CHAPTER - IV
ARTICLE 356 AND ITS CHANGING FACE

a) Introduction:

The basic law of country functions smoothly when normal conditions prevail. In extraordinary conditions such as external aggression or internal aggression or internal revolt or other crises- constitutional, financial and administrative, the basic law becomes a dead letter. Hence every constitution has to provide for measures to deal with these extra-ordinary situations. Under certain constitutions of a federal type, full powers are assumed by the federal government to combat external aggression or to overcome an internal catastrophe,1 while in some cases the working of the State Government is suspended and full powers are assumed by the federal Government2 In other cases the Constituent units are allowed to function as in normal times but certain powers are transferred to the Central Government to deal with emergency3

The framers of our Constitution were quite alive to these abnormal conditions and have fully incorporated provisions in the Constitution itself to deal with such crises. External aggression is dealt with under article 352 whereas emergency due to breakdown of the Constitution and financial emergency are provided for under articles 356 and 360 respectively.

Suspending the Constitutional Provisions relating to a responsible Government of a State is an emergency provision and not a normal one. Article 356 is intended to be used only in emergent situations when other constitutional remedies fail to meet the threatening situation. Moreover article 356 is placed along with the other articles relating to emergency, which means that the extraordinary powers under this article are to be exercised only in abnormal conditions when the State Legislature and the Ministry are unable to function properly.

Article 356, it is obvious, is inspired by sections 93 of the Government of India Act, 1935. Section 93 of the 1935 Act provided that if a Governor of a province was

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1 Article IV, Section 4 of the American Constitution.
2 Article 356 of the Indian Constitution.
satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of the said Act, he could, by proclamation, assume to himself all or any of the powers vested in or exercisable by a provincial body or authority including the Ministry and the Legislature and to discharge those functions in his discretion. The only exception was that under this section the Governor could not encroach upon the powers of the High Court. (Section 45 conferred a similar power upon the Governor-General with respect to the Central Government/Central Legislature). It is well-known that the said two provisions were incorporated in the 1935 Act to meet certain purposes and exigencies. The 1935 Act contemplated, for the first time, delegation of certain powers of governance to the Ministries formed by Indian political parties and constitution of Legislatures elected, no doubt, on a restricted franchise. The colonial powers were not inclined to trust these Ministries even with limited powers probably in view of the fact that not only the political parties in India were ambiguous regarding entering the Legislatures and Ministries created under the said Act but some of them were also proclaiming that even if they entered the Ministries they would try to break the governments from within. The said sections therefore provided that if at any time the Governor or Governor-General felt that the Ministry in the province or at the Centre was not acting in accordance with the provisions of said Act, he could resume their powers and exercise the same in his discretion.(The provisions of the said Act relating to Central Government were not brought into operation partly because of the onset of World War II.)

Even though article 356 was patterned upon the controversial section 93 of the 1935 Act - with this difference that instead of the Governor, the President is vested with the said power - it was yet thought necessary to have it in view of the problems that the Indian republic was expected to face soon after independence. The socio-political experience of the framers of the Constitution made them acutely aware that security of the Nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social, economic and political life, the diversity in languages, race and region were expected to present the nascent republic with many a difficult situation. (It is interesting to note

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3 Section 91 of the British North America Act
4 Consultation Paper On ARTICLE 356 OF THE CONSTITUTION NATIONAL COMMISSION TO
that with respect to Union territories, a provision similar to article 356 is found
enacted in section 51 of Government of Union Territories Act enacted in 1963 and
that it was indeed invoked on as many as on 13 occasions). The Constituent
Assembly debates disclose these sentiments. They also disclose that several members
strongly opposed the incorporation of article 356 (draft article 278) precisely for the
reason that it purported to reincarnate an imperial legacy. However, these objections
were overridden by Dr. Ambedkar with the argument that no provision of any
Constitution is immune from abuse as such and that mere possibility of abuse cannot
be a ground for not incorporating it. He stated: 5

"In fact I share the sentiments expressed by my Hon’ble friend Mr. Gupte
yesterday that the proper thing we ought to expect is that such articles will never be
called into operation and that they would remain a dead letter. If at all they are
brought into operation, I hope the President, who is endowed with these powers, will
take proper precautions before actually suspending the administration of the
provinces."

He added: "I hope the first thing he will do would be to issue a clear warning
to a province that has erred, that things were not happening in the way in which they
were intended to happen in the Constitution." 6

May be that the British Parliament thought of, while enacting the 1935 Act,
providing a 'controlled democracy' or 'restricted democracy' in India but surely our
Founding Fathers could not have envisaged or intended to import any such concept
into our Constitution, as would be evident from the speeches of Dr.Ambedkar and
Shri Alladi Krishnaswami Ayyar while the draft articles 277-A and 278
(corresponding to articles 355 and 356) were being debated in the Constituent
Assembly. Article 356 was supposed to be an exceptional measure to be invoked to
meet a grave and dangerous situation. It should also be remembered that clause (3)
does not require a special majority; a simple majority is enough. Ordinarily, the
Council of Ministers does command a majority in the Lok Sabha. The difficulty only
arises when the Council of Ministers cannot command a majority in the Rajya Sabha.
If, however, they command a majority in Rajya Sabha also, then the cost is clear. The

5 Ibid.

REVIEW THE WORKING OF THE CONSTITUTION.
Central Government can, if it is so inclined, simply play with the lives of the State Governments and the State Legislative Assemblies, as indeed it is said, by many, to have happened on several occasions in the past. Some people may argue that under our Constitution, the Centre is superior to States and that the central dominance over States is implicit in the several provisions including 256, 257, 355, 365 besides 356 itself. (For a discussion of this aspect, see paras 209 to 211 at pages 2052 to 2055 and paras 65 and 66 at pages 1976 to 1979 of S.R. Bommai versus Union of India, (AIR 1994 S.C. 1918). At the same time, it cannot be forgotten as affirmed by Dr. Ambedkar (his speech in the Constituent Assembly, quoted in para 53, page 1961 of S.R. Bommai ibid ) that the States are supreme - in the words of Dr.Ambedkar, "sovereign" - in the field allotted to them and that notwithstanding a bias in favour of the Centre in our Constitution, ours is a federation - that too a democratic federation. 

b) **The Federal Spirit and article 356: A fine Balance**

It needs to be remembered that only the spirit of "co-operative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - a sine qua non for good governance. Even assuming that Centre has been given certain dominance over the States, that dominance should be used strictly for the purpose intended, nor the oblique purposes. An unusual and extraordinary power like the one contained in article 356 cannot be employed for furthering the prospects of a political party or to destabilize a duly elected government and a duly constituted Legislative Assembly. The consequences of such improper use may not be evident immediately. But those do not go without any effect and their consequences become evident in the long run and may be irreversible. 

Unfortunately, however, it so happened that over the years, the Centre has not always kept in mind the concept of co-operative federalism or the spirit and object with which the article was enacted while dealing with the States and has indeed

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6 Ibid.  
7 Ibid.
grossly abused the power under article 356 on many occasions. Between 1950 and 1994, the said power was exercised on more than 90 occasions. The facts and figures contained in Chapter Six of the Sarkaria Commission Report read with Annexure VI (1 to 4) appended to the said chapter and the decision of the Supreme Court in S.R. Bommai v. UOI (reported in AIR 1994 SC 1918) amply bear out the truth of our assertion. The said Annexure shows that on several occasions, the State Governments were dismissed even when they enjoyed the majority in the Assembly; on some occasions, they were dismissed without giving them an opportunity to prove their strength on the floor of the House. The very instance of S.R. Bommai, who was the Chief Minister of Karnataka, is proof positive of such abuse. In spite of his asking the Governor to allow him to prove his majority, within a very short period, on the floor of the Assembly, the Governor did not give him that opportunity and recommended the dismissal of his ministry. The said action of the governor naturally invited strong condemnation at the hands of the Supreme Court.

The main target of criticism from the point of view of State autonomy, however, has been article 356 which empowers the centre the "President is satisfied that the Government of a State cannot be carried on in accordance with the provisions of the Constitution and makes a proclamation to that effect". Both in its intent and in its actual exercise, this provision of the Indian constitution has been something unique and there is little in other recognized federations with which it may be compared. The Constitution of U.S.A. places on the Federal Government the responsibility of ensuring the maintenance of a republic form or Government in the States. But this responsibility has never been invoked to justify intervention in the affairs of a State or the suppression of its Government - and this despite the fact that the United States has or does not have a republican form of Government is a political question and that the decision of the Congress in this regard cannot be questioned by the courts. Dr. Ambedkar was obviously wrong when he equated article 356 of the Indian Constitution with Article IV, Sec. 4 of the American Constitution and claimed that “so far as that point is concerned, we do not think that the Drafting Committee has made any departure from an established principles.”

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8 Ibid.
9 Ibid.
10 CAD, Vol. IX, p. 176
In the United States and Australia, the federal Government is also authorized to protect the State against "domestic violence", but federal intervention for this purpose can take place only on the request of the State concerned unless, of course, domestic violence in the State hampers operation for which the federal Government is directly responsible. In India, on the contrary, the central intervention in a State for the purpose of protecting it against "internal disturbance" under article 356 of the Constitution is not contingent on a request from the State Government concerned.\textsuperscript{11} Two obvious conclusions may be stated here. In no other federal State is the centre given as extensive a power, not only to intervene into the sphere of State autonomy but to overthrow the Governmental constituent units as in India. Further, in other federations, Central intervention on grounds of domestic violence is aimed at protecting the State authorities in India such intervention can lead to their temporary abrogation.

It is not necessary to labour the point that article 356 is incomputable with the federal principle. In fact, it is even more under feral than "the old and hated" section of the Government of India Act, 1935 in so far as it empowers the President to suspend responsible Government in a State even without a report from the Governor. One may, therefore, wonder whether Alladikrishnaswami Aiyer was speaking with this tongue in his check when he declared in the Constitution Assembly.

"The Protagonists of Provincial or State autonomy will realize that, apart from being an impediment to the growth of healthy provincial or State autonomy, this provision is a bulwark of provincial or State autonomy, because the primary responsibility is cast upon the Union to see that the Constitution is maintain."\textsuperscript{12}

Such a view, if seriously propounded, can be understood only on the basis that the framers of the Constitution felt that the States would function perpetually as the Centre’s words. A more plausible basis for the over-caution taken by the framers in this matter may be found in the fact that the Constitution was made under the shadow of the events like the war in Kashmir, the Communist insurrection in Talangana and the Razakar troubles in Hyderabad, all of which seemed at the time to make the very

\textsuperscript{11}Article 16 of the Swiss constitution authorize the federal Government to intervene in a canton in cases of internal disorder or threat from another Canton without a request from Canton authorities. But this right is restricted to cases of extraordinary urgency when the Canton authorities concerned are unable to ask for federal assistance.
survival of public problematic. Article 355, therefore, incorporated in the Constitution, not only to ensure orderly constitution government in the States but to erect a strong defence against forces of disruption. According to Dr. Ambedkar the overriding powers of the centre under this provision were justified on the ground that “the residual royalty of the citizen in any emergency must lie to the centre and not to the constituent units.”13

Therefore, it is clear that when Presidential Rule is imposed in the State the constitution for that particular state become unitary and federalism seems to be a myth. Because all the powers of the States’ Legislature and executive Government assumed by the Central Government or the President the Constitutional Head of the Central Government. A frequent use of this power and for reasons not warranted would be a negation of federal polity.

Prof. K.C. Wheare had dubbed Indian Constitution as ‘quasi federal’ because of its tendency to become unitary in times of crises, external or internal. The framers of the Constitution have drawn from various sources and benefitted by their rich experience. A strong centre was created by vesting it with plenary powers. The residuary powers were also vested in it. Of all these the greatest is right to take over the Government of a Constituent Unit in case of emergency, particularly in the event of a failure of the constitutional machinery in the States. But this power was sought to be exercised with judgment and caution and only in the last resort when other methods of settling a dispute had hopelessly failed. A too frequent use of this power and for reasons not warranted would be a negation of a federal polity and would make mockery of democratic government.

Federal interference should be confined solely on legalistic basis and political consideration should not weight in favour of such interference. The bed rock on which the power vested in the Central Government can be exercised under article 356 is a breakdown of the Constitutional machinery of a State. If the constitutional machinery is intact and there is no law and order problem, there is no justification for the central interference at all.

12 CAD Vol. IX p.150
It is no denying the fact that the Centre had misused the powers under article 356. What was meant to be a 'safety valve' has been used as a political weapon to do away with the Governments not of their choice in the States. How can this be prevented? What constitutional methods could be evolved to place a check upon the misuse of this power? These questions have of late been engaging the attention of the jurists in the country.

c) Article 356 of the Indian Constitution - its use and Misuse:-

The frequent imposition or the President's rule in the States under the provisions of article 356 has raised many constitutional issues. Extra-ordinary powers under this article with respect to State machinery, have been exercised many a times within a span of sixty years.

In addition to the provisions of article 356, there are other provisions which enable the central Government to issue directions to the State, both in normal times and in period of emergency. Failure on the part of the States to comply with any direction issued by the Union would attract the provisions of article 355 which says:

Art. 356 (1) If the President, on receipt of a 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 provisions of this Constitution, the President may be proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor, or any body or authority in the State other than the legislature of the State;

(b) declare that the powers or the legislature of the State shall be exercisable by or under the authority of Parliament;

14 The wording of article 356 is derived mainly from section 93 of the Government of India Act, 1935, which enable the Governor of a Province to issue a proclamation inabling himself, inertia, to "assume to himself all or any of he powers vested in or exercisable by any provincial body or authority", if he, "is satisfied that a situation has arisen in which Government of the Province cannot be carried on in accordance with the Provisions of this Act".

15 Article 256 (1) and Article 257 (1).
(c) make such incidental and consequential provision as appear to the
president to be necessary or desirable for giving affect to the objects of the
proclamation, including provisions for suspending in whole or in part the
operation of any provisions of this Constitution relating to any body or
authority in the State.

Provided that nothing in this clause shall authorize the President to assume
to himself any of the powers vested in or exercisable by a High Court, or to suspend
in whole or in part the operation of any provision of this Constitution relating to
High Court.

(2) Any such proclamation may be revoked or varied by a subsequent
proclamation.

(3) Every proclamation under this article shall be laid before each House of the
Parliament and shall, except where it is a proclamation revoking a previous
proclamation, cease to operate at the expiration of two months unless before the
expiration of that period it has been approved by resolution of both Houses of
Parliament.

Provided that if any such proclamation (not being a proclamation revoking a
previous proclamation) is issued at a time when the House of the people takes place
during the period of two months referred to in this clause, and if a resolution
approving the proclamation has been passed by the Council of States, but no
resolution with respect to such resolution has been passed by the House of People
before the expiration of that period, the proclamation shall cease to operate at the
expiration of thirty days front the date on which the House of the people first sits
after its reconstitution unless before the expiration of the said period of thirty days a
resolution approving the proclamation has been also passed by the House of the
People.

(4) A proclamation so approved shall, unless revoked, cease to operate on the
expiration of a period of one year\(^16\) from the date of the passing of the second of the
resolutions approving the proclamation under clause (3):

\(^{16}\) Substituted six months by the Constitution 44th Amendment Act. 1978 in place of one year in
clause (4) of this Article.
Provided that if an so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of one year from the date on which under this clause it would otherwise have cease to operate, but no such proclamation shall in any case remain in force for more than three years.

Provided further that if the dissolution of the House of the people takes place during any such period of one year and a resolution approving the continuance the force of such proclamation has been passed by the Council of States, but no resolution with respect of the continuance in force such proclamation has been passed by the House of the people during the said period, the proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the people first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the proclamation has been also passed by the House of the people.

(5) a resolution for the continuance in force of a proclamation beyond the period of six months cannot be passed by the House unless :-

a) a proclamation of emergency is in operation at the time of the passing of such resolution; and

b) the Election Commission certifies that the continuance in force of the proclamation is necessary on account of the difficulties in holding general elections in Legislative Assembly of the State concerned.

The phraseology of clause (1) of article 356 is very vague and in general terms. It may include\(^\text{18}\) not only actual breakdown of the constitutional machinery of a State, but also the problem of law and order, general insecurity,

\(^{17}\) Clause (5) is added by the constitution (44th Amendment) Act. 1978 and clause (5) added by the Constitution (38th Amendment) Act. 1976 is omitted by the same amendment.

\(^{18}\) In connection with the wording of article 356(I) Sh. MC. Setalvad said that “the phrase is of the widest import. It is capable of including cases in which the Government of the State has failed to respect or act in accordance with any provisions of the constitution whatever their importance and significance. No doubt the drastic nature of the consequence which flow from a proclamation under article 356(I) amounting to a suspension of the executive and legislative authority of the State indicate that what is contemplated is something in the nature of a complete breakdown of the Constitutional Machinery.” Grave emergency arising out of the failure of Constitutional Machinery in a State”.
political and ministerial crises.

The intention of the founding fathers regarding the operation of articles dealing with actual breakdown of constitutional machinery was that the duly elected State Legislature and the popular ministry of the State should have failed in the discharge of their functions in accordance with the rules of parliamentary type of Government. A Ministry may not be able to function in accordance with the provisions of the Constitution when its own members have deserted the ministry or it has been voted down by the opposition in the floor of the Assembly and when all constitutional methods of forming an alternative ministry have proved fruitless. Failure of the State Machinery may also take place when any single largest party in cooperation with the members of other political parties of the State legislature is unable to form a Ministry after the fresh elections in the State.

But the Central Government has made use of the powers under article 356 for the imposition of President's rule in a State on the basis of several causes and circumstances leading to failure of constitutional State Machinery contrary to the intentions of the framers of the Constitution.

The Framers of the Constitution had discussed at length the emergency provisions of the Constitution. One member of the Constituent Assembly observed that the implication of the drastic powers which were invested with the Centre under the emergency provisions would reduce provincial autonomy. It was stated that it would not be proper to invoke the article for resolving ministerial crises or for putting an end to mal-administration in a State. Another leading member of the Constituent Assembly Shri H.N.Kunzru deplored the tendency of the Central Government's interference in the management of provincial governments.

20 HL. Sexena, Constituent Assembly Debates. Vol. IX. P. 143.
21 H.V. Kamath, pointed out that the remedy for such crises would lie in the dissolution of the Legislature and a fresh reference to the electorate , CAD, Vol. IX, p. 143
22 Granville Austin has quoted the noteworthy words of Shri H. N. Kunzru: 'The Central Government'. Kunzru said, 'will have the power to intervene to protect the electors against themselves.' He deplored this tendency because it would rob the people of their initiative. The power
Staunch supporters of the various emergency provisions thought that they would act as a "safety valve". A member of the Constituent Assembly succinctly remarked that the inclusion of these provisions was vital and necessary for the preservation of the Integrity of the Indian Union which might be threatened by several divisive and disruptive forces of communalism, regionalism and linguism.

According to Dr. Ambedkar however, overriding powers entrusted to the Central Government are justified on the grounds of emergent situations which threaten the very survival of the State and the interest of the Nation as a whole. He told the Constituent Assembly:

"If at all they are brought into operation, I hope the President who is endowed with these powers, will take proper precautions before actually suspending the administration of the Provinces. I hope the first thing he will do would be to issue a mere mining to a province that has erred, that things were not happening in the way in which, they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this Article… I do not think we could then say that these Articles were imported in vain or that the President had acted wantonly."

No clear model rules or causes were laid down in the Constitution for declaring what constitutes failure of a State’s machinery. This Constitution lacuna has been said to be exploited by the ruling party at the Centre according to its political expediency and that is why a good number of States have come under the President's rule on several occasions. The Central Government has also not followed a uniform pattern in the exercise of the constitutional power given to it under article 356. There has been no consistency in the policy of the

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\text{CAD Vol. XI. p. 123.}\]
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central government since 1951 in this matter.

a) We now examine the use and misuse of the provisions of article 356 in case of failure of Constitutional Machinery in few individual states, since the adoption of the Constitution in 1950.

i) Between 1950-1967

1. East Punjab: June 20, 1951 to April 17, 1952

East Punjab was the first State which came under the Central Government's long arm due to the dramatic resignation of the Chief Minister, Dr. Gopi Chand Bhargav.26 The Governor made a report to the President that the Government of State could not be carried on according to the provisions of the Constitution and declared that an alternative ministry also could not be formed. Official version of the situation was that the persisting differences in the State cabinet had rendered the administration inefficient and corrupt and virtually orderly Government had ceased to exist in the State. Therefore, the State administration should be taken over by the Central Government under its control. Earlier, a request for the President's rule was already made by the Congress Working Committee.

Without finding out a political solution i.e. the formation of an alternative congress Ministry, the President's rule was imposed in East Punjab on June 20, 1951. By the promulgation of the Presidential order the first congress ministry was suspended for "gross mal-administration" and "woeful lack of unity".

The exercise of extraordinary powers under article 356 in putting an end to party rivalries and the groupism of the Congress Legislature party of the State could be considered as improper since the Central Government's action deprived the people of their representative Government. A Survey of the Congress party position in the State Legislature suggested that there were chances for the formation of an alternative Ministry or at least attempts to form an alternative Government could have been made by the Governor of the State.

26 Shiva Raj Nakade, Article 356 of the Constitution - its use and misuse' in J.C.P.S., special Number, 1969, p. 82.
In the State Legislature, the Congress party had 70 seats on its side in a house a 77 and only 7 seats were held by the opposition parties. And, moreover, within the congress group the Chief Minister had the support of 40 members while the other group could claim 37 member's support. Even with such party strength for both the Congress group the Chief Minister had the support of 40 members while the other group could claim 37 member's support. Even with such party strength for both the Congress groups neither Dr. Gopi Chand Bhargav had been followed to stay in office nor the formation of an alternative ministry was attempted.

Thus it would appear that in the very first case of President's rule the constitutional provision become a device to end party rivalry and mal-administration of the State although it showed the democratic spirit of the congress party since it accepted the fact that the Congress Government was unable to govern the State properly.

2. **PEPSU: March 5, 1953 to March 7, 1954**

After the first General Elections no political party emerged in the State with a stable majority. The Congress party was the largest group with a membership of 26 seats in a House of 60. The leader of the Congress party Col. Raghbir Singh formed the Ministry. Within a few days of the meeting of the Legislative Assembly there were some defections from the Congress ranks. The Congress Ministry suffered its first defeat on April 16, 1952 when the Legislative Assembly elected a nominee of the opposition as the Speaker of the Assembly by 33 votes to 27.

The one month old PEPSU Congress Ministry headed by Col. Raghbir Singh tendered its resignation to the Raj Pramukh who later on invited Sardar Gian Singh Rarewala, leader of the Untied Front to form the Ministry.

Meanwhile, election petitions against 31 members gave a setback to the newly formed Untied Front Ministry. Sardar Gian Singh Rarewala submitted his resignation to the Rajpramukh of PEPSU eight days after his election has been declared void. On receipt of the report of the Rajpramukh, President's rule was imposed in PEPSU on March 5, 1953 of the ground of political instability and
its adverse affects on the administration causing failure of the State Machinery.

The fear of the Central ruling Congress party was that once the United Front was allowed to remain in office it might consolidate its power in the State. Therefore, to bring the Congress Ministry again into power at the opportune time dissolution of the legislature and fresh elections in the State were considered to be the favourable courses available to the central ruling party. The Central Government's action in imposing president's rule may thus appear to be a partisan one, to serve the party interests of the ruling party at the center.Ordinarily the Central Government should not interfere within the affairs of the State. The spirit of the Constitution demands that the Central Government should resort to President’s rule as a last resort to maintain the administration of a State.


In this State the Prakasam Ministry resigned after its defeat and advised the Governor to dissolve the Legislature. The opposition group approached the Governor for a mandate to form a new Ministry. But they were denied the right to form an alternative Ministry on the ground that it was not easy for desperate elements to join together in the formation of a new Ministry. The action of the Central Government with respect to the imposition of President's rule in Andhra was criticized by opposition members of the Lok Sabha. Shri Asoka Mehta accused the Andhra Governor of practicing “controlled democracy”. They alleged that it was improper on the part of the Central Government to suspend the provisions of the Constitution without the leader of the opposition being given an opportunity to form a Government. It is a convention of Parliamentary form Government that whenever the ruling party is defeated the head of the State will invite the

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27 U.F. Assembly party passed a resolution in which it was stated that the Centre’s action was designed to "suppress and eliminate non-congress elements and rehabilitate the decaying congress in the State." It claimed that the U.F. still had a majority in the Assembly and its strength was 26 in the House of 51 members. The statesman, March 5, 1953.

28 Dr. K.V. Rao observed: "...still the spirit of the Constitution is that the Provincial political machinery should be left to be shaped largely by electors of the Units alone, and the centre should step in as a last resort." I. J. pol. Sc., Vol. XIV, No. 4, 1953, p.352.


leader of the opposition to form an alternative Government. But this well-known convention was not followed in India in this case.

4. **Travancore-Cochin: March 23, 1956 to April 5, 1957**

No political party emerged with a clear majority after the first General elections of 1952. Congress Government was formed with the support of the members of the Trivancore Tamilnadu Congress. The withdrawal of the support by the Tamilnadu Congress group from the Government led to defeat the Ministry. Fresh elections were held and even then the congress failed to command a majority. Therefore a minority Government supported by the Congress members was formed. But this support of the congress was withdrawn for party gains with the permission of the Congress Central Parliamentary Board and eleven months-old Ministry crumbled in February 1955. A Congress Ministry supported by Tamilnadu Congress and two P.S.P. dissidents was formed by Shri. P. Govinda Menon as the Chief Minister. This ministry also did not last long in the office and it toppled down in March 1956 as a result of the revolt of 6 Congress Members. Such frequent Ministerial crises led to the suspension of constitutional Machinery in the State in terms of article 356 on March 23, 1956. The former Chief Minister Shri P. Govinda Menon said that the opposition members, the six rebel congressmen and the "irresponsible attitude of the State Legislators" were mainly responsible for the imposition of President's rule in the State. During the Lok Sabha Debate on March 30, 1959, the criticism of the opposition was vigorously voiced by Shri Ashoka Mehta, Shri A.K. Gopalan and others that emergency provisions of the Constitutions were being misused to protect "partisan interests of the Congress" and to permanently damage Parliamentary Government. Later in the debate it was pointed out by Shri Mehta and Shri Gopalan, that principles were changed and standards varied from state to state and from time to time in the same state to suit the convenience of the congress party. According to Shri Gopalan the Government's principle was: "Either congress Ministry or no Ministry at all."

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31 The Statesman, March 27, 1956.
5. **Kerala: June 31, 1959 to February 22, 1960**

Kerala was subjected to President's rule under unusual circumstances without a constitutional precedent. The unusual circumstances came to the surface after the assumption of the political power by the communist party in 1957. The Communist Ministry had to face a strong opposition from all political parties.

A popular agitation of combined opposition against the administration of the state started at the beginning of 1959. A new technique of organizing a state-wide agitation was evolved by the opposition parties named a "Mass upsurge", a movement which was originally initiated by the Catholic Hierarchy. This technique of Mass upsurge was perfected by the opposition parties in Kerala and thereby paralyzed the State administration with an obvious motive to create a situation in which the central government could be urged to intervene in the affairs of the State under the provisions of article 356.

Kerala became the test case of political prejudice of the central congress ministry by which a communist Ministry was dislodged from power even though it enjoyed the confidence of the members of the Legislative Assembly. The Central Government established a bad precedent in clamping President's rule in Kerala when the Ministry enjoyed the full confidence of the democratic Legislative Assembly.


After the General elections in 1967 no political party came out with such strength as to form a stable Government. A coalition Ministry of Congress-Ganatantara Parishad headed by congress party withdrew its support from the Ministry. This was obviously done with a view to bring a complete congress ministry back to power. It had thus became the general practice of the Congress party that whenever they were sure to capture power in the mid-term elections they managed to impose the President's rule and favoured the dissolution of State Legislature whenever emergent situation arose in the state.
7. **Kerala: September 10, 1964 to March 24, 1965**

In the Mid-term elections of 1960 a coalition Ministry of Congress-PSP was installed in office. Very soon internecine squabbles within the congress party, scramble for power and position, and undisciplined groups placed the coalition ministry in a very precarious position. The fall of the Ministry was a foregone conclusion. The P.S.P. Chief Minister Shri P. Thanu Pillai was shifted from the political scene of Kerala by being appointed as Governor of Punjab. The Congress cabinet led by Shri R. Shankar was formed. This ministry also had the cyclic change due to the internal factions of the party groups. Fifteen congress members of Chacko group declared their intention to vote against the Ministry. A no confidence resolution was moved in the legislature in which the Chacko group voted against the Shankar Ministry and thus paved the way for the President's role.

8. **Kerala: March 24, 1965 to March 6, 1967**

By this time the State had become a puzzle and a problem both to its people as well as to the Central Government because it could not provide a stable ministry. There was a possibility minority Government in Kerala but the congress leaders did not like to form Government with the help of rebel congress members. Hence, the Governor, without even summoning the legislature, made a report that no group or party was in a position to form a stable Ministry. Therefore President's rule become inevitable.

9. **Punjab: July 5, 1966 to November 1, 1966**

A special situation existed in the State of Punjab during its reorganization into two States- Punjab and Haryana. The purpose of declaring an emergency under article 356 was considered "to facilitate the smooth transfer of power".

The exercise of extraordinary powers under article 356 for affecting the partition of a State was totally different form the application of emergency provisions which would be caused due to the failure of State machinery. Such a

situation was not visualized and contemplated by the framers of the Constitution. In Punjab actually there was no breakdown of constitutional machinery of the State and the congress party had a clear cut majority in the State legislature. Therefore the imposition of the President's rule in Punjab on the ground of division of Punjab was considered contrary to the grounds contemplated in article 356.


A special type of emergency arose in the case of Goa on the issue of its proposed merger with Maharashtra. President's rule imposed following the resignation of the Bandokar Ministry in the Union Territory of Goa, Daman and Diu. The purpose of the resignation of Bandokar Ministry and the imposition of the President's rule was to ensure a free and fair opinion poll on the issue of merger or otherwise. Hence on the report from the administrator of Goa, Daman and Diu, the President was satisfy that for the proper administration of Union Territory it was necessary and expedient to suspend the operation of certain provisions of the Government of Union Territories Act, 1963.

In the opinion poll people decided to remain under the authority of the Central Government. Afterwards fresh elections were conducted in March 1967 and subsequently new Ministry was formed by Shri Dayanand Bandodkar. Just before the swearing in ceremony of the Chief Minister President's rule was revoked on April 5, 1967.

ii) The Fourth General Elections and New Developments:-

Since the Indian Independence in 1947 the congress party was a ruling party at the centre as well as in most of the Slates. But the fourth general elections gave a new turn to the Indian political life and Indian politics. At the centre the Congress party maintained its government by a reduced majority though the Indian electorate vote it out in many states. In this way the monopoly of the Congress party's rule was broken and it led to transfer of power from the previously dominant congress to diverse parties and party coalitions in more than half of the Indian States”34

34 Paul R. Brass observed: A transfer of power at the State level took place as early as 1957 in Kerala.
Multi-party and non-congress Governments in Bihar, Madras, Kerala, Orissa, Punjab and West Bengal were formed immediately after the Fourth General Elections in 1967. Rajasthan was placed under the President's rule due to political uncertain conditions in that State. Later on within a period of six months since March, 1967 three more State Governments went to non-congress party. 

Alliances of different non-congress parties were forged with one major common objective - to keep the congress party out of office. The main binding chord of all non-congress parties was anti-congressism. The non-congress parties advocated and agreed on Minimum 'common programme' due to internal differences of the constituent units, factionalism within parties, fight for personal power and ambition and large scale defections of the members. During the period of toppling down of the State Governments the congress party made successful attempts in installing minority Governments with its support in three States. the Congress did not support and function as responsible opposition. In retaliation to this the opposition parties created constitutional crisis and raised controversies over the roles of the Speaker of Legislative Assembly and that of the Governor. Amidst this controversy a theory of ‘Implied discretionary powers’ of the Governor had been propounded. Opposition parties charged that the Governor acted in a partisan manner.

The very first time President's rule was imposed in India was on June 20, 1951 in the East while East Punjab State -17 months after the Constitution came into force on January 26, 1950. "During the period from 1950 to 1967, President's rule was rather infrequent - a total of 11 times in 17 years. However, in the post-1967 period the emergence of many parties and coalitions as also the phenomenon of the defections made President's rule a very frequent occurrence. During the period that the Congress party was in power at the Centre up to March, 1977, Presidential proclamations were issued on 47

However, Kerala has always been considered an aberrations in general pattern of congress dominance. The change in 1967 is far from more massive and is widely believed in India to presage the defeat of the Congress at the centre. When and if this occurs Indian Democracy will enter its third test, that of transfer or power at the centre'. Coalition Politics in North India. The American Political Science review. Vol. LXII, No 4, December 1968. p. 11.74

35 These were Haryana, Madhya Pradesh and Uttar Pradesh
36 These States were West Bengal, Punjab and Bihar.
Now, it become necessary for us to discuss in this period, how, the congress party make a trick to the Presidential rule to bring back congress Ministry into office.

1. Rajasthan March 13, 1967 to April 25, 1967

The Fourth General Elections of 1967 opened a new chapter in the political history of India. In 1967 factionalism within the Congress party Of Rajasthan and open revolt of the Congress leaders became the factor to reduce the strength of the congress party. The congress party secured 89 seats in a House of 184 members and the opposition parties 80 seats.

The scramble for power within the State started as soon as results of the elections were announced. On the one side Swatantra, Jan Sangh, S.S.P. and Janta Party formed a group in preventing the congress party from holding the rein of the State Government and claimed 10 have the majority to form the Government on the other side the congress party claimed the majority.

Both the groups- the congress as well as the non-congress parties, sent their respective two lists of 92 legislators to the State Governor in support of their claim to form Government. Mean while on March 1, 1967 the non-congress parties along with 22 independent MLA’s formed a United Legislature party called Samyakia Dal. Shri Sulchadia, the leader of the congress legislature party second the support of a few independents and one Swatantra member and claimed that the congress commanded an absolute majority in the Assembly.

The Political drama of suspense in the formation of Government had cast a gloomy shadow over Rajasthan when the Governor Dr. Sampurnanand invited SIM Sukhadia to form the Government as the leader of the single largest party in the legislature. The move of the Shri Sukhadia to form a new ministry sparked off widespread disturbance in Rajasthan resulting in the death of nine parsons and injuries to a large number of people including the police officers. Law and order was threatened and insecurity prevailed. This become a convenient ground for the

Governor to report that the State Government could nor he carried out in accordance with the provisions of the constitution. In view of the Governor's report the President's rule was imposed on March 13, 1967. In the beginning it was argued that the suspension of the State Assembly would last in the first instance for only two months within which period efforts would be made to form a ministry. This opportunity was conveniently exploited by the Congress to stage a comeback.

The opposition parties charged that the Central government displayed unseemly haste in accepting the Governor's conclusions with respect to the assessment of the situation in the State. A censure motion admitted in the Lok Sabha against the new Central Cabinet though it was ultimately defeated on March 20, 1967, nevertheless demonstrated that the imposition of the President's rule was not warranted by the circumstances of the case. Dr. Karan Singh criticized the action of the Governor and pointed that "For the Governor to come to an arbitrary decision that the opposition is in a minority a few hours before the Assembly was to meet and a trial of the strength was to take place it not only a complete negation of democracy but proved beyond any doubt that the Congress wishes to stick to power at any cost and the Governor is not wholly neutral."38

Without going into the merits of political judgment, it may be said that the constitutional power vested in the executive by virtue of Article 356 is capable of being misused by the party in power at the Centre of its political gains. The Rajasthan episode has cast new light on the Constitutional responsibility on the Governor in making a report to the President on the failure of the constitutional machinery in a State. Events in Rajasthan presented a clear picture of how the ruling party at the Centre allowed its party to gain time to manoeuvre the formation of a Congress Ministry.39 The imposition of President's rule was a convenient trick to bring back Congress Ministry into office.

38 Dr. B.B. Jena, The role of the State Governors in India', The Indian Political Science Review, Vol. II, Nos. 3 & 4, 1968
39 Dr. B.B. Jena, The role of the State Governors in India', The Indian Political Science Review, Vol. II, Nos. 3 & 4, 1968

As a result of the fourth general elections the congress was return to power with a comfortable majority in the State legislature. A new congress ministry was formed by Shri Bhagwat Dayal Sharma on March 10, 1967. However, within the Congress party the old cast fictions and group rivalries marred the prospects of stable congress government. The congress ministry did not remain in office for more than a week. It crumbled down on account of the open revolt of the party members at the time of the election of the Speaker on March 17, 1967 the office nominee Shri Daya Kishan was defeated on account of twelve congress members having voted against him. Shri Rao Birendra Singh, a dissident congressman, was elected as the Speaker of the legislature with the support of the opposition members. Most of the cabinet members of Sharma's Ministry resigned from the cabinet and joined the opposition group. In view of this Shri Bhagwat Dayal Sharma tendered his resignation to the Governor.

Member of the Haryana Congress, opposition group and Independents formed a United front. When Rao Birendera Singh was elected as the leader of the United Front he resigned from the Speakerarship. As the leader of the United Front, the Governor invited him to form Government on March 24, 1967.

Haryana was the first state where large scale defections wreaked the congress party. The game of defection from one party to the other continued for a long time. The legislators had established an all-India record for floor-crossing. While keeping in view the See-saw game of defections the Governor made a report to the President "that the State administration had been totally paralyzed by the frequent defections in the legislature and that no alternative stable ministry was possible so long as there were such a large number of MLAs with a rapidly changing their loyalties."40 To some members changing the party was apparently or a little consequence as changing a coat. The Governor observed, "it is impossible to find out whether the will of the majority in the legislature does really represent the will of the people."41

41 The Indian Express. November 22, 1967.
On receipt of the report of the Governor the President dissolve the State Assembly and brought the State administration under the supervision and control of the Central Government on November 12, 1967.\(^\text{42}\)

At the time of imposition of the President's rule in Haryana the Chief Minister Rao Birendra Singh contended that he commanded the Majority but he was not given necessary time to streamline and tone up the administration because he headed non-congress government. Mid-term elections were held in the State and the emergency was revoked when a Congress Ministry was formed by Shri Bansi Lal on May 21, 1968.

3. **Punjab: August 23, 1968**

Following the 1967 elections, a United Front Ministry had been formed under the leadership of Gurnam Singh. Following defection by 17 legislators the ministry resigned on November 12, 1967. The defectors, forming themselves into the Janta Party under the leadership of Lachman Singh Gill, established a Janata party ministry with congress support on November 25, 1967. On August 21, 1968 the Congress withdrew its support and Gill submitted the resignation of his ministry. On the Governor's recommendation president's rule was proclaimed and the Assembly was dissolved on August 23. Following mid-term elections in February 1969 an Akali-Janasangh government once again under Gurnam Singh was sworn in, ending the central rule on February 19, 1969.

4. **Bihar: July 4, 1969**

Mid-term elections in Bihar did not through up a majority party. The States come under President's rule on July 4, 1969 after barely four months of popular rule. The congress-led Haribar Singh Ministry had resigned on June 20, 1969.

\(^{42}\) Rao Birendra Singh expressed the view that the imposition of President's rule in Haryana was 'a serious encroachment on the rights of the people'. He reiterated that 'it would be a most unfair and unjust action on the part of the centre. We are in majority. The law and order situation is perfect. I cannot understand how they can take action under Art 356 of the Constitution.' The Indian Express, November 27, 1967. Later on Rao Birendra Singh filed a writ petition under Articles 226 and 227 of the Constitution in the High Court of H & P for an order or direction quashing the president's proclamation under Art. 356. But his writ petition was dismissed on March 1, 1968. The learned court observed that the President's proclamation was in accordance with his constitutional power under 356 and it not being an executive act of the Union and the President not being amenable to the jurisdiction of the High Court in view of sub-Art. (1) of Article 361, the Court cannot go into the validity of legality or propriety of his proclamation.” AIR 1968 Punj. 441
following the rejection of budget demanded by 143 to 164. The Bhola
Paswan United Front Government was sworn in on June 22, but it resigned on
July 1 when following the inclusion of two defecting congressmen into the Ministry
34 Jana Sangh legislator withdrew their support. President's rule was revoked on
February 16, 1970 a congress-led coalition ministry under the leadership of Daroga
Prasad Raj was formed.

5. Kerala: August 4, 1970

Kerala came under President's rule for the fifth time for a short
duration on August 4, 1970. Chief Minister Achuthe Melton on June 26
recommended the dissolution of Assembly as he wishes to seek fresh mandate.
He tendered the resignation of his Ministry on August 1. President's rule
remained in force till October 4, 1970 when Melton was again sworn in as
Chief Minister of a United Front Ministry with a fresh mandate.


In Gujarat, the Chief Minister, Hitendra Desai. recommended to the
Governor dissolution of the Assembly and continuance of his Ministry in a 'care
taker' capacity till the next elections. However, President's rule was proclaimed in
the State, on May 13, 1971 and the Assembly was dissolved.

After fresh election in March 1972. President's rule ended in Gujarat on
March 17 when a congress Ministry under Ghanashyam Dass Oza was formed.

7. Tripura: January 21, 1972

When Tripura become a State on January 21, 1972, President's
rule was proclaimed under article 356. The central rule came to an end on March
20, the same year after fresh assembly elections. A Congress Ministry under
Sukhmoy Sengupta took office.

8. Uttar Pradesh: June 13, 1973

President's rule had to be proclaimed for the first time in U.P. on June 13,
1973, following a revolt by the Provincial Armed Constabulary necessitating
deployment of the army. The State Chief Minister Kamalapati Tripathi, resigned, President's rule proclaimed, but the assembly was kept in suspension. Central rule was revoked on November 7 the same year.

Uttar Pradesh came under the fourth spell of President's rule on November 30, 1975. Chief Minister H.N. Bahuguna, under attack from dissident factions in the State Congress for several months and a number of his colleagues having already resigned, submitted his resignation on November 29. The President's rule was proclaimed the next day and the Assembly was suspended. Popular rule was restored after 52 days, when N.D. Tiwari of the Congress party was sworn in January 21, 1976.

9. Tamil Nadu: January 31, 1976

Tamil Nadu came under President's rule for the first time on January 31, 1976. When the DMK Government was dismissed on corruption charges. In November 1975, the ADMK leader, M.G. Rama Chandran, had submitted to the President a memorandum of allegations against the DMK Government. Similar memoranda were submitted by others. The Governor sent his report to the President on January 29, 1976 recommending President's rule and appointment of a high power inquiry commission. President's rule was proclaimed on January 31. The Assembly was dissolved. The ministry stood dismissed. On Feb. 3, 1976 the appointment of a one-man commission under Justice R.S. Sakoria was announced to inquire into the corruption charges. The President's rule was revoked after the June 1977 elections.

iii) Presidential rule during Janata rule:

As we have seen in the last pages how the ruling party uses the Article 356 of the Constitution for the Party interests. The Congress party established a bad precedent in clamping President's rule. While commenting upon President's rule in Kerala in June 31, 1999, Shiv Raj Nekade wrote:

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43 For full terms of President’s rule and incidents there under see, Indian Background Service Vol. II, No. 18(70), August 1, 1977.
“The Central Government established a bad precedent in clamping President's rule over Kerala when the Ministry enjoyed the full confidence of the Democratic Legislative assembly. The norms of Parliamentary form of Government are dismissed a ministry on the floor of the Legislature rather than on the grounds extraneous consideration of loss of people's support to the ruling State Ministry demonstrated outside the Legislature. A very dangerous political weapon in the hands of the Central Government which may boomerang at any time against congress ministries of the States if the Central Government would be formed by the parties other than the Congress in future.\textsuperscript{44}

In its election manifesto issued on February 10, 1977 the Janta Party had included a political charter which contained 19 steps to "generate fearlessness and to revive Democracy" Point seven of the charter said that Janta Party would:

"(7) move to amend Article 356 to ensure that the power to impose President's rule in a State was not misused to benefit the ruling party or any favoured faction within it."\textsuperscript{45}

The words of Shri Shiv Raj Nakade become true when Union cabinet recommended to the Acting President on April 29, 1977. President delayed appending his signatures to the nine proclamations by nearly a day. A constitutional crisis was feared.

About the middle of April, 1977 Mr. Charan Singh, the then Home Minister wrote to the Chief Ministers of nine States\textsuperscript{46} asking them to advise their respective Governors to dissolve the Legislative Assemblies. This request was based on the ground that the voting in the last general election to the Lok Sabha showed that the congress party in these States had lost the confidence of the people and therefore, it had no right to run the Government and should seek the verdict of the people by general election. It may be mentioned that only one each out of 25 and 40 seats was secured by the Congress party in the Rajasthan and Madhya Pradesh respectively and 3 out of 42 in West Bengal, 4 out of 21 in Orissa

\textsuperscript{44} Shive Raj Nakade, op. cit., p.91.
\textsuperscript{45} The Janta Govt. fulfill its promise and by the 44th Amendment Act. 1978 the scope of article 356 delimited to some extent.
\textsuperscript{46} These States were: West Bengal, Orissa, Bihar, Uttar Pradesh, Madhya Pradesh, Himachal Pradesh,
and not a single seat in the other live states. As regard what would happen if the Chief Ministers declined to comply with his request, Mr. Charan Singh said that some constitutional means would have to found to resolve the difficulty, obviously hinting that the centre would act under Article 356 and impose President's rule.

The Chief Ministers are expected, declined to advise their Governors to dissolve the assemblies. Their ground was that they enjoyed the confidence of the majority of the members of the respective Assemblies and therefore, no questions of their resignation or dissolution of Assemblies arose. The request of Mr. Charam Singh was described by some Congress Ministers as unconstitutional and illogical. The action was termed "Politically motivated and constitutionally unwarranted", as it was urged, there has been no breakdown in the State Political Machinery. An informal meeting of the Congress Working Committee held on May 1 said in a statement:

"The dissolution of the nine Assemblies by the Central Government is totally undecorated and contrary to all norms of constitutional and political property. It impairs the federal structure and erodes the autonomy of the State."

These nine proclamations were issued without any reports being made to the Centre by the State Governors. Such reports normally precede presidential take over of a State administration. However, article 356 explicitly states that action can be taken even without the Governor's report. Clause (1) of this Article begin with the words: "It the President on receipt of Report form the Governor of a State or otherwise."

It appears, however, that such a request was made by the then Congress Government at the center to the communist Ministry in Kerala in 1959 and on the Ministries declining to comply with the request, President's rule was imposed under Article 356.

In the circumstances several question of grave constitution importance arose. Firstly, whether Ministry should resign or can be dismissed and a general

Punjab, Haryana and Rajasthan.
election held when the Ministry enjoyed the confidence of the majority of the legislature if it appears that the Ministry and the legislature have lost the confidence of the people. Secondary, if the Ministers does not voluntarily resign, can the Ministers be dismissed and by whom. Thirdly, is the Union Government, entitled to step in and impose President's rule under Article 356 on the ground that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. And lastly, what is the position and power of the President vis-a-vis his Ministry if the Ministry advises President's rule in any State.

As regard the first question, it seems to be the accepted doctrine that a Ministry which appears to have lost the confidence of the people should resign and seek re-election even though it commands a majority in the House and it is unwilling to do so, it can be dismissed by the appropriate authority Anson says:

“The direct action of the crown in causing or refusing a dissolution may be said to have ceased; but the prerogative exists; where the King has thought that his Ministers and Parliament were alike out of harmony with the country he has dismissed his Ministers. (Anson gives two instances, one in 1783 and other in 1834). The Cases served to remind us that the prerogative might conceivably be a source when a ministry and House of commons were alike out of harmony with the country and were unwilling to admit the fact.”

Dicey says:

"I entirely agree that the king can do nothing except on the advise of Ministry. I totally disagree with the doctrine draw from this principle that he never dismiss Ministers in order that he may ascertain the will of the nation."

Jennings is supposed to maintain a contrary view. He says:

“If the King believes that the Government has lost its majority and it is any concern of his, his obvious step is to ascertain whether his assumption is correct and to insist upon a dissolution. If the Ministers refused to advise the dissolution in Council they would resign; and if they did not resign he could dismiss

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48 Quoted in C.W.N. Vol. LXXXI No. 24 May 2, 1977 Editorial Notes, p.XCVI.
49 Ibid.
Jennings, of course does not say what the King should do after dismissing his ministers. The obvious step should be to dissolve Parliament, and order a general election as George-Governor-General in Canada did in 1925.

As regards the second question, there is no King in India; but the slants of the Governor as the constitutional head of a State is akin to that of the crown in England. In the similar circumstances, the Governor can ask the Ministry to resign or dismiss it and direct a general election. If the Governor does not take any action the Union Government can step in either on the Governor's advise or suo motto impose President's rule and order a general election thereafter. President's rule has been imposed at least thrice on the ground that the Legislature does not represent the views of the people, once in 1959 in Kerala when it was said that there was a "great upsurge" of public opinion against the Communist Ministry, in Haryana in 1967 and again in Tamil Nadu.

The third question it, can it be said that the Government of a State cannot be carried on in accordance with the Provisions of the constitution when the Ministry has the support of the legislature and can very well run the administration? The foundation of representative Government is that the administration of the State must be carried on in accordance with the wishes of the people and the basic structure of our Constitution is Parliamentary Democracy - base don popular opinion. And when it appears the legislature elected by the people, has lost the confidence of the people, the Government supported by such legislature cannot be said to be carried on in accordance with the provisions of the Constitution.

There must be some authority to intervene in the case of a breakdown of the constitution. The Central Government was not only given the authority to intervene but also burdened with obligation to see that the Government of a State is bring carried on in accordance with the provisions of the Constitution.  

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50 Ibid.
51 Article 356.
52 Article 355.
The question remains is the President bound to act according to the advise of the cabinet? The 42\textsuperscript{nd} Amendment Act has made it incumbent upon the President to act in accordance with the advise of Council of Ministers.\textsuperscript{53} It seems there is a source of conflict here so far as Article 356 is concerned. Under Article 356, the President has to be satisfied that the requisite condition precedent to act under that article exists. The Council of Minister may have been satisfied that such condition exists when they advise the president to issue a proclamation. In the President to be content with a vicarious satisfaction. He can, of course, insist upon materials being placed before him for arriving at his own satisfaction. Hut ha President does not agree, what would be the consequence. A serious constitutional crisis would ensure, from which there appears to be nor scope of escape. Formally when the advice of the Ministry was not binding, on disagreement the Ministry would resign. As at Present can the president be impeached on the ground of a ministry in the State enjoyed majority support should be left to be decided only in the Assembly.

"Several legislators, including the deputy leader of the Congress legislature party of Karnataka, also approached the Prime Minister and Home Minister, suggesting that the centre should immediately intervene. Even then, the Government felt that such intervention was not called for.

The Governors Report received today made it necessary to for the government to review the mater afresh. The Governor has pointed out..

"In the circumstances, the government has also to consider whether a Ministry, which seeks to ensure its survival only by bribery, unfair inducements and intimidation, could reasonably be expected to allow free and fair elections to be held.

This aspect, taken along with other circumstances clearly brought out in the Governor's report, persuaded the government to accept the Governor's recommendations.

\textsuperscript{53} Section 13, Amendment of Article 74 of the Constitution. (Forty Second Amendment) Act, 1976, enacted as follows: In article 74 of the constitution, for clause (1), the following clause shall be substituted, namely; "(1) There shall be Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with his advice."
Karnataka: Dec. 28, 1977

The Ministry headed by Mr. Devaraj Urs was dismissed and President's rule imposed in Karnataka On December 28, 1977. The State Assembly was also dissolved. New elections were ordered in the State to be held in six weeks. The Governors report complained of "horse trading", "bribery" "inducements", "undue pressure" and "intimation" which had vitiated the political atmosphere in the State. It was clear, according to him, that any further delay in taking action would "further pollute the prevailing atmosphere."

The Urs Ministry was the second Karnataka Ministry to be dismissed. The first, headed by Mr. Veerendra Patil, was dismissed before the 1971 elections. Incidentally this was the 10th State Ministry to be dismissed after the Janata Government come to power at the Centre in March, 1977.

The following is the text of the announcement imposing President's rule issued by the Home Ministry:

"A large number of members of the Congress legislature party in Karnataka have been publicly announcing their decision to withdraw their support to the Chief Minister, Mr. Devvraj Urs. The Government reviewed the developments in the States, on Dec. 28, 1977, and were of the view that the question whether or not violation of the Constitution? In the constituent Assembly, a proposal was made for inserting an Instrument an Instruction where it was laid down that the President should act according to the advise of the Ministry. When Mr. Kamath asked whether the President could be impeached it he did not, Dr. Abedkar replied, there is not the slightest doubt about it or would be president be required by convention to resign as would the Ministry before the 42nd Amendment?"

55 Ibid.
(U.T.) Mizoran: 12 November, 1978

Presidential rule was proclaimed in the Union Territory of Mizoram on 12th November, 1970 due to a split in the ruling people's conference.56

The Prime Minister Mr. Morarji Desai, during his recent visit to Mizoram had ruled out fresh elections in the Union Territory saying that it was a luxury.

The Mizoram Chief Minister told PTI that his stand was vindicated in calling for a fresh mandate to prove who was in a majority. He said the decision of the Union Government have paved the way for democratic process to enable the people to express their support for bringing about a final solution to the pace effort in the Union Territory.


Recently, Pondicherry, Union Territory brought under President's rule in November 13, 1978 and Assembly was also dissolved.57 The decision on Mizoram followed a request from is Chief Minister for President's rule. But the decision in report of Pondicherry is that of the Centre.

iv) President's Rule from 1980 to 1997:-

1980 Owing to political feud between the congress and the opposition parties, after the central govt. formation the President rule was impose din 9 states.

Sikkim

In the 1979 assembly elections, the Sikkim Janta Parishad (as it was known before it merger with Cong. (I) in July, 1981) won 16 seats in a 32 member assembly. Later on it secured the defection of nine more legislators. Initially, the Chief Minister, Nar Bahadur Bhandari pulled on well but by Aug. 1983, his long simmering differences with the Governor, J.H. Talyarklan came out in the open with former openly demanding the Governor, J.H.T. Talyarkhan came OUT in

the open with the former openly demanding the Governor's removal. A time came when both were barely on speaking, terms and thus the constitutional crisis began to brew in the state. On May 11, 1984, the Governor abruptly dismissed the Bhandari ministry even though it still commanded majority support in the Assembly and administered oath to Bhim Bahadur Gurung, an ousted member from the ministry.

The fortnight old government of Gurung was reduced to minority when by a clever maneuver; Bhandari persuaded 16 MLA's to resign from the Congress. He formed a new party Sikim Sangram Parishad and staked his claim to form a new ministry. But instead of giving Bhandari an opportunity to test his claim on the floor of House, the Centre decided to impose President rule and dissolved the assembly. This was done on May 25, 1984.

J & K 1984

The border sensitive state of Jammu and Kashmir, though an integral part of Indian Union, enjoys special under article 370. In the assembly elections held on June 5, 1983, National conference headed by Farooq Abdullah emerged victorious by securing an absolute majority. Differences among the National Conference and the central leadership of Congress prompted the Centre to take advantage of family feud between the Chief Minister and his brother in law GM. Shah (who had a grouse on account of hint being not elected successor of Sheikh Abdullah). On July 2, 1984, the Governor Jagmohan dismissed Abdullah's ministry as it was reduced to minority, following withdrawal of support by 13 National Conference legislators. Without giving a chance to Abdullah to prove his majority on the floor of the house, the Governor invited G.M. Shah, who had staked his claim to form the government with the support of Cong (I). The drama could not have been played without the strong arm of Centre nudging the Governor who did not perform his constitutional duty in an objective and fair manner in contrast to the just attitude adopted by his predecessor B.K.Nehru.

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58 Main demand of Bhandari was that he position of people of Nepalease origin in Sikkim should be consolidated through reservation of seats in The Assembly. But the Governor the behest of the Centre discouraged these postures.
Hindustan Time editorialised... “No time was wasted in the swearing in ceremony. The change was too sudden, too sudden to be believed... even the Chief Secretary was playing golf when the transfer of power in Kashmir was taking place.” The Governor also gave one month time to Shah to prove his majority on the floor of assembly.

The new government miserably failed to provide stability or clean administration to the state. The situation became worse when, in Feb. 1986, the state witnessed communal disturbances on an unprecedented scale. On Feb. 27, about 3000 Kashmiris held a silent procession in New Delhi to protest against the unabated violence in the valley and presented a memorandum to Lok Sabha Speaker, Balram Jakhar. Oposition MP's demanded the removal of 'unrepresentative and incompetent' government of G.M. Shah. On March 6, the congress (I) decided to withdraw support to the 20 month old ministry reducing it to minority. On March 7, Governor Jagmohan dismissed the shah ministry and placed the state under Governor rule. The assembly was put under suspended animation.

In fact, shah should never have been installed in the 1st place. In keeping the assembly under suspension and not dissolving it, Jagmohan obviously succumbed to the pressures from Cong. (I) which still hoped that it could form the government by purchasing MLA's from the two National Conference fictions.

Governor rule was followed by President rule on Sept. 71, the assembly continuing under animated suspension. Opposing President rule, M. Farooqui (CPI) said "by imposing President rule, the central government has given another blow to the concept of democratic federal polity.”

Sensing the adamant attitude of Rajiv Gandhi not to dissolve the assembly, Farooq Abdullah initiated a dialogue with the former to resolve the deadlock. An agreement was reached under which a coalition of Congress (I) and National Conference headed by Abdullah was to be formed. Commenting upon

60 Section 92 of the J & K Constitution.
the arrangement, N.T. Rama Rao, the then Andhra Pradesh Chief Minister said, "It is not certainly the will of people but a mere arrangement at sharing power". President rule was revoked on Nov. 7, before the installation of a 10-member coalition ministry headed by Abdullah. Immediately after the swearing in ceremony, the Governor dissolved the assembly on the recommendation of the Chief Minister.

**Tamil Nadu- 1988**

During G. Ramachandran leadership, AIIDMK enjoyed absolute majority (131/234). On his demise senior most member of the cabinet was asked to continue as acting president till the legislature party elected its leader. After physically verifying the 97 supporters of Janaki Ramachandran, the Governor appointed her as Chief Minister and asked her to prove majority within 3 weeks of assuming office. In this interval there were undesirable developments (resignations, disqualifications of members, unruly scenes etc.) Janaki Ramachandra won the vote of confidence in the absence of Congress, CPI, CPM. The Governor recommended President rule and assembly was dissolved on Jan. 30, 1988. The Governor did not explore the possibility of alternate government.

**Nagaland- 1988**

Hoshike sema led the Cong. I Ministry in Nagaland (34/60). On July 30, 1988, 13 members resigned to form a new party called Congress (Regional) of Nagaland. Sema ministry was reduced to a minority. The newly formed party along with some other groups elected a new leader, Mr. Vamuzo who staked his claim to form the government. But Governor sent out report to the President recommending President Rule which was imposed on August 7, 1988 and assembly was dissolved.

The Governor's action was characterized as blatantly partisan and motivated, designed primarily to help the ruling congress. It was criticized by all. Vamuzo, leader of the newly formed alliance JRLP, challenged the validity of Presidential proclamation dissolving the Nagaland state assembly. The writ petition

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61 Hindustan Times, Sept. 9, 1986.
62 Times of India, Nov. 8, 1986.
was heard by Chief Justice, A. Raghuvir and Justice B.L. Hansaria of Gauwhati High Court. Both the judges held the Governor's report to be unsustainable. But they disagreed on the consequences of the findings and the relief to be granted.

**Mizoram-1988**

A Memorandum of settlement was signed on June 30, 1986 by the Union home Secretary, Laldenga the MNF leader and the Chief Secretary of Mizoram to restore peace and normalcy in the state. A Congress — MNF coalition ministry was sworn in on 21st August. General elections were held in Feb. 87, where MNF led by Laldenga secured 25 seats and Congress 13 (Total 40). The MNF formed the ministry.

Reduced 10 minority due to the defections of some MLA's, who formed Mizo National Front (D) on August 31 electing Lathanwala as leader, Laldenga offered to seek a vote of confidence in the assembly but the Governor, Hiteshwar Saikia sent a report to the President recommending promulgation of President's rule and dissolution of assembly which was done on Sept. 7, 1990. Again the decision was termed as partisan and improper because the strength of majority of the Laldenga ministry was not allowed to be tested on the floor of the House even though the Chief Minister had offered to do so within a week.

**Karnataka-1989**

R.K. Hegde was elected leader of the Janta legislature party and sworn in as Chief Minister in March, 1985. In August, 1988 he resigned on Telephone taping episode. S.R. Bommai was elected leader of the Janta legislature party and sworn in as Chief Minister on Aug. 13. There was a split in the Janta Party. The Governor sent a report to the President that the ministry headed by Bommai does not command a majority in the House. Bommai informed the Governor and the President that he was willing to advance the session of assembly to prove the majority. But the Governor requested the President to take action on his earlier report. Accordingly the President issued a proclamation under article 356 dismissing Bommai government and dissolving legislative assembly of the state of Karnataka on April 21, 1989.
The imposition of President rule in April, 89 in Karnataka was a blatant violation of all constitutional norms. It was an unprincipled use of the constitutional power to pull down an opposition led ministry through the back door. It was evident, that the situation was not such that the Governor could not have waited for even seven days to get proof of the majority even when the Chief Minister was ready to prove the majority on the floor of assembly and ready to prepone the session of assembly. The Governor did not explore the possibility of forming an alternate government headed by some one other than Bommai or with the support of parties other than the Janta Dal. Quite naturally, the action of Governor attracted the nation wise condemnation, it deserved. All the opposition parties observed 'Protest Day' on April 27, 1989 all over the country to condemn the Centre's naked aggression on the democratic rights of the people through its policy of destabilizing non congress state governments.

Assam-1990

AGP won the 1985 state assembly election and formed the government with Prafulla Kumar Mahanta as Chief Minister. Activities of ULFA were increasing day by day due to which many tea-companies closed their offices because the ULFA was openly preaching secessionist techniques. 'Telegraph' in its editorial comment said "The time is running out. Some one must act. If it is not the state govt., then it will have to be Centre.. In such situation free and fair elections arc not possible."63

Chandra Shekhar government had informed the Lok Sabha on Nov. 16, 1990 that Assam was one of the priority issues on its agenda. He asked the government of Assam to restore law and order and warned that "things would otherwise take their own course".64 The Governor of Assam sent a report on Nov. 26 informing the Centre that ULFA cadres were receiving arms form abroad. He said elections (due in last 1990 or early 1991) in such circumstances would be a farcical exercise. The cabinet committee on Political affairs considered the report on Nov. 27 and decided to promulgate president rule which was imposed on Nov. 28 and state assembly kept in suspended animation. Chief Minster Mahanta termed the act of central government as 'betrayal of democracy'. The Janta Dal which was a

63 Telegraph, Nov. 19, 1990.
64 Statesman, Nov. 17, 1990.
constituent of National Front government along with the AGP said that the decision had been taken unilaterally and without consulting any one. V.P. Singh termed its as undemocratic Act.

**Goa-1990**

In the Goa Assembly elections held on Nov. 22, 1989, Cong. (I) secured 20 seats, MGP 18 seats and Independents 2. Cong. (I) formed the government with the support of one Independent. A group defected from the Congress and formed Goan People Party (GPP) with Dr. Barbosa as President. MGP and GPP formed a Progressive Democratic Front. Congress Chief Minister Rana, reduced to minority, resigned on March 26 and Dr. Barbosa was sworn in as Chief Minister. On Nov. 29, MGP withdrew support from the Govt. and staked claim to form the ministry, being the largest party with support of 19 MLS's Dr. Barbosa on the other hand did not resign and urged the Governor to allow him to prove his majority on the floor of House. The Governor Khurshid Alam Khan asked the Chief Minister Dr. Barbosa to seek a vote of confidence in the assembly on Dec. 10 Communication in this regard was sent on Dec. 6. But three GPP ministers resigned on Dec. 6 to join MGP and Dr. Barbosa instead of facing the assembly tendered his resignation on the morning of Dec. 10.

Criticising the Governor's action to summon legislative assembly, the state BJP said that the Governor should have dissolved the house instead of asking the Chief Minister to prove majority. The General Secretary of the Goa Pradesh Janta Dal accused the Governor of encouraging horse trading.

MGP trader Ramakanta Khalap met the Governor at Raj Bhawan and staked his claim to form the new government as his party enjoyed the support of 21 members. The leader of the Congress Democratic Forum, D'Souza also staked his claim to form the government. The Governor asked both to submit the list of supporters to him. But the disqualification of two MGP legislators on Dec.13, upset the calculations of both contenders and President rule had to be imposed.

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be imposed on Dec. 14, 1990. The assembly was kept in suspended animation.

The action of Governor could not be justified. He neither explored the possibility of alternative govt. nor dissolved the assembly. He should not have taken upon himself the responsibility of assessing the majority. The Governor is not expected to find out whether the ministry would be stable or not: nor can he ensure the stability of ministry. That should Sc left to the legislators. Since the MGP was the single largest party in the 37 members house (after excluding three seats falling vacant due to disqualification) and since it also enjoyed the support of 3 GPP members, the Governor should have invited the loader of MGP to form the ministry and to prove his majority on the floor of assembly within the shortest possible time or alternatively he should have dissolved the assembly so as to enable the electorate to resolve the dispute.

President rule in Goa was revoked on Jan. 25, 1991. MGP rebel leader Ravi Naik was sworn in as Chief Minister of Democratic Front comprising of legislators of Cong (I), MGP rebel group, a faction of Goan People Party and one independent.

Tamil nadu-1991

Ever since Chander Shekhar became Prime Minister on Nov. 10, 1990, Karunanidhi's days as Chief Minister of Tamil Nadu seemed to he numbered because of his opponents, being the supporters of government at the Centre. Both the Congress and the AIIDMK were demanding the ouster of DMK government since the day it was installed in Jan. 1989, after winning a thumping majority in the assembly elections. The demand gained momentum after the Lok Sabha elections in Dec. 1989 in which the DMK was humiliated.

Prime Minister Chandra Shekhar in his speech in parliament on the vote of confidence on Nov. 16, 1990 administered stern warning to the stale government of Tamil Nadu and made mention of threats posed to the nation by the extremists. It was evident from the mood of the Prime Minister that the state government was going to be suspended in near future. AIIDMK leader Jayalalitha issued an ultimatum that her party's ten MP's would be forced to reconsider support
to the Central government it Karunanidhi was allowed to present the budget on Feb. 2.\textsuperscript{70} Even the Congress-I threatened to go to the extent of withdrawing support on the 'gulf issue' if the Tamilnadu government was not dismissed.

State Governor S.S. Barnala was summoned to Delhi on Jan. 30, 1991 to obtain favourable report but he is reported to have refused. The President thereafter assumed to himself the functions of state government on the advice of Union cabinet. Tamilnadu was brought under President rule and the state assembly was dissolved on Jan. 30, 1991 by invoking the 'otherwise' provision under article 356. Karunanidhi very aptly summed up this step by observing "Chandra Shekhar dismissed my government to save his."\textsuperscript{71}

According to the official sources, Tamilnadu government was dismissed following the breakdown of law and order in the state and increasing activities of Sri Lankan Tamil militants (LTTE) group in the state. Recurrent communal trouble in the state was also cited as one of the reasons for the dismissal.\textsuperscript{72}

**Haryana-1991**

In Haryana, Janta Dal came to power in June 87. Following All India pattern, it suffered split in 1990. Om Parkash Chautala replacing Hukam Singh, was elected leader of Janta Dal legislature party on Dec.2, 1989 to succeed his father who had become Deputy Prime Minister in V.P. Singh government. However he had to quit after violent incidents at Meham on May 22, 1990. His second brief stint was in July 1990, when B.D. Gupta was virtually asked to abdicate in his favour.

The elevation of Chautala to Chief ministership for the third time within a span of sixteen months touched off the resignations of three Ministers of Hukam Singh ministry and the withdrawal of support by two independents. JD (S) was reduced to minority on March 26, when speaker disqualified three JD(S) legislature. Strength of the party was now 39 in a 90 Member house having an effective strength of 80 members. Chautala recommended dissolution of state

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\textsuperscript{69} Statesman, Nov. 17. 1990.
\textsuperscript{70} Ibid.
\textsuperscript{71} Ibid.
\textsuperscript{72} Statesman, Jan. 31, 1991.
assembly and holding of fresh election along with Lok Sabha polls, with caretaker-
ship for himself. All major national political parties on the other hand called
upon the President to dismiss Chautala government and impose President
rule in Haryana. Governor Dhanik Lal Mandal asked Chautala to prove his majority
on the floor of Assembly by April 3\textsuperscript{rd}.

Chautala in his reply, questioned the constitutional propriety and legal
authority of the Governor in directing him to prove the majority, once he has
recommended the dissolution of assembly.\textsuperscript{73} The Governor thereafter sent his report
to the President and President rule was imposed on 6\textsuperscript{th} April. The assembly was
dissolved with the direction to hold assembly election simultaneously with Lok
Sabha polls in May, 1991. The promulgation of President rule had the unique
distinction of having enjoyed the support of all national parties and the press.

Meghalya-1991

Ruling MUPP enjoyed the support of 30 in the 60 member Meghalaya
Assembly with an effective strength of 58. Opposition Congress(I) and its allies
were at 26 excluding the speaker which belonged to Congress(I).

Following a written complaint by the Cong(I) legislatures, the speaker
passed an interim order suspending the voting rights of five legislators including
four ministers of the ruling MUPP within the house with effect from August 7, the
day fixed for seeking a vote of confidence. They were finally disqualified from the
membership of House on Aug. 17. The ruling reduced the strength of 19 month old
ministry headed by B.B.Lyngdoh who decided to thrash out the majority issue on
the floor of the House. The Governor issued an order dated Aug. 31\textsuperscript{st} summoning a
special session of state assembly on Sept. 9 to decide on the vote of confidence.
In the meantime the disqualified MLA'S moved the Supreme Court which
directed status quo on Aug. 23 and later stayed the disqualification of four cabinet
ministers permitting them to vote in the assembly session. The Speaker, however,
insisted upon his decision. The Governor cancelled the special session. On Oct. 8,
when the assembly met to consider the motion of confidence in the ministry, the

\textsuperscript{73} Although the stand of Chautala had some logic, but his recommendations had no value since he did
not command majority.
Speaker did not count the vote of reinstated members and in the tie of 26 each, cast his vote in favour of Congress(I).

Immediately thereafter, Congress Legislature party leader J.D. Phoreman staked his claim to form the ministry put by virtue of Supreme Court's interim order, the Governor could not possibly concede the demand. The State Governor, Madukar Digha in this letter dated 9th Oct. confidentially asked the Chief Minister to resign which the Chief Minister refused. The Governor thereafter sent two reports to the Central government on Oct 8, 9 which were considered by the Union cabinet on Oct. 11. The Union Minister of State for Home, Mr. Jacob later informed the Rajya Sabha that the Governor report gave the Centre only two options either to impose President rule or to form an alternate government which meant installation of Congress (I) government in the state.74

The Union government after taking into consideration the relevant facts decided to recommend President rule under Art. 356, keeping the assembly in suspended animation. State wise brought under President rule on Oct. 11, 1991 itself.

**Madhya Pradesh-1992**

In Sunder Lal Patwa Vs. Union of India75, a full bench of Madhya Pradesh High Court by a majority of two to one invalidated the proclamation under Art. 356 issued on Dec. 15, 1992 removing the state government and dissolving the legislative assembly.

The majority took the view that the President's satisfaction was based on two letters of the Governor which mentioned some incidents of riots, arson and killings in the aftermath of the demolition of the disputed structure of Ayodhya on Dec. 6, 1992. These incidents, the majority did not find adequate to justify an action under article 356. Relying upon Art, 355 it held that the internal disturbance in a state to justify an action under Art. 355 it held that the internal disturbance in a state to justify an action under Art. 356 must be of such magnitude as to satisfy the President that it would be impossible for the government.

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74 Telegraph, Nov. 29, 1991.
75 AIR 1993, Jab. LJ 387 (FB).
to carry on in accordance with the Constitution. It ordered the restoration of the government and the assembly. The operation of High Court's order was however stayed by the Supreme Court pending the disposal of the appeal against it.

v) **President's Rule from 1997 to 2008:**

In 1997 in the case of UP when the President was advised to invoke article 356 on the grounds of violence and large scale defections in the Art. 356 could not be invoked in such situation. Again in 1998, in Bihar when complaints of lawlessness, political corruption, mal administration, economic crisis etc. were made, the President sent back the cabinet decision for its reconsideration primarily for the reasons that these factors did not constitute the ground for the exercise of power under Article 356. In neither of these two cases, the cabinet advised the President second time to invoke Article 356. In both these cases, the state governments enjoyed the confidence of assembly.

In Uttar Pradesh, in 1998, Governor Romesh Bhandari being of the view that the Chief Minister Kalyan Singh had lost majority in the assembly, dismissed him without affording him an opportunity to prove his majority on the floor of House and appointed Jagdambika Pal as Chief Minsitcr. Kalyan Singh challenged the action of Governor in High Court, which by an interim order put him in the position. The order was challenged by Sit Jagdambika Pal before the Supreme Court, which directed a 'composite floor test' to be held between the contending parties, which resulted in Kalyan Singh's securing majority. Thus the interim order of the High Court was made absolute.\(^{76}\)

In 1999, a Presidential proclamation was issued dismissing the Government of Bihar on the ground that the law and order had failed in the state. The proclamation was, however, not ratified by the parliament and hence the dismissed ministry was reestablished.\(^{77}\)

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\(^{76}\) Jagdambika Pal vs. Union Of India, (1999), 9 SS 95.

President's Rule in Bihar-

On March 7, 2005: The President's Rule was imposed in the State of Bihar as no party had the required majority of 122 MLA's in a 243 members Assembly. In a House of 243 members, RJD had a strength of 75, UP 29, NDA 93 Congress 10, BSP 2, CPI 13. CPM 1, CPI (ML) 1, Samajwadi Party- 4, NCP 3 and 12 independents. The centre acted on the Report of the governor that there was no possibility of a stable Government. The petitioners challenged the validity of the presidential Proclamation of 23.5.2005 ordering dissolution of the Legislative assembly of Bihar. The present case is of its own kind where even before the first meeting of the legislative assembly its dissolution had been ordered on the ground that attempts were being made to cobble a majority by illegal means and lay claim to form the Government in the State and if these attempts continue it would amount to tampering with the constitutional provisions. Thus the main question that arose in this petition was whether the dissolution of an assembly under Article 356 (1) of the constitution could be ordered to prevent the staking of a claim by a political party on the ground that majority had been obtained by illegal means. The facts in brief were that the assembly election was held in Bihar on 17.12.2004 and its results were declared on 4.3.2005. But no party gained a requisite majority in a 243 member Assembly. The party position of different political parties were as follows- RJD 75, LPJ 29, NDA 93, congress 10, BSP 2, CPI 13, CPI (M) 1, CPI (ML) 1, NCP 3, S.P. 4 and independent 12. Since no political party was in a position to form a Government President's Rule was imposed under Article 356 of the Constitution and the Assembly was kept in suspended animation. Afterwards, a process of realignment of political forces started and LPJ, MLA's were merged with JD (U), and thus the NDA reached to a position to form the Government. This was not at all acceptable to the RJD which was a constituent of the UPA Government at the Centre. The Governor sent a Report on 21.5.2005 recommending for the imposition of the President's Rule and dissolution of the State Assembly. The Union Cabinet met at about 11.00 P.M. and accepted the Report of the Governor and sent a fax message to the President, who was in Moscow, recommending, the dissolution of the State Assembly. This message was received by the President's office in Moscow at 0152 hrs. 1ST. The President sent his approval through a fax message which was received at 0350 hrs. 1ST and a Proclamation was issued at 1430 hrs. IST on
In Rameshwar Prasad v. Union of India, a five Judge bench of the Supreme Court comprising of K. Sabharwal, C.J., B.N. Agrawal, Ashok Bhan, K.G. Balakrishnan and Arijit Pasayat, JJ., 3- 2 majority (Arijit Pasayat and K.G. Balakrishnan, JJ. Dissenting) held that the presidential Proclamation dissolving State assembly was "unconstitutional and based on extraneous and irrelevant grounds". The Court said that "the governor misled the centre in recommending the dissolution of the State assembly and the union council of ministers should have verified before accepting it as 'gospel truth'. The governor acted in "undue haste" in sending his Report and his full motive was to prevent JD (U) from staking claim to form a Government after a fractured assembly polls verdict. The Court said that the governor's Report contained "fanciful assumption" which could be "destructive to democracy". The drastic and extreme action under Article 356 cannot be justified on mere personal opinion of the governor. The Court said that the it cannot remain a silent spectator watching the subversion of the constitution. The council of minster should have verified the facts Stated in the Report of the governor before hurriedly accepting it as a 'gospel truth' as to what the Governor Stated. It was claimed by the governor that he recommended dissolution on the ground that in view of media Report a political party was trying to gain majority by engineering defections and this was a series threat to democracy. On this, the Court held that this was matter which can be solved under the tenth schedule and not relevant at the time when the governor had to send Report to the centre. "That was fully an unconstitutional act". The Court declared. The issue of defection has to be dealt in accordance with the law as no such power is given to a governor.

The Court emphasized that the Governor while recommending dissolution of an assembly has to annex with his Report to the union Government "relevant" material substantiating his decision. "In the absence of the relevant material much less due verification, the Report of the governor has to be treated as the personal 'ispe dixit (Personal opinion) of the governor.

Regarding the claim of the petitioner for the revival of dissolved assembly the Court held that in view of the election process was set in motion and was at an
advanced stage, in the larger interest, it would not be proper to order revival of State assembly. The Court avoided any confrontation between the legislature and the judiciary by not ordering the revival of the assembly. Secondly, the Court rightly left the matter to be decided by the electorate which was the ultimate source of power. Had the Court revived the assembly there would have been a serious controversy between the judiciary and the legislature.

The Court rightly decided in favour of the election process to be completed believing in the judgment of the people which ultimately rose to the occasion and gave a clear verdict. In view of the stinging remarks by the Court on the role of the governor, it is desirable that political parities should re-think to implement Sarkaria commission Report which had suggested that the centre should recommend "persons who have not taken too great a part in politics, generally and particularly in the recent past for governorship". Also, the Court's judgment holds a lesson for the president who has to apply his mind before giving consent to the cabinet's recommendations.

**President's Rule in Goa in 2005**

In Goa the president's Rule was imposed in a peculiar circumstances. The United Progressive Alliance (UPA) Government dismissed its own Government and imposed the president's Rule in the State suo moto without governor's Report after Chief Minister Pratap Singh Rane won the controversial vote of confidence. Earlier, the one month old congress Government in Goa led by Chief Minister Pratap Singh Rane had won the vote of confidence on predictable line with pro-tern speaker using his casting vote Francisco Sardinha was appointed as pro-tern speaker by Governor S C Jamir after both, speaker and deputy speaker of BJP resigned during the special session called for Rane to seek the trust vote. As soon as the house met pro-tern speaker announced that the lone MLA of a regional party was not entitled to cast his vote till the next date of hearing on a disqualification petition filed against him by a congress MLA. The MLA had defied his party whip and continued to support former BJP chief minister whose Government was dismissed by on next Monday. With both congress and BJP tied at 16 each, the speaker moved the motion of confidence and used his casting vote. The centre suo moto imposed the

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President's Rule. The Home Minister said that what happened in Goa was undemocratic and wrong.

**President's Rule in Karnataka (Oct. 2007)**

In Assembly elections no party secured requisite majority to form the Government. The B.J.P was the single largest party. The congress, against which was the people's mandate, forged a coalition with Janata Dal of Kumar Swami. After sometime the coalition failed. However, Kumar Swami formed a coalition with the B.J.P. it was agreed that they would hold the Chief Minister ship term wise. But Kumar Swami in his term rejected this agreement. The President's Rule was imposed and the assembly was kept in suspended animation. But after sometime Kumar Swami agreed to support the B.J.P. but Dev Gaura imposed twelve conditions to support the Government in the assembly at the time of vote of conditions. The B.J.P Chief Minister tendered his resignation and the President's Rule was again imposed and the assembly was dissolved.

**President's Rule in Nagaland in 2008**

The President's Rule was imposed in the State of Nagaland on the ground that due to defections the Government was reduced to a minority

**d) President's Rule under Article 356 and Judicial Review:**

This was the first case challenged in the Kerala High Court on the point of proclamation issued by the President of India. In this case the resignation of the ministry caused a breakdown of the constitutional Government in the State of Kerala; the President dissolved the Legislative Assembly and assumed the executive powers of the State to himself by a Proclamation dated 10-9-1964, which was approved by Parliament by a Resolution on 30-9-1964. A general election was held thereafter, in February and March 1965, for the purpose of constituting a new Legislative Assembly in the State; but no party was able to secure a working majority of seats in the legislature. The new legislature had never been summoned under Article 174(1)\(^79\) of the Constitution, therefore the elected members could not be sworn in.

\(^79\)“The Governor shall from time to time summon the House or each House of the Legislature of the State to meet…..”
After consultation with leaders of various parties, the Governor submitted his report to the President on the possibility of the formation of the Government in the State. On 24-President, who was then discharging the functions of the President in the latter’s absence out of India, revoked the Proclamation of 10-9-1964 and issued a fresh proclamation under Article 356 and dissolved the newly constituted Legislative Assembly of the State.

On behalf of Aboo, it was first of all argued that the Governor could not recommend the imposition of Presidential Rule when the State was already under the rule of the President. Secondly, that the Assembly could only be dissolved after it was assembled. This would have given the Assembly an opportunity to consider the situation. The third argument was that the Court and Parliament should consider the validity of the Presidential Proclamation. The last argument was that the Governor had acted mala fide.80

The Court refused to go into the constitutionality of the proclamation. Speaking for the Court, M. Madhavan Nair, J. held that the remedy lay with Parliament and not with the Court. He observed:

8. … When the matter comes up before it, it is open to Parliament to withhold approval. If Parliament, in its supreme wisdom, is not impressed with the constitutionality, the legality or even the propriety of the proclamation it will not give its approval to it. It requires no exposition by this Court for such an action on the part of Parliament.81

As to the last question the Judge made it clear that the Governor had not acted mala fide even if some political leaders have been preventively detained. The Court also observed that the President while acting under Article 356 exercised power in his own right and the only sanction against him was impeachment. Consequently 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.

81 Supra n. 8.
The constitutional validity of the President's rule came before the Kerala High Court in K. K. Aboo v. Union of India.\(^{82}\) The writ petition was filed before the Kerala High Court challenging the central action of taking over the administration of Kerala State following two grounds:

(i) That the state legislature could not have been dissolved without its meeting at all.

(ii) That the President's action was mala fide.

The Kerala High Court rejected the writ petition and also rejected the contention that the action of the President as malafide.

The constitutionality of the President's proclamation was also questioned in Rao Birendra Singh v. Union of India.\(^{83}\) The former Chief Minister filed a writ for quashing the proclamation on the ground, among the others, that the petitioner commanded the majority in the Legislative Assembly and as long as he had the majority, the Central Government was not competent to issue the proclamation as it could only be issued when it has become impossible to carry on the Government of the State in accordance with the provisions of the Constitution, and the proclamation does not show in what way the Government of the State could not be carried on and what are the provisions of the Constitution in accordance with which the Government could not be carried on. The High Court dismissed the petition. It was observed that firstly, the President having issued the proclamation pursuant to his constitutional power under Article 356(1) and it being not executive act of the union, and the President not being amenable to the jurisdiction of the High Court in view or Article 361(1), the court cannot go into the validity or legality or propriety of his proclamation, and secondly, the reconsideration of the proclamation is vested by the Constitution in Parliament and that excludes the jurisdiction of the High Court in so far as the proclamation is concerned in that respect. The court was also of the opinion that any inference drawn by the Governor and conclusions reached by him cannot be questioned in court either. As regards the proclamation being question on grounds of malafides, it was stated that there is

\(^{82}\) AIR 1965, Kerala, 229.

\(^{83}\) AIR 1968, Punjab and Haryāna, 441.
ample material in the report of the Governor that the administration of the State had been paralyzed and its real function was almost not there because Ministers were unable to attend not only to the making of policies but also to the execution of the same.

In another case, Gokulananda Roy v. Tarapada Mukharjee84, the Calcutta High Court held that,

“18. … The validity or legality of the incidental and consequential provisions contemplated by Article 356(1)(c) is not justiciable because that is a matter entirely for the satisfaction of the President. The Court further ruled that the Governor’s report could not be questioned because the President acted in his satisfaction.”85

The scope of Article 356 was, however, considered in greater detail and depth in A. Sreeramula, In re,86 in 1974 by the High Court (Andhra Pradesh). The Presidential Proclamation was challenged on the ground that President’s Rule was imposed in the State without exploring the possibility for the formation of an alternative ministry when the Chief Minister resigned under the instruction of the Congress High Command. Justice Chinnappa Reddy held that a Presidential Proclamation issued under Article 356 is not susceptible to judicial review because the Presidential satisfaction under Article 356 is basically a political issue. The Constitution does not enumerate a situation where President’s Rule can be imposed and there are no satisfactory” criteria for judicial determination of what is relevant consideration for invoking the power under Article 356. Consequently, the question is intrinsically political and beyond the reach of the courts.

While considering the question whether there is any legal limitation to the kind of action that can be taken under Article 356 of the Constitution, the Judge assured that the only limitation on the exercise of power under Article 356 is political limitation, the considerations of which are relevant for action under Article 356 and weighing of these considerations appears to be clearly matters of political wisdom and not of judicial scrutiny.

84 AIR 1973 Cal 233 at p. 238, para 18.
86 AIR 1974 AP 106.
“12. … 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 Parliament and it is scarcely a matter for the courts.” Further, the Court said that the President can act under this Article in a number of situations, whereas, the Founding Father hoped that Article 356 to be used as “dead letter”.

It is significant to note at this juncture that it was in Sreeramula case that for the first time the yardstick of judicial review of administrative action was sought to be invoked to test the validity of a Presidential Proclamation under Article 356 though the response of the Court was the same as before. It is the head of the State that is entrusted with the discharge of the duty and the fact that it is Parliament that is the final arbiter led to the inevitable conclusion that the Court can never go into the merit of the proclamation issued by the President.

In a subsequent decision in Hanumantha Rao v. State of A.P. the Andhra Pradesh High Court reached the zenith of abdication of judicial review. It held that court cannot examine the appropriateness or adequacy of the grounds for the taking of a decision by the President, nor any bad faith can be permitted to be attributed to him. The court must be a “judicial hands off” in connection with this Presidential exercise of emergency power.

In Bijayananda Patnaik v. President of India, the constitutionality and legality of the Presidential Proclamation of 3-3-1973 in the Orissa State was examined by the Orissa High Court. It was alleged in this case that, when the Chief Minister tendered resignation of his Council of Ministers, the Governor should have called the leader of the opposition party to form the ministry. The Court said that without testing its strength the Governor’s decision not to call the leader of opposition party to form the ministry and to recommend for President’s Rule under Article 356 are however not justiciable and no writ can lie for quashing.

87 Ibid, at p. 111, para 12.
88 Supra n. 5.
90 (1975) 2 An WR 277.
91 Ibid, at p. 301.
92 AIR 1974 Ori 52.
The Court with instructive attitude, criticised the conduct of the Governor insofar as he recommended the President’s Rule in the State without first calling Bijayananda to form the Government. By this the Governor failed to honour the conventions prevalent in Great Britain. The Court suggested that, on the fall of ministry, the Governor should automatically ask the leader of opposition to form the Government.

The Court further stated that it is now well settled that the conventions which were prevalent in England at the time of framing of our Constitution are to be honoured by different functionaries in working out of the Constitution though they are not put into a written instrument of instructions. In the Constituent Assembly there was a debate whether the well-accepted conventions followed in England should be put into a written instrument of instructions for guidance. The proposal was not accepted.93

This is the concluding interpretation supported by the courts in respect of the power and position of the President that he is bound to act according to aid and advice of the Council of Ministers. But in case of imposition of President’s Rule in State, he is said to have acted on his own and Council of Ministers is not responsible for that. Both the views cannot be held simultaneously. Since Parliament is a forum to debate the policies of the Government and take a verdict on them but that does not mean that the policies so approved ipso facto attain constitutional validity. So also the approval of the emergency resolution by Parliament, with Government solidarity voting for the resolution and the opposition marshalling its entire strength against it, overtaken by the heat of political fervour, and nothing sort of a dispassionate and unbiased consideration for the issue from the angle of protecting the Constitution motivates their stance. The view taken by the Court mutatis mutandis applies to legislation enacted by Parliament and on the basis of the same logic, once an Act is adopted by Parliament it should also, like emergency resolution, get immunity from judicial review. Since the courts in consideration of the sacred trust reposed in them to protect the Constitution, exercise judicial review on other policies enacted by Parliament, likewise it is equally incumbent upon them to have taken cognizance of the dispute relating to

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exercise of powers under Article 356 and pronounce their verdict.

When the President for all practical purposes was made to act on the aid and advice of his Council of Ministers it was erroneous to hold that Article 74(2) barred the court from enquiring into the advice given to the President to promulgate emergency. Since the President was made a constitutional head and the courts, in different judgments had also declared him bound by the advice of his ministers. It was not consistent to hold that the advice did not fall within the ambit of judicial review, particularly, in a matter where the abuse of the power had very serious consequences of the nature of scuttling and cascading the basic structure of the Constitution.

A critical examination of these decisions reveals that the courts have given support to the Central Government consistently. They have taken the position that they could not go into the validity or otherwise of a proclamation, because of non-justiciable nature of the President’s satisfaction by treating the circumstances sufficient to justify the Centre’s conclusion that there was a breakdown of constitutional machinery in the State concerned. The Kerala and Punjab High Courts took a very restrictive view on the issue, approving the proclamation. These courts observed that they did not have any power to go into these questions at all. The Andhra Pradesh High Court, however, explained its stand on the basis of separation of powers, Justice Chinnappa Reddy pleaded for an alternative testing of the merits of the proclamation. The Orissa High Court also followed the total ouster approach but G.K. Mishra, J. in his judgment censured the Governor for not following political conventions which ought to have been followed. Thus, in all these cases before the various High Courts, it was made known that there could be no judicial review of Presidential Proclamation although the reasons for reaching the conclusions varied. None of these challenges had come before the Supreme Court. The matter came up for consideration in 1977 before the Supreme Court in State of Rajasthan case.

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i) **President's Rule Cases**

The Special Bench of the Supreme Court which had dismissed the suits brought by six status against the Union Government for restraining it from taking recourse to Article 356 of the Constitution, imposing President's rule in these States and from taking any steps for the holding of general elections in them gave its reasons for the dismissal on the 6th May, 1977. The Bench also had dismissed applications for interim injunction restraining the Union Government from giving effect to the "directives" contained in a letter addressed to the Chief Ministers of these States by Mr. Charan Singh, the then Home Minister on the 18th April, 1977.

The suits were brought under article 131. ‘The whole thing, however, appears to us to have been entirely misconceived. Seven learned judges delivered between them six judgment which, valuable though they are as expositions of abstract proposition of law, are all based on hypothetical considerations — no concrete facts having been placed Before the court and lack the teeth of a decision of court of law but read more like the opinions delivered by the International Court of Justice.’

What were the facts before the Supreme Court? The only fact was that letter of Mr. Charan Singh. In that letter he requested the Chief Ministers of Nine States to advise their Governors to dissolve the legislative Assemblies and order a general election. In the general elections in March, 1977, the Janta Party was returned to the Lok Sabha with an overwhelming majority and the Congress party was ousted in the nine Northern States. There was a general public opinion, shared understandably by the Janta leaders that the Congress Ministries in these States had lost the confidence of the people. With the election of President ahead, the Janta party could not afford to have congress majorities in the States and it could not also carry into affect many of its promised legislative measures because of the Congress majority in the Rajya Sabha. The obvious step would be to disband the State Legislatures in the States about which it could be said that the Congress party has lost the confidence of the people.

Goswami, Untwalia and Fezl Ali, JJ. Have held that the suits arc not

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97 State of Rajasthan v. Union of India AIR 1977 SC 1361 Also see, CWN Vol. 81, May 23, 1977, President's rule case judgment, Editorial notes.
maintainable. Mr. Justice Goswami basis his conclusion on two grounds:

(i) that the dispute, if any, was of a political nature-about a political right and not a legal right of the State as contemplated by article 131; and

(ii) that the State and the Government of the State were two distinct entities; the dispute in the present case was one between the Government of India and the Government of the State concerned and not a dispute between the Government of India and State within article 131.

Mr. Justice Untwalia says that the dispute between the parties fell short of a dispute vis-a-vis a legal right of a State, according to him is undoubtedly entitled to have a Governor- a government of one form or another, and a legislature; no part of it can be abolished. Abolition would affect the legal right of the State. But the State has no legal right to have a particular Governor or a particular Government or a particular legislative Assembly.

Mr. Justice Fazl Ali says that the dispute did not involve any legal right of the State concerned - the exercise of the President's discretion was of a purely political nature.

On the other hand, Justices Chandrachud Bhagwati and Gupta have held the suits to be maintainable but dismissed the suits on the merits. Mr. Justice Chandrachud holds that the States are entitled to question the exercise or power by President under article 356. But as the reasons for the exercise of the power disclosed in the letter of Mr. Charan Singh (viz. lack of confidence in the congress party) bore a reasonable nexus with the proposed action (dissolution of the Assemblies) the court would not exercise its power of review.

Mr. Justice Bhagwati with whom Gupta justice concurred held that the reasons given for the intended action under article 356 that the existing Assemblies did no longer reflect the will of the people had a reasonable nexus with the matter in regard which the President is required to be satisfy before taking action under article 356 and therefore, any action taken under that article would be justified.

Chief Justice Beg said that a too restrictive review of the State's right to bring a suit under article 131 need not be taken, lie stressed that the court was only
concerned with legal rights to dissolve or legal obstacle to dissolve. The view of the Union Government that there was an overwhelming electorate verdict in the States against the ruling party there and that the situation justified action under article 156 was largely a political or moral issue and the court would not substitute its judgment for that of the Union Government on such a matter.

It appears that suits could have been disposed of on a much simpler and shorter grounds. It does not appear that the bar of the clause (5) of article 356 was seriously pressed before the Supreme Court. That clause ousts the jurisdiction of the Court to question an order made under article 356 on any ground. In Rao Birendra Singh v. State of Punjab\(^99\) it was held that the validity of such a proclamation was not open to judicial review. In 1975, it was made clear by the 38\(^{th}\) Amendment Act which inserted clause(5) in article 356\(^100\) that the satisfaction of the President shall be final and conclusive and shall not be questioned in any court on any ground. Supposing the President had issued a proclamation that proclamation would not have been open to question. If a final order cannot be questioned or challenged, it is obvious that the court would have no jurisdiction to restrain the passing of such an order. There are observations in some of the judgments that the court had yet some sort of a residuary jurisdiction to examine the validity of an order under article 356. Indeed, Chandrachud, Bhagwati and Gupta JJ, proceeded on the basis that Supreme Court have jurisdiction to examine the validity or relevancy of the grounds when they are disclosed.

After the decision in State of Rajasthan V. Union of India\(^101\) to fulfill his promise made in the Election manifesto the Janata Party Government amended the article 356 by the Constitution (44\(^{th}\) Amendment) Act, 1978 and limited the scope of this article. By this amendment clause (5) which is inserted by the Constitution (38\(^{th}\) Amendment) Act, 1975, is omitted and for the purpose of delimiting this article a new clause(5) is provided:

\[(5) \text{ a resolution for the continuance in force of a proclamation beyond the} \]

\(^99\) AIR 1968, P & H, p.44 I.
\(^100\) Clause(5) of Article 356 is omitted and new clause is substituted by the 44th Constitution Amendment Act, 1978.
\(^101\) AIR 1977 S.C 1361.
period of six months cannot be passed by the House unless-

a) a proclamation of emergency is in operation at the time of the passing of such resolution; and

b) the Election Commission certifies that the continuance in force of the proclamation is necessary on account of the difficulties in holding general elections to the legislative assembly of the State concerned.

In A.K. Roy v. Union of India\textsuperscript{102} a Constitution Bench of the Supreme Court observed that Rajasthan case\textsuperscript{103} is often cited as an authority for the proposition that the court ought not to enter the “political thicket”. It has to be borne in mind that at the time when the case was decided, Article 356 contained clause (5) which was inserted by the Thirty-eighth Amendment\textsuperscript{104} by which the satisfaction of the President mentioned in clause (1) was made final and conclusive and that satisfaction was not open to be questioned in any court on any ground. Clause (5) has been deleted by the Forty-fourth Amendment\textsuperscript{105} and therefore any observation made in Rajasthan case\textsuperscript{106} on the basis of that clause cannot any longer hold good. It is arguable that the Forty-fourth Constitution (Amendment) Act leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President satisfaction.

After Rajasthan case\textsuperscript{107} the question of judicial review of Presidential Proclamation under Article 356 arose for consideration in the Gauhati and Karnataka High Courts. The President’s Rule was imposed in Nagaland on 7-8-1988 when the eight months old Congress Ministry headed by Hokisha Sema was reduced to a minority due to defections. There was a difference of opinion between Chief Justice Raghaur and Justice Hansaria.\textsuperscript{108} The former held that the Union of India cannot be compelled to tender any information to the Court because of Article 74(2) of the Constitution.\textsuperscript{109} On the other hand, Justice Hansaria held that as the

\textsuperscript{102} (1982) 1 SCC 271 : 1982 SCC (Cri) 152.
\textsuperscript{103} State of Rajasthan v. Union of India, (1977) 3 SCC 592.
\textsuperscript{104} The Constitution (Thirty-eighth Amendment) Act, 1975.
\textsuperscript{105} The Constitution (Forty-fourth Amendment) Act, 1978.
\textsuperscript{106} State of Rajasthan v. Union of India, (1977) 3 SCC 592.
\textsuperscript{107} Ibid.
\textsuperscript{109} State of Rajasthan v. Union of India, (1977) 3 SCC 592.
material which formed part of “other information” was not before the Court and as the same did not form part of the advice tendered by the Council of Ministers under Article 74(1), the Union of India should be given an opportunity to disclose the information to the Court. Justice Hansaria ruled that if the Union of India fails to give the “other information” the Court would have no alternative but to decide the matter on the basis of the matter placed before it. 111

Sunderlal Patwa v. Union of India 112

After the demolition of Babri Masjid at Ayodhya on 6-12-1992, the President’s Rule was imposed in U.P., M.P., H.P. and Rajasthan. The imposition of President’s Rule in M.P., H.P. and Rajasthan was challenged in the respective High Courts. The Madhya Pradesh High Court departed from the earlier decisions and held that the Presidential Proclamation can be challenged in a court of law. The Court held that after the Forty-fourth Amendment of the Constitution, clause (5) of Article 356 has been repealed resulting in enlarging the scope of judicial review. Therefore, the Presidential Proclamation is open to judicial review on the ground of irrationality, illegality, impropriety or mala fide or in short, on the ground of abuse of power.

The Court in the instant case pointed out that sudden outbreak of riot resulting in failure on the part of the State Government to maintain public order does not justify the President’s Rule in the State. The power can be used only in an extreme difficult situation viz. where there is an actual and imminent breakdown of the constitutional machinery, as distinguished from failure to observe a particular provision of the Constitution or worsening of law and order situation. Since Article 356 of the Constitution authorises serious inroads into the principles of federation. As regards the “other information” the Court stated that the Union Cabinet cannot claim privilege.

30. … As has been held by the Supreme Court in Rajasthan case 113, the satisfaction of the President has to be, in the scheme of the Constitution, based on

110 There shall be a Council of Ministers … to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.
113 State of Rajasthan v. Union of India, (1977) 3 SCC 592.
the aid and advice of the Cabinet. The decision to impose the President’s Rule is virtually taken by the Cabinet and the action of the President is subject to judicial review in a court. Although the President cannot be made a party in a court of law, the Union Government representing the Cabinet can claim no privilege or protection against the disclosure of such “otherwise information” in its possession and which was made the basis of proclamation.\textsuperscript{114}

The Supreme Court in A.K. Roy case\textsuperscript{115} ordered to restore the dismissed ministry as also the dissolved Assembly. The judgment of the Madhya Pradesh High Court has been a “significant milestone in legal history” since it is the first case where the Court struck down a Presidential Proclamation as unconstitutional.\textsuperscript{116}

\textbf{ii) Bommai’s case of 1994 vintage, an innovative approach by apex court to ensure cooperative federalism:-}

The Supreme Court has now rendered a landmark decision on Art 356(I) in S.R. Bommai v. India.\textsuperscript{117} The case arose in the context of the following facts.

In 1989, the Janta Dal Ministry headed by Shri S.R. Bommai was in office in Karnataka. A number of members defected from the party and there arose a question mark on the majority support in the House for the Bommai’s Ministry. The Chief Minister proposed to the Governor that the Assembly session be called to test the strength of the Ministry on the floor of the House. But the Governor ignored this suggestion. He also did not explore the possibility of an alternative government but reported to the President that as Shri Bommai had lost the majority support in the House, and as no other party was in a position to form the government, action be taken under Art 356(I). Accordingly, the President issued the proclamation in April, 1989.

Bommai challenged the validity of the proclamation before the Karnataka

\textsuperscript{116} D. Nagasalila and V. Suresh, “Will the Supreme Court break new ground”, The Hindu, 9
On similar issue, Ahmad Tariq Rahim v. Federation of Pakistan, PLD 1992 SC 646 and Federation of Pakistan v. Aftab Ahmad Khan Sherpao, PLD 1992 SC 723. A much more relevant and instructive judgment of the Pakistan Supreme Court is of June 1993 invalidating the dismissal of Nawaz Sharif Government and dissolution of the National Assembly.
High Court through a writ petition on various grounds. The High Court ruled that the proclamation issued under Art. 356(I) is wholly outside the pole of judicial scrutiny: the satisfaction of the President under Art. 356(I) which is a condition present for issue of the proclamation ought to be real and genuine satisfaction based on relevant facts and circumstances. The scope of judicial scrutiny is therefore confined to an examination whether the disclosed reasons bear any rational nexus to the action proposed or proclamation issued. The courts may examine as to whether the proclamation was based on a satisfaction which was mala fide for any reasons, or based on wholly extraneous and irrelevant grounds. In such a situation, the stated satisfaction of the President would not be a satisfaction in the constitutional sense under Art. 356. In the end, however, the High Court dismissed the petition holding that the facts stated in the Governor's report could not be held to be irrelevant, Governor's bona fides were not questioned and his satisfaction was based upon reasonable assessment of all facts. The court also ruled that recourse to floor test was neither compulsory nor obligatory and was not a pre-requisite to the sending of the report to the President. Bommai appealed to the Supreme Court against the High Court decision.

Besides the Karnataka proclamation, the Supreme Court was also called upon to decide the validity of similar proclamations under Art. 356(I) in the States of Meghalaya and Nagaland.

Besides, there were three more proclamations before the Supreme Court for review—those made in Madhya Pradesh, Himachal Pradesh and Rajasthan in 1992 in the wake of the demolition of the disputed Babri structure in Ayodhya. The governments in these States belonged to the B.J.P. which was sympathetic to the organizations responsible for the demolition. The M.P. High Court had held the Madhya Pradesh proclamation to be "invalid and beyond the scope of Art. 356." The Court had ruled that from the material placed before it no inference could be drawn that the State Government had disrespected or disobeyed any Central direction nor was there any specification of any alleged deeds or misdeeds on the part of the State Government in meeting of the law and order situation. Merely because there was some worsening of the law and order situation in the State in

AIR 1994 SC 1918: (1994) 3 SCC I.
the wake of Ayodhya incidents, no inference could be drawn that the State Government could not be carried on in accordance with the Constitution, or that the constitutional machinery had broken down in the State.

Needless to say that this was an unprecedented ruling as never before any proclamation issued under Art 356(I) had been invalidated by any court. Accordingly, the Central Government appealed to the Supreme Court against the High Court verdict. There were also writ petitions pending in the respective High Courts challenging the proclamations under Art. 356, as mentioned above. All these writ petitions were transferred to the Supreme Court for a hearing. The great significance of Bommai can be gauged from the fact that the Supreme Court had to adjudged the constitutional validity of six proclamations issued under Art. 356(I) in six different State during 1989 to 1992.

It may be mentioned that by the time the Bommai case came before the Supreme court, Art. 356(5) putting a ban on judicial review of Art. 356 proclamations had been repealed.

The Supreme Court in its judgment by majority declared the Karnataka, Meghalaya and Nagaland proclamations as unconstitutional but the proclamations in Madhya Pradesh, Rajasthan and Himachal Pradesh as valid. Thus, both the High Court decisions mentioned above were overruled.

A Bench of nine Judges was constituted in Bommai to consider the various issues arising in the several cases, and seven opinions were delivered. While some of the Judge (AHMADI, VERMA, RAMASWAMY, JJ) adopted a passive attitude towards judicial review of the presidential proclamation under Art. 356(I), others adopted somewhat activist stance. On the basis of consensus among the judge, the following propositions can be enunciated in relation to Art. 356(I) and the scope of judicial review there under:

1. The President exercise his power under Art 356(I) on the advice of the Council of Minister to which, in effect, the power really belongs though it may be formally vested in the President.

2. The question whether the incumbent State Chief Minister has lost his
majority support in the Assembly has to be decided not in the Governor's Chamber but on the floor of the House. There should be test of strength between the government and others on the floor of the House before recommending imposition of the President's rule in the State.

The Court ruled that the Karnataka High Court was wrong in holding that floor test was neither compulsory nor obligatory nor a pre-requisite to send the report to the President recommending action under Art. 356(I).

3. The Governor should explore the possibility of installing an alternative Ministry, when the erstwhile Ministry loses support in the House.

4. The validity of the proclamation issued under Art. 356(I), is justiciable on such grounds as: whether it was issued on the basis of any material at all, or whether the material was relevant, or whether the proclamation was issued in the mala fide exercise of the power, or was based wholly on extraneous and/or irrelevant grounds.

5. There should be material before the President indicating that the Government of the State cannot be carried on in accordance with the Constitution. The material in question before the President should be such as would induce a reasonable man to come to the conclusion in question.

Once such material is shown to exist, 'the satisfaction' of the President based on such material will not be open to question. But if no such material exists, or if the material before the President cannot reasonably suggest that the State Government cannot be carried on in accordance with the Constitution, the proclamation made by the President is open to challenge.

According to JEVAN REDDY, J. Art. 356 confers upon the President conditioned power. "It is not an absolute power. The existence of material which may comprise of or include the report of the Governor-is a precondition. The President's satisfaction must be formed on relevant material."
6. When a prima facia case is made out against the validity of the proclamation, it is for the Central Government to prove that the relevant material did in fact exist. Such material may be the report of the Governor or any other material.

7. The dissolution of the Legislative Assembly in the State is not a automatic consequence of the issuance of the proclamation. The dissolution of the Assembly is also not a must in very case. It should be done only when it is found to be necessary for achieving the purposes of the proclamation.

8. The provisions in Art. 356(3) are intended to be a check on the powers of the President under Art. 356(1). If the proclamation is not approved within two months by the two Houses of Parliament, it automatically lapses. This means that the President ought not to take any irreversible action till the proclamation is approved by the Houses of Parliament. Therefore, the State Assembly ought not to be dissolved.

The dissolution of the Assembly prior to the approval of the proclamation by the Parliament under Art. 356(3) will be per se invalid. The State Legislative Assembly should be kept in suspended animation in the meantime. Once the Parliament has put its seal of approval on the proclamation, the State assembly can then be dissolved. The assembly which was suspended will revive and get reactivated if the proclamation is not approved by parliament.

Here a word of explanation is necessary. A view was expressed in Rajasthan V. Union of India, that the proclamation is valid when issued under Art. 356(1), and the State Legislature can be dissolved by the Centre without waiting for its approval by the Houses of Parliament. But, in Bommai, the Court has disagreed with this view and for a very good reason. If the proclamation is not approved by Parliament, it automatically lapses after two months. How is the state

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118 When in October, 1995, President's rule was imposed in the State of U.P. the State Assembly was first suspended and then dissolved ahead of the ratification of the proclamation by Parliament. There was a Congress Government headed by P.V. Narasimba Rao at the Centre. The ostensible reason given for the step was that there was a possibility of “horse trading” of MLAs in case of a suspended Assembly. The real reason, however, was that the Congress Government at the Centre wanted to kill the possibility of emergence of a B.J.P. Government in the State. The decision to dissolve the Assembly was purely a political decision which was not in consonance with the Bommai ruling.

government run thereafter? It would be inevitable that the dissolved assembly be revived for no fresh elections can be held for the House within the short period of two months. Bommai view avoids any such embarrassment to the Central Governments.

Sometime back, when in February, 1999, a proclamation under Art. 356(1) was issued in respect of Bihar, the State Government and the State Legislature were suspended. The proclamation was approved by the Lok Sabha on February 26, 99. But when it became clear that the Rajya Sabha would not approve it, because of the opposition by the opposition parties which were in a majority in that House, the Government revoked the proclamation on March 8, 99, in exercise of the powers under Art. 356(2). The State Government was installed in office and the State Legislature which had been suspended was then revived.

9. Once the proclamation is approved by Parliament, and then it lapses at the end of six months, or it is revoked earlier, neither the dismissed State Government, nor the dissolved legislature will revive.

10. If the Court invalidates the proclamation, even if approved by the Parliament, the action of the President becomes invalid. The State Government if dismissed, is revived and the State Assembly, if dissolved, will be restored.

11. Art. 74(2) bars an inquiry into the question whether any or what advice was tendered by the Council of Ministers to the President. Art. 74(2) "does not bar the Court from calling upon the Union Council of Ministers to disclose to the court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice."

According to JEEVEN REDDY, J., when called upon, the Union Government has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The Court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action taken. Even if some material was irrelevant, the
court will not interfere so long as there was some material which was relevant to the action taken.”

Applying these principles, the Karnataka, Meghalaya and Nagaland proclamations were invalidated. In ease of Karnataka, the Court ruled that the question of lack of majority support for the Ministry was not tested on the floor of the house. A duly constituted Ministry was dismissed on the Ipse dixit of the Governor who made no effort to instal in office an alternative ministry. The Governor's report thus was faulty and clearly smacked of mala fides. The proclamation based on such a report also suffered from mala fides and was liable to be stuck down.

In case of Meghalaya, after reviewing the circumstance leading to the issue of the proclamation, the Court ruled that prima facie, the material before the President was not only irrational but motivated by factual and legal mala fides."

In case of Nagaland, there was defection in the ruling Congress Party as 1/3rd of its members formed a new party. The Chief Minister resigned. The leader of the breakaway group claimed majority support but instead of allowing him to test his strength on the floor of the House, on the report of the Governor, the President issued the proclamation under Art. 356(1). The Court ruled that in the circumstances, the proclamation was unconstitutional. The Court emphasized that the Anti-Defection Law members of an existing legislature party. The leader of the new party ought to have been given an opportunity to prove this majority on the floor of the House.

The case of the proclamations issued in case of Madhya Pradesh, Rajasthan and Himachal Pradesh fell in a different category. None of the State Governments had lost its majority. These proclamations were issued in the wake of the incidents at Ayodhya on December 4, 1992. But here the crucial question involved was that of upholding the basic constitutional value of secularism.

The Court emphasized that the various constitutional provisions by implication prohibit the establishment of a theocratic State and prevent the State from either identifying itself with, or favouring any particular religion or religious sect or denomination. The state is enjoined to accord equal treatment to all religious

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and sects. Religion cannot be mixed with any secular activity of the State. In the words of RATNAVEL PANDIAN, J.: "In matters of State, religion has no place. No political party can simultaneously be a religious party and politics and religion cannot be mixed."

Secularism is a part of the basic structure of the Constitution. If any State Government acts in a manner which is calculated to subvert or sabotage secularism, it can lawfully be regarded that a situation has arisen in which the State Government cannot be carried on in accordance with the constitutional provisions. The three proclamations were thus held valid on this ground. The decision of Madhya Pradesh High Court, mentioned above, was reversed.

In Bommai, the Supreme Court seeks to promote several basic and wholesome constitutional values, such as, parliamentary system, federalism, control over the executive and secularism. Bommai is a very fine example of judicial creativity.

To promote parliamentary government, the Court has insisted that the question whether the incumbent State Chief Minister has lost majority support or not, must be decided on the floor of the House and not by the Governor himself. Further, the Governor ought to explore the possibility of installing an alternate Ministry before reporting failure of the constitutional machinery in the State to the President under Art. 356(1).121

Federalism has been designated as a basic value in the Indian Constitution. Dismissal of a duly elected State Assembly by the Central Government is really a negation of the federal concept. The power under Art. 356(1) has thus to be exercised sparingly, scrupulously and with circumspection. Abuse or misuse of this power will damage the federal fabric and disturb the federal balance.

The Court has emphasized that the president exercises the power under Art. 356(1) on the advice of the Central Ministry which is a political body. In a pluralistic democracy and federal structure, the parties in power at the Centre

121 AIR 1994 SC at 1986, 2100; (1994) 3 SCC I.
and the States may not be the same. Hence it is necessary to confine the exercise of power under Art. 356(1) strictly to the situation mentioned therein which is a condition precedent to its exercise.

In this connection, the situation in the Rajasthan case may be referred to. There the question was whether the nine Congress State Governments could be dismissed under Art. 356(1) in the wake of the Congress defeat in the recently held election for the Lok Sabha and installation of the Janata Government at the Centre. The Judges had expressed views supporting such a step. But in Bommai, several Judges expressed disapproval of what had happened, first in 1977 and, then in 1980. The Court has now firmly stated that so long as a State Government is functioning within the discipline of the Constitution and pursues an ideology consistent with the constitutional philosophy, its dismissal under Art. 356(1) solely on the ground that a different political party has come to power at the Centre is unwarranted and unjustified.

India has consciously adopted a pluralist democratic system which implies that different political parties may be in power in the various States and the Centre. "The mosaic of variegated pattern of political life is potentially inherent in a pluralist multiparty democracy like ours." Accordingly, several Judges have expressed disapproval of the view that if the ruling party in the States suffers an overwhelming defeat in the election to Lok Sabha — however complete the defeat may be- it can be a ground for the issue of the proclamation under Art. 356(1). Simply because a political party had overwhelming majority at the Centre it could not on that ground alone advise the President under Art. 356 of the Constitution to dissolve the State Assemblies of the opposition-ruled States. As SAWANT. J., has observed in this connection:

"So far the power under the provision has been used on more than 90 occasions and in almost all cases against governments run by political panics in opposition. If the fabric of pluralism and pluralist democracy and the unity and integrity of the country are to be preserved, judiciary in the circumstances is the only institution which can act as the saviour of the system and of the nation."
Absolute power cannot be conceded to the Executive under Art. 356(1). The reason is that in the past the power has been used at time on "irrelevant, objectionable and unsound" grounds.

Finally, the Court has laid a good deal of emphasis on secularism. It is a part of the basis structure of the Constitution. If any State Government acts in a manner which is calculated to subvert or sabotage secularism, it can lawfully be regarded that a situation has arisen in which the State Government cannot be carried on in accordance with the Constitution. A State Government may enjoy majority support in the Assembly, but if it subverts the basis value of secularism, it can be dismissed under Art. 356(1). Such a government may be regarded as not functioning in accordance with the provisions of the constitution.

Breakdown of the constitutional machinery in the State is the sine qua non for invoking Art. 356. What is the significance of phrase "breakdown of the constitutional machinery." K. RAMASWAMY, J. in Bommai has elucidated the matter as follows:

"The exercise of the power under Art. 356 is an extraordinary one and needs to be used sparingly when the situation contemplated by Art. 356 warrants to maintain democratic form of government and to prevent paralyzing of the political process. Single or individual act or acts of violation of the Constitution for good bad or indifferent administration does not necessarily constitute failure of the constitutional machinery or characterizes that a situation has arisen in which the government of the state can not be carried on in accordance with the constitution."

iii) After Bommai's Case of 1994:-

It has become very difficult to invoke Art. 356 after the Bommai decision: The following incidents prove the point.

On Oct. 21, 1997, the Chief Minister of Uttar Pradesh obtained a vote of confidence on the floor of the House amidst pandemonium. This vote was sought by him as a result of the Supreme Court ruling to that effect. Thereafter, the Governor in his report recommended imposition of the President's rule in the State under Art.356(1) on the ground of breakdown of the constitution& machinery in the
State. Accepting the Governor's report, the Central Cabinet recommended to the-President the invocation of Art.356, in the State, but under Art. 74(1), the President returned the recommendation for reconsideration of the Cabinet. The President expressed a doubt about the constitutional correctness of the Governor reporting breakdown of constitutional government in the State immediately after the Chief Minister had seemingly won the vote of confidence in the House. Better sense prevailed with the Central Government which then withdrew its recommendation to the President to invoke Art. 356(1) in Uttar Pradesh. The matter came to an end at the Central level leaving Kalyan Singh Ministry intact in the State.

Again, in October, 1998, the Central Government recommended to the President invocation of Art. 356 in the State of Bihar. The Central Government had done so on mission and omission on the part of the State Government as constituting a breakdown the constitutional machinery in the State—a sine qua non for the exercise of power under Art 356(1). The main allegation against the State Government was the worsening of the law and order situation in the State. At this time, the State Government undoubtedly enjoyed the majority support in the Assembly.

The President considered the Governor's report and the recommendation of the Central cabinet and then decided to refer back the matter to the Cabinet for reconsideration under Art. 74(1). The President took the view that the acts complained of did not constitute a breakdown of the constitutional machinery in the State so as to justify the use of his extraordinary power under Art. 356. Obviously, taking his cue from Bommai, the President distinguished between bad government and breakdown of constitutional machinery. The President's stand was in accordance with the letter and substance of the Supreme Court’s decision in Bommai case.

For sometime, the Central Cabinet deferred the decision, but somewhat later it again revived its recommendation. The President cannot refer back the matter twice under Art. 74(1) and, therefore, he fell in line with the Cabinet. The requisite proclamation under Art. 356(1) was issued. The State Government was dismissed and the State Legislature was suspended. The proclamation was approved by the Lok Sabha but the Government had to revoke it when it found that,
because of the hostility of the Congress Party, it would not be approved by the Rajya Sabha.

After the revocation of the proclamation, the Governor invited the earlier Chief Minister Rabri Devi to form the government. The Governor, however, imposed a condition that the government must prove its majority on the floor of the House within ten days. This condition was challenged as unconstitutional. The Patna High Court however upheld the same saying that the Governor can impose such a condition in his discretion where there is doubt about the majority support enjoyed by the government in the House. The principle of collective responsibility means that the government must enjoy majority support in the House and how that majority support is to be ascertained is a matter left to the discretion of the Governor.”

**Recommendations of the Administrative Reforms Commission with regard to the Role of Governor in the Context of use of Article 356:**

The Administrative Reforms Commission made the following recommendations with regard to the Role of Governor in the context of use of Article 356:

- A person to be appointed as a Governor should be one who has had a long experience in public life and administration and can be trusted to rise above party prejudices and predilections. He should not be eligible for further appointment as a Governor at after the completion of his term. Judges, on retirement, should not be appointed as Governors. However, a judge who enters public life on retirement and becomes a legislator or holds an elective office may not be considered ineligible for appointment as Governor.

- The convention of consulting the Chief Minister before appointing a governor is a healthy trend that may continue.

- Guidelines on the manner in which discretionary power should be exercised by the Governors should be formulated by the Inter-State Council and on acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament.

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• The Governor, besides sending the fortnightly Reports to the President, should make ad hoc Reports as and when the need arises. He must Report to the President and also in regard to the reservation of Bills for the consideration of the President.

• When the Governor has reason to believe that the Ministry has ceased to command a majority in the Assembly, he should come to a final conclusion on this question by summoning the Assembly and ascertaining its verdict on the support enjoyed by the Ministry. When a question arises as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly, and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, suo motu summon the Assembly ofr the purpose of obtaining its verdict on the question.

• Where functionaries like the Speaker at arbitrarily and prevent the functioning of legislatures effective remedies must be devised by the legislatures themselves by way of formulating Rules of business which would enable the legislature to transact the business.

• When a Ministry is defeated in the Assembly on a major policy issue and if the outgoing Minister advises the Governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the Governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the Governor should accept the advice. In other cases, he may exercise his discretion.

• The governor should not only receive information as provided for in Article 167, but he should also actively look for it with a view to discharging his constitutional responsibilities effectively.

i) Comments and Suggestion of Sarkaria Commission on the use of Article 356:-

Sarkaria Commission is against the frequent use of Article 356, recommends its minimum use and that too after exhausting all alternatives. That commission recommended that:

1. Article 356 should be used very sparingly and in extreme cases, as measure of
last resort, when all available alternatives fail to prevent to rectify a breakdown of constitutional machinery in the state.

2. A warning should be issued to the errant state, in specific terms, that it is not carrying on the government of state in accordance with the Constitution. Before taking action under Article 356, any explanation received from the state should be taken into account except in cases where not taking immediate action would lead to disastrous consequences.

3. When an 'external aggression' or 'internal disturbance' paralyses the state administration, all alternative courses available to the Union for discharging its paramount responsibility under article 355 should be exhausted to control the situation.

4. 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 to continue as 'caretaker government'.

5. Every proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of two months period contemplated in clause (3) of Art 356.

6. The state assembly should not be dissolved either by the Governor or the president before the proclamation issued under article 356(1) has been laid before the parliament and it has an opportunity to consider it.

7. Safeguards should be incorporated in article 356 to enable the parliament to review the continuance in force of the proclamation.

8. It should be provided that not with-standing 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 the Article.

9. The report of Governor's should be '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.

10. The Governor's report, on the basis of which the proclamation under article 356(1) is issued, should be given wide publicity in all media and in full.

11. Normally, President Rule in a state under article 356(1) should be proclaimed on the basis of the Governor's report only.

12. In cause (5) of article 356, the word 'and' occurring between sub clause (a) and (b) should be substituted by 'or'.

RECOMMENDATIONS OF STANDING COMMITTEE OF INTER-STATE COUNCIL (ISC): REGARDING STATE EMERGENCY PROVISIONS CONTAINED IN ARTICLE 355, 356, 357:

The Standing Committee held in-depth discussion on the safeguards to Article 356 suggested by the Sub-Committee and twelve recommendations of Sarkaria Commission on 'Emergency Provisions', taking into account the Supreme Court judgement in Bommai case. The Standing Committee observed that the safeguards contained in the judgement in Bommai case, which is already a part of the law of the land, are adequate to prevent misuse of Article 356. It was decided that the propositions laid down in the Bommai judgement should be appropriately incorporated in the Constitution.

The Standing Committee took the following decisions in regard to the Commission's recommendations on 'Emergency provisions':-

1. The Commission's recommendation that Article 356 should be used as a measure of last resort was accepted.

2. The recommendation of the Sub-Committee that a show-cause notice be issued to the State Government before taking action under Article 356, except in a
situation when not taking immediate action would lead to disastrous consequences, was agreed to.

3. The Commission's recommendation that in the event of an 'external aggression' or 'internal disturbance' paralyzing the State Administration, all alternative courses available to the Union under Article 355 should be exhausted to contain the situation, was accepted.

4. The Commission's recommendation regarding placing of the Proclamation before Parliament within two months of issues and that the Legislative Assembly should not be dissolved before the Presidential Proclamation issued under Article 465(1) has been laid before the Parliament and the Parliament has had an opportunity to consider it, were accepted.

5. The Commission's recommendation for incorporating the safeguards corresponding to clauses (7) and (8) of Article 352 in Article 356 was accepted.

6. The Commission's recommendation that the Governor's Report be in the nature of a 'speaking document' was accepted. The Standing Committee, however, decided not to accept another recommendation of the Commission that the material facts and grounds on which Article 356 is invoked should be made an integral part of the Proclamation issued under that Article.

The Standing Committee took note of the Action Taken Report on the recommendations of Sarkaria Commission submitted by the Secretariat. Out of total 247 recommendations of the Commission, the Council has so far taken decision in respect of 230 recommendations of which 152 have been implemented, 27 are at various stages of implementation and 51 recommendations have not been found acceptable by the Council and the concerned Ministries/Departments of Union Government.

ii) Comments and Suggestions of National Commission to Review the working of Constitution on the use of Article 356:

Tracing the historical background of Article 356, the Commission in the

initial pages of its report says that Article 356 is inspired by and patterned upon the controversial section 93 of Government of India Act, 1935 with the difference that instead of Governor, the President is vested with the power of taking over the administration of state. According to the Commission, the Constituent Assembly debates disclose that several members had strongly opposed the incorporation of Article 356(1) precisely for the reason that it purported to reincarnate an imperial legacy.

However these objections were over ridden by Dr. Ambedkar with the argument that no provision of Constitution is immune from abuse and as such mere possibility of abuse cannot be a ground for not incorporating it. Strongly opposing the misuse of article 356, the Commission cautions that the power to dismiss the duly elected government of a state by the Executive of the Union, is a concept which no once who believes in democracy can easily accept. To quote the exact words of Commission, "May be that the British Parliament thought of while enacting the 1935 Act, providing a controlled democracy or restricted democracy in India but not surely our founding fathers."

The Commission further add, "It needs be remembered that only the spirit of 'Cooperative Federalism' can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Sovereignty does not lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions, a sine qua non for good governance." Criticizing the union government for resorting to the abuse of power under Art. 356, it add, "Unfortunately, however, it so happened that over the years, the Centre has not always kept in mind the concept of cooperative federalism and has indeed grossly abused the power under article 356 on many occasions. On several occasions, the state governments were dismissed without giving them the opportunity to prove their strength on the floor of house."

Citing the data regarding misuse of Article 356, the Commission states that since the coming into force of the Constitution, Article 356 and analogous provisions have been invoked many times but considers a little over 20 cases which could be considered as of its misuse. In spite of all the criticism, the
Commission is not in favour of deleting of Article 356 and is of the view that remedy against misuse of Article 356 lies in creating safeguards and constitutional conventions governing its use. The Commission is in agreement with Sarkaria Commission that in the spirit of framers of Constitution, Article 356 should be used sparingly and only as a remedy of last resort and after exhausting all options under other Article (Article 256, 257, 355). It further recommends that before issuing a proclamation under Article 356, the concerned state should be given an opportunity to explain its position and redress the situation.

One of the principle criticisms against the power of Governor in recommending the imposition of President rule has been the unseemingly hurry of the Governors to recommend it without exploring all the possibilities of having an alternative government. On this controversial issue, the Commission recommends that the question whether the ministry in the state has lost the confidence of legislative assembly or not, should be decided only on the floor of house. It is only when a Chief Minister refuses to resign in spite of a defeat on a motion of no confidence, that the Governor should resort to dismissal.

On the matter of continuance of President rule in the state, the commission suggests delinking of the two conditions allowing for the operation of each condition in its own specific circumstances.

The Commission endorses the views of Sarkaria Commission that in clause (5) of article 356, in the sub clause (a) the word 'and' should be substituted by 'or'. Regarding dissolution of assembly the Commission prefers dissolution of assembly at the latest within two months of the issue of proclamation. The commission concludes by suggesting that article 356 should be amended to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation is issued under Article 356(1) has been bid before Parliament and it has had an opportunity to consider it.

In the year 2005, the Governor of Jharkhand was ordered by the Supreme Court for holding a floor test to determine which party/political alliance commanded a majority in Jharkhand. The Court made it clear that the discretionary
power under Article 164(1) of the Governor is subject to judicial review. And the exercise of such power can constitutionally be insured by conducting floor test. Thus, democratic principle propounded in Bommai case\textsuperscript{124} was again sounded in this case and so as with Arjun Munda v. Governor of Jharkhand.\textsuperscript{125}

Rameshwar Prasad case\textsuperscript{126} has reiterated the principle enunciated in State of Rajasthan\textsuperscript{127} and Bommai case\textsuperscript{128} with more constitutional conscience. The Court made it clear that the Article 356 contains an emergency power and this emergency power should be used not as normal power. “Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355”. By referring Articles 74(1) and(2), the Court held that due to Bommai case\textsuperscript{129} Article 74 (2) is not a bar against scrutiny of materials on the basis of which the President has issued proclamation under Article 356. This approach shows objectivity even in subjectivity. Constitutionalism or constitutional system of government abhors absolutism- it is premised on the rule of law by which subjective satisfaction is substituted by objectivity, providing for by provision of the Constitution itself.\textsuperscript{130}

These two recent judgements of the Supreme Court in Jagdambika Pal\textsuperscript{131} and Rameshwar Prasad\textsuperscript{132} are the reflections of the judicial progress which in turn are a proof of the contribution in constitutional jurisprudence. The theory deducted by way of construction of the Constitution has been an instant need of Indian constitutional system. The President and Parliament are found sort in protecting the constitutional misuse for political purposes. It is now expected that the judicial weapon can preclude from abusing the provisions of the Constitution which have colourably been interpreted with there own line by the politicians.

More recently, on 2\textsuperscript{nd} June, 2011, the Governor of Karnataka, H.R. Bhardwaj, put the Government of India in a most embarrassing position by

\textsuperscript{124} (2005) 3 SCC 399.
\textsuperscript{125} Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1.
\textsuperscript{126} State of Rajasthan v. Union of India, (1977) 3 SCC 592.
\textsuperscript{128} Ibid.
\textsuperscript{129} Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1 at pp. 94 & 96, paras 96 & 100.
\textsuperscript{130} Jagdambika Pal v. Union of India, (1999) 9 SCC 95.
\textsuperscript{131} Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1.
\textsuperscript{132} In Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299, it was held that the noting of the officials which lead to the Cabinet’s decision form part of the advice.
recommending imposition of President’s Rule in the State. In the process, he exposed, once again, his unfitness for the office he holds.

The rejection of his recommendation means that his prestige, none too high at any time, will suffer a terrible blow. Had the recommendation been accepted, it would have landed not only the Government of India but also the President in a most embarrassing situation in the Supreme Court. The court would be entitled to examine the material on the basis of which the Council of Ministers advised the President, and the onus of justifying the reckless action would not be on the petitioners but on the Union of India.

More recently, Karnataka Governor H.R. Bhardwaj has been, for a long time now, a disgrace to the constitutional office he holds. At every available opportunity, he has been abusing the authority of his office to unseat the Bharatiya Janata Party government of B.S. Yeddyurappa. However, by recommending the imposition of President’s Rule in Karnataka, using as a pretext the order of the Supreme Court setting aside the disqualification of 11 BJP rebel Members of the Legislative Assembly, he has taken the office of Governor to a new low. When Chief Minister Yeddyurappa was ready for another confidence vote, and the rebel MLAs had already taken back their letter withdrawing support to the government, the situation certainly did not warrant Mr. Bhardwaj sending a report to the Centre recommending President’s Rule. That Mr. Bhardwaj did so after meeting Prime Minister Manmohan Singh and other leaders in New Delhi raises the question whether he was acting at the behest of the Congress-led United Progressive Alliance government at the Centre. The S.R. Bommai vs Union of India judgment delivered by the Supreme Court in March 1994 clearly states that “in all cases where the support of 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.” The assessment of the strength of the Ministry, the judgment made it clear, was “not a matter of private opinion of any individual, be he the Governor or the President.” In the wake of the Supreme Court ruling against the disqualification of the BJP MLAs, the Governor had no proper constitutional role to play other than acting in conformity with the Bommai judgment and leaving the matter to be settled in the Assembly.\textsuperscript{133}

\textsuperscript{133} The Hindu, Editorial, May 17, 2011.
Mr. Bhardwaj, through his actions, has again brought to the fore the issue of Governors acting as political agents of the Centre in States ruled by opposition parties. Although the Bommai judgment has limited the partisan use of Article 356 of the Constitution impossible, the case of Mr. Bhardwaj highlights the dangers of possible misuse of the powers vested in the office of Governor.\textsuperscript{134}

\textsuperscript{134} Ibid.