannot go into the question of mala fide or otherwise reasons for the action under Article 356 though it could go into the question of ultra vires. The Court held that "The Court was incompetent to go into the question of mala fide or probe into the reasons for the action of the President though it could go into the question of ultra vires."19

17 Ibid, p. 111.
18 Ibid, p. 111.
19 Ibid, p. 112.
Therefore, the petition was dismissed by the Andhra Pradesh High Court and the Court did not give any relief to the petitioner.

4. **Bijayananda vs. President of India (1974)**

In Orissa (1974), the Congress Party government led by Nandini Satpathi got reduced to minority in 1973 owing to defections from the Congress Party. Consequently, the Chief Minister had to resign. On the contrary, Bijayananda Patnaik, the leader of the Pragati Party, who commanded a strength of 70 MLA's in a House of 140 (including the Speaker), staked claim to form a government. However, the State Governor did not invite Bijayananda Patnaik to form the Government. He thought that the government formed by Bijayananda would not remain in office for a long time owing to the ongoing defections of the MLAs. The Governor preferred to recommend the imposition of President's Rule in Orissa along with dissolution of the State Legislative Assembly. Consequently, President's Rule was imposed in Orissa on March 3, 1973 and the State Legislative Assembly was dissolved. This Proclamation of the President regarding the imposition of President’s Rule in Orissa was challenged in the Orissa High Court by Bijayananda and 74 members of the Legislative Assembly.20

The Orissa High Court rejected the challenge of the Proclamation of imposition of President’s Rule in Orissa on March 3, 1973. The Court ruled that the Proclamation is not justiciable on the following grounds.

(a) The wide source of information as contemplated by the expression ‘otherwise’ gives ample indication that the President’s satisfaction is not justiciable.

(b) The satisfaction and the basis of satisfaction are both subjective and are not subject to judicial review.

(c) In view of the provisions under Article 74 (2) and Article 361 (1) the Court is not in a position to test the grounds of satisfaction.

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(d) The fact that its continuance after two months has been subjected to Parliamentary approval gives a further indication that it is not justiciable in Court.

(e) The emergency provisions under Articles 352, 356 and 360 in Chapter XVIII of the Constitution are not justiciable.

(f) The satisfaction of the President is integrally connected with the question of enforcing the convention on the Governor's failure to call the leader of the Opposition to form the Ministry. The convention being not enforceable, the satisfaction based on a decision whether to honour the convention or not, is equally unenforceable.21

Thus, the writ petition was dismissed by the Court by saying that there was no ground for interference for the Court.

A critical examination of these decisions reveals that the Courts have given support to the Union Government consistently. They have taken the position that they could not go into the validity or otherwise of a Proclamation under Article 356, because of the non-justiciable nature of President's satisfaction. It is considered that the Parliament is the final arbiter of the Proclamation under Article 356 and the Court can never go behind the Proclamation issued by the President either on the ground of mala fide or on the ground of absence of any grounds for the action. Thus, in all these cases put before the various High Courts, it was made known that there could be no judicial review of Presidential Proclamation although the reasons for reaching these conclusions varied.22

THE SECOND CATEGORY: PROCLAMATION UNDER ARTICLE 356 JUDICIALLY REVIEWABLE

The second category includes cases decided in accordance with the opinion that the President's 'satisfaction' under Article 356 would be open to Judicial review, where fact admitted was mala fide or it was based on wholly extraneous or irrelevant

21 Bijayananda vs. President of India, AIR, 1974, Orissa, 52, vol. 61C 19, p. 70.
grounds. The Supreme Court and High Courts can strike such Proclamation and restore the status quo ante. The most important case was the S.R. Bommai Case (1994), which totally changed the legal considerations about the President's Rule. The Bommai Case judgement laid down the principle for the Governors that the question of majority of the Council of Ministers of the State must be decided on the floor of the Assembly and not anywhere else. The second opinion included State of Rajasthan (1977), Sunderlal Patwa (1993), S.R. Bommai (1994), Cases. These cases critically analyse as follows:

1. **State of Rajasthan vs. Union of India (1977)**

The ruling Congress Party at the Centre was defeated in the Lok Sabha elections held in March, 1977, and the Janata Party came to power at the Centre. On April 17, 1977, the then Union Minister for Home Affairs, Charan Singh, wrote a letter dated 18.04.1977 requesting the Chief Minister of nine States ruled by Congress Party, viz., Bihar, U.P., H.P., M.P., Haryana, Orissa, Punjab, Rajasthan and West Bengal, to advise the Governors of their respective States to dissolve the Assemblies of those States and to seek fresh mandate from the electorate on the ground that the electorate had virtually rejected the ruling party in those States in the Lok Sabha elections. Six of these nine States, viz., Rajasthan, M.P., Punjab, Bihar, H.P. and Orissa filed suits under Article 131 of the Constitution in the Supreme Court praying for a declaration that the letter of the Home Minister was illegal, and ultra vires of the Constitution and prayed for an interim injunction restraining the Union Government from taking any step to dissolve their Assemblies before the expiry of their term fixed by the Constitution.  

The main grounds of challenging the constitutionality and legality of Proclamation of the President's Rule on behalf of the petitioner are follows.

(i) that the letter of Union Home Minister, Charan Singh, dated April 18, 1977, discloses the sole ground of an impending proclamation under Article 356 of the Constitution to be followed by a dissolution of the Legislative Assembly of the State concerned and that such a proclamation, resulting necessarily in

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the dismissal of the Ministries in the six States and the dissolution of their Legislative Assemblies upon the grounds given in the letter, is prima facie outside the purview of Article 356.

(ii) that in any case, the condition precedent to the dissolution of the State Legislative Assemblies is a ratification by both Houses of Parliament of the Presidential action under Article 356 so that no dissolution, at any rate, of a Legislative Assembly can take place without ascertaining the wishes of both the Houses of Parliament.

(iii) that the grounds given being outside the constitutionally authorised purposes and objectives make the proposed action, on the face of it, mala fide and unconstitutional.

On the Contrary, the replies on the behalf of the Union of India are.

(i) that on allegations made in the plaints no suit before us would fall within the purview of Article 131 if the Constitution which is meant for grievances of States as such, against the Union Government, and not those relating to mere composition of State Governments and Legislatures without involving constitutional or other legal rights of States as such.

(ii) the questions which arise for gauging the existence of a "situation", calling for the action under Article 356 are, by their very nature, inherently non-justiciable, and they have also been made non-justiciable expressly by Article 356 (5) of the Constitution.

(iii) the letter of the Union Home Minister and the speech of the Union Law Minister do not indicate that anything falling outside the wide spectrum of Article 356 of the Constitution is being or will be taken into account for taking action under Article 356. Hence, on matters stated there, no cause of action could be said to have arisen.

(iv) mere intimation of some facts, fully within the purview of Article 356 of the Constitution, does not justify a prohibition to act in future when the situation may be serious enough, on the strength of facts indicated and possibly other facts also, for action under Article 356.24

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Goswami, Fazal Ali and Untwalia, J.J., were of the view that the plaintiffs had no locus standi to maintain the suit. Untwalia did not want to rest his judgement on this technical ground alone. M.H. Beg, C.J. and Fazal Ali, J. held that the suit was premature. There was general agreement among all the judges that the matter in question was beyond the range of Judicial review either because it was of a political nature, regarding which the President's subjective satisfaction was conclusive, or was otherwise non-justiciable in view of the bar to the Courts' jurisdiction in clause (5) of the Article. They observed. "Article 356(1) calls for an assessment of a 'situation'. In so far as Article 356(1) may embrace matters of political and executive policy and expediency courts cannot interfere with these unless and until it is shown what constitutional provision the President is going to contravene or has contravened on admitted grounds of action under Article 356(1) for, while Article 74(2) disables Courts from inquiring into the very existence or nature or contents of ministerial advice to the President. Article 356(5) makes it impossible for Courts to question the President's satisfaction 'on any ground'". 25

However, the Court made it clear that the President's 'satisfaction' would be open to judicial review only in those exceptional cases where on facts admitted or disclosed, it was manifested that it was mala fide or was based on wholly extraneous or irrelevant grounds. P.N. Bhagwati and A.C. Gupta, J.J., observed: "If the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it... The satisfaction of the President is a condition precedent to the exercise of power under Art 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." 26

The Court ruled that the second part of the duty mentioned in Article 355 is broader in character and covers all steps which are enough 'to ensure' that the Government of every State is carried on in accordance with the provisions of the Constitution. This duty of the Union Government sought to be covered by a proclamation under Article 356. This proclamation intended either to safeguard against the failure of the constitutional machinery in a State or to repair the effects a

25 *ibid.* p. 1361.
26 *ibid.* p. 1362.
breakdown thereof. The Court held that “The second part of that duty, mentioned in Article 355, seems to be of a somewhat different and broader character and cover all steps which are enough ‘to ensure’ that the Government of every State is carried on in accordance with the provisions of the Constitution. Its sweep seems quite wide. It is this part of the duty of the Union towards each State which is sought to be covered by a proclamation under Article 356... It is a proclamation intended either to safeguard against the failure of the constitutional machinery in a State or to repair the effects of a breakdown. It may be either a preventive or a curative action”.

The Court ruled that the legitimacy of particular actions of the Union Government can be tested and determined only by the verdicts of the people at appropriate times rather than by decisions of Courts. The Court held that “The question of legitimacy of particular actions of the Union Government taking us in particular directions can often be tested and determined only by the verdicts of the people at appropriate times rather than by decisions of Courts”.

The Court ruled that the total and massive defeat of the ruling party in the Lok Sabha elections shows the complete alienation between the Government and the people and it is a relevant ground for taking action under Article 356 (1). The Court held that “A total rout of candidates belonging to the ruling party, and in some of the Plaintiff-States, the ruling party has not been able to secure a single seat, it is symptomatic of complete alienation between the Government and the people... This ground is clearly a relevant ground having reasonable nexus with the matter in regard to which the President is required to be satisfied before taking action under Article 356, Clause (1)”.

The Court ruled that the use of words “or otherwise”, as to Article 356 (1) calls on the President to consider materials and resources other than the Governor's report. But at the same time, in practice, this ambiguous phrase has given assaults to the federal principles of Government. The Court held that “the usual

27 ibid, p. 1362.
28 ibid, pp. 1362-63.
29 ibid, p. 1364.
practice is that the President acts under Article 356 (1) of the Constitution only on the Governor's report. But, the use of the words 'or otherwise' show that Presidential satisfaction could be based on other materials as well. This feature of our Constitution indicates most strikingly the extent to which inroads have been made by it on the federal principles of Government."

The Court dismissed the case unanimously, but the observations made by the Court are very important. For the first time the Court started judicial review of Presidential proclamation under Article 356 of the Constitution. The Court made it clear that the President's 'satisfaction' under Article 356 would be open to Judicial review, where facts admitted was malafide or it was based on wholly extraneous or irrelevant grounds. Thus, exercise of President's power under Article 356 was brought under judicial review to that extent.

2. **Sunderlal Patwa vs. Union of India (1993)**

After the demolition of the Babri Masjid at Ayodhya (6th December, 1992) President's Rule was imposed in Madhya Pradesh on 15th December, 1992. The then Governor of Madhya Pradesh, Kunwar Mahmood Ali Khan, in his letter to the President has mentioned the acts of omissions and commissions on the part of the State, but he didn't specify them. The Governor also stated in his report that the Sunderlal Patwa government had soft reaction to the RSS (a banned organisation).

The Proclamation of President's Rule in M.P. was challenged in the M.P. High Court. In his majority judgement S.K. Jha, C.J. and K.M. Agrawal, J. ruled that the satisfaction reached at by the President in issuing the Proclamation regarding the imposition of President's Rule in Madhya Pradesh on December 15, 1992 and dissolving the State Legislative Assembly is based on irrelevant grounds and is therefore liable to be quashed. The Court held that "The Satisfaction reached by the President is issuing the Presidential Proclamation dated December 15, 1992 imposing Presidential Rule in the State of M.P. and dissolving the State Assembly,"

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30 *ibid.*, pp. 1364-65.
on the advise of the Cabinet, is based on circumstances not relevant for invoking Article 356 of the Constitution of India and is therefore liable to be quashed". 33

The report of the State Governor regarding the deterioration of law and order situation in Bhopal and two other cities of Madhya Pradesh after the demolition of the Babri Masjid at Ayodhya on December 6, 1992, could not itself be a relevant cause for the imposition of Presidents Rule in M.P. on December 15, 1992. Neither the report of the State Governor nor any other sources could prove the failure of constitutional machinery in the State. So the Proclamation of the President did not hold ground and it should be quashed. The Court held that, “The Governor’s reports on the worsening of the law and order situation in Bhopal and two other cities of Madhya Pradesh as aftermath of Ayodhya incident, could not in itself constitute a relevant material having a reasonable nexus for the satisfaction of the President in imposing his rule in the State of Madhya Pradesh. There is no other material in existence-either in the report of the Governor or from any other sources-to hold that the Government in the State of Madhya Pradesh could not be carried on in accordance with the Constitution and that there was failure of the constitutional machinery in the State. Failure on part of the State Government to save the lives and properties of citizens in few cities, as a result of sudden out-break of violence could not reasonably lead to the satisfaction of the President that the Government was unable to function in accordance with the Constitution. The Presidential Proclamation is therefore liable to be quashed.” 34

The Court ruled that there came no occasion to reveal any proof of failure of constitutional machinery in Madhya Pradesh, because the State Government did not disobey the directives given by the Union Government. There was no reasonable ground for the imposition of President’s Rule. So the Proclamation of the President regarding the imposition of President’s Rule in Madhya Pradesh on December 15, 1992, liable to be quashed. The Court held that “There was also no occasion to raise any inference of failure of constitutional machinery under Art. 365 of the

34 ibid. p. 217.
Constitution, because there were no Central directives, which were disobeyed or disrespected by the State of Madhya Pradesh".35

The Court also ruled that the State Governor did not mention that the Sunderlal Patwa Government had actually failed to implement the ban on RSS, which had been banned by the Centre. The satisfaction of the President was not fact-based, hence the Proclamation of the President Rule was liable to be quashed. The Court held that “The Governor has nowhere mentioned that the Government, at any point of time, had actually failed to implement the ban on RSS”.36

The Court ordered to restore the dismissed Ministry as also the dissolved Assembly. The judgement of M.P. High Court is a “significant milestone in legal history”. Since it is the first case where the Court struck down a Presidential proclamation as unconstitutional, null and void. Later this judgement was challenged in Supreme Court in the S.R. Bommai case (1994) and the Supreme Court set aside this judgement.


In Karnataka (1989), the Janata Dal Government led by S.R. Bommai was thrown into 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 writ petition and challenged the constitutionality of the Proclamation of President regarding the imposition of President’s Rule in Karnataka on April 21, 1989.37 Also, appeals from the decisions of the Guwahati, Karnataka and M.P. High Courts and the writ petitions filed in the Rajasthan and H.P. High Courts, which were transferred to the Supreme Court were heard by a nine member

35 ibid. p. 217.
36 ibid. p. 217.
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 President's Rule in Nagaland (1988), Karnataka (1989) and Meghalaya (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.38

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."39

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, S.R. 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."40

The legal experts have different opinion on the judgement 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

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39 *S.R. Bommai vs. Union of India*. AIR, 1994, Supreme Court, 1918.
40 *ibid.* p.1919.
starting point for further judicial refinement. P.P. Rao was of the view that the significance of the judgement 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 he finds as inconsistent in parts. 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. He 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 case, 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) polit bureau member Prakash Karat described it a landmark verdict, which needed to be widely publicised 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.R. Pandian and B.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.”\(^{48}\)

The Court interpreted Article 356 and ruled that the failure of State Government to comply with or to give effect to directions issued by 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 365 says it is permissible for him to say so in such a case. The discretion is still there and has to be exercised fairly.”\(^{49}\)

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. Sawant 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.”\(^{50}\)

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

\(^{48}\) S.R.Bommai vs. Union of India, op.cit., p.1922.
\(^{49}\) ibid. p. 1927.
\(^{50}\) ibid. p. 1928.
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 not possible in the House.”

P.B. Sawant and Kuldip Singh, J.J., also held that “In case where the ministry looses 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 claims 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 by pass 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. The possibility of horse trading also to be

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51 ibid. p. 1930.
52 ibid. p. 1930.
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.\textsuperscript{53}

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.”\textsuperscript{54} 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.”\textsuperscript{55}

\textsuperscript{53} ibid. p. 1930.
\textsuperscript{54} ibid. p. 1931.
\textsuperscript{55} ibid. p. 1933.
The Court ruled that in appropriate cases the Court can grant requisite interim relief and issue injunction restraining holding of fresh elections. P.B. Sawant and Kuldip Singh, J.J., held that "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 emasculation 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."\(^{56}\)

The Court ruled that if the proclamation of President's Rule is found to be invalid then 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."\(^{57}\)

B.P. Jeevan Reddy and S.C. Agrawal, 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 be 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."\(^{58}\)

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

\(^{56}\) ibid. p. 1936.  
\(^{57}\) ibid. p. 1937.  
\(^{58}\) ibid. p. 1937.
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. 59

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. 60

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 a 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 powers conferred by the Constitution and conventions. 61

59 ibid, p. 1939.
4. **ALLAHABAD HIGH COURT VERDICT (1996)**

The three member bench of the Allahabad High Court unanimously held that the impugned Presidential proclamation dated October 17, 1996 reimposing President's Rule in Uttar Pradesh and subsequently approved by Parliament was unconstitutional, issued in colourable exercise of power and was based on wholly irrelevant and extraneous grounds and, therefore, could not be allowed to stand. Consequently, the Proclamation was quashed. Justice B.M. Lal observed. The Governor of Uttar Pradesh was constitutionally not bound to invite the single largest party to form a government, in case it did not have the confidence of the House. But at the same time he was constitutionally bound and obliged to explore all possibilities.\footnote{Hindustan Times, New Delhi, 20 December, 1996.}

5. **BIHAR ASSEMBLY DISSOLUTION CASE (2005)**

In Bihar (2005), after general elections of the State Legislative Assembly in February, 2005, there emerged a hung assembly and there was no political party or coalition having a clear majority to form a stable government in the State. The UPA government at the Centre, recommended the dissolution of State Assembly on the basis of two reports sent by State Governor, Buta Singh, on April 27 and May 21, 2005. These reports became the subject matter of litigation in a batch of petitions, which questioned the legality and constitutionality of the Proclamation of the President.

Appearing for the petitioners, Soli J. Sorabjee, maintained that the Governor made no genuine attempt to explore the possibility of forming a government before recommending the dissolution of the Assembly. The 'indecent haste' with which the Governor acted would show that his only intention was to prevent Janata Dal (United) – led NDA leader Nitish Kumar from staking his claim to form the government, as it did not suit the political ambitions of RJD Chief Lalu Prasad. On the contrary, the Attorney-General, Milin Banerjee, defend the Centre's action by saying that the Proclamation was issued to prevent horse-trading and formation of government through foul means.
A five-judge Constitution Bench headed by Justice Y.K. Sabharwal of the Supreme Court on October 7, 2005, gave a majority judgement and declared unconstitutional the May 23, 2005 Presidential Proclamation of dissolution of the Legislative Assembly of Bihar [Article 174 (2)(b)], but gave it nod for the present elections, the first phase of which is scheduled for October 18, 2005. It is noteworthy that the Supreme Court Introduced a new ploy that the reports of the Governor dated April 27, 2005 and May 21, 2005 be made public and subject to judicial review.

The legal experts expressed divergent opinions on the Bihar Assembly dissolution Case 2005. Shanti Bhushan has opined, The decision of the Supreme Court is not logical one. If the dissolution is unconstitutional, then the Assembly elections this will constitute a new assembly. Then, will there be two sets of assembly in existence. However, the way horse-trading of the MLA’s was going on, the Governor was left with no alternative. Laxmi Mal Singhavi has opined, It would be better if the Supreme Court had nulled the coming Assembly elections. P.N. Lekhi has opined. The Assembly was not formally constituted; so could the Governor dissolve it? Anil Diwan has opined, When the Governor’s action of dissolution of the Assembly has been declared illegal, then it would be better that it was reinstated. Similarly the political parties gave varied opinions. Arun Jaitley, Secretary General of BJP, said. The decision of imposition of President’s Rule in Bihar was of the Governor. the Centre and the RJD party and all these there are culpable. Now the Centre should clarify their stance besides calling back the Governor. Ambika Soni, Secretary General of Congress (I), said, The decision should not be taken as against Congress Party. When someone becomes a Governor, then he stops working on the party line. Prakash Karat, Secretary General of CPI-M, said, the arbitrary execution of the powers of the Governor and his discretion should end. For this, sincere effort should be made to change the institution of Governor.

It may be concluded that the Presidential Proclamation under Article 356 of the Constitution has come under judicial review. The Supreme Court and the High Court may have to decide whether the Governor acted in a constitutional manner.

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63 *The Hindu*, Delhi, 8 October, 2005.
64 *Nav Bharat Times*, New Delhi, 8 October, 2005.
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 Ministers of the State must be decided on the floor of the Assembly and not anywhere else. Therefore, the Union Government cannot act arbitrarily. As A.G. Noorani pointed out "Once the doors to judicial review are thrown open, everything will be exposed to the scrutiny of the courts and to 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 president. It fortifies it."65

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