CHAPTER V
INTRODUCTION:

Constitutional issues are inherently controversial. But, there is unanimity of opinion on the persistent misuse of Article 356. It is rightly said that the power of dismissing a Ministry and dissolution of State assemblies points to a deep seated anomaly in the Indian federal structure. Article 356 is intended to be used only in emergent situations when other constitutional remedies fail. Article 356 comes under emergency provisions which means that the extraordinary powers under this article are to be exercised rarely and only in extremely abnormal situations. From the experiences of 37 years, in exercising power under Art. 356 we want to draw (lessons) and guidelines less confusing, and politically morally legally less ambiguous, for the future for smooth working of the Indian federal system. Article 356 contains power of a drastic nature to meet the break down of the constitutional machinery in a state. Hence, this power of the president (artc. 356) has very important bearing on centre-state-relations.
PHASES OF POLITICAL DEVELOPMENT OF INDIA

5. 1975-1977 Emergency period

1. Near - Hegemonic System:

   It is based on domestication of dissent. All types of sub-system crises are most likely resolved. Without imposing presidential rule. (Generally).

2. Bargaining System:

   It is based on fixing thresholds of dissent. Generally in crisis presidential rule may come with the consent of the state concerned. Only systemic crises are resolved through imposing presidential rules.

3. Paretorian System:

   It is based on overweening private ambitions and absence of the rules of game. All types of crisis are resolved through
OPPORTUNISTIC imposition of presidential rules. Opportunistic means federal authorities most often suspend the state gove., watch public reactions and then either to dissolve or to withdraw suspension all depending on the situation. On other hand, Petroian system is itself in disequilibrium with little capacities to foreclose crisis.

The elite in this system is in a continuous process of learning from each incident of crisis and working according to the principle of "anticipated reactions".

4. Hegemonic System:

It is based on treating dissent as simple subversion. President's Rule is to be the first choice to resolve all types of crisis. But in near Hegemonic system presidents' Rule is to be the last choice. Difference is that of degree rather than of kind.

Various system models are suggestive of the HYPOTHESIS as to how the federal leadership would assess & resolve crises.

**PRESIDENT'S RULE**

1. Crises at the state Level:
   1. Incumbency
   2. Congressization
3. Structural
4. Systemic

2. Choices in decision-making at the Federal Level in Resolving Crises

1. Patronage
2. Investigation Commissions
3. Discriminatory Resource allotment
4. Threatened Presidential Rule
5. Presidential Rule suspension
6. Presidential Rule Dissolution

3. System Environmental Interaction Patterns and the Resultant system states (Models)

Developmental Paths of Political system.
1. Near Hegemonic
2. Bargaining
3. Praetorian
4. Hegemonic

4. Hypothesis

With sub system crises as independent variables and federal choices in decision making as dependent variables - the various system models are suggestive of the hypotheses as to how the federal leadership would assess and resolves crises.
1. Incomency Crisis:

A demand for changing minis trial personnel (and not the party complextion). It is the result of internal strain at the elite level including intra party conflicts within ruling party.

2. Congressization Crisis:

This is a challenge to the coa litional Government (State) to transforms themselves into congress governments. It involves a replacement if possible and displacement, if necessary, not only of the incumbent, political actors at the state level, but also of the parties they represent. Governors appointees of the central government - on many occasions, facilitated manoeuvres of state congress units to fragment and absorb opposition parties.

3. Structural Crisis or Constitutional Machinery Failure Crisis

It represents a failure, full or partial, in the capabilities of the sub system to function...

It may bring a voluntary resignation or centre may ask for the resignation (or may dissolve)....

4. Systemic Crisis

Other crises develop at sub system level. Systemic
crisis may develop at the federal state level and it is more serious than any of 3 types.

DESCRIPTION:

This is a challenge by provincial authority to federal authority which may take one of following forms:

1) A challenge to incumbents of authority roles at the federal level. (1967 U.P.) U.F. Government some partners wanted Indira to be arrested and publicly impeached.

2) A challenge to the constitutional frame within which the federal authority roles interact or regulate their relations with the state govt.s. and/or

3) A challenge, direct or indirect, by the state-authority involving security of the country.

NOTE: These categories of crises, though distinct and separate, may, at times, overlap, because it is in the very nature of crises to spill over from one direction to another.

1950-’74 (1)

1977-’80 (3) - 1. Nagaland-Sus’75, 2. Disso’75’ 3. Tamilnad Disso’76.

1977-’80 (2) - 1. mainpur - Sikkim - Disso - 1979.

1980-’84 (92) - 1. Assam - Disso’80, 2. Punjab-Susp’83.
The political leadership borrowed the concept of emergency governance from the government of India Act 1935 and fitted it into the federal framework of the Indian constitution.

By so combining emergency governance and a federal system, the political leadership tried to get the best of the two possible worlds though, in time, the Indian system could be alleged to have become a case of the pathology of federalism.

The frequent use of president's Rule in India, is an index of the magnitude of degeneration in democratic constitutionism that has crept into the overall operation of the state.

President's rule has acquired a context that goes much beyond the pathology of a federal system. It is a manifestation of the corrupt state.

When the state Governors dismiss legitimately constituted governments (Sikkim, J & K Andhra) in order to prove their 'more than thou' loyalty to New Delhi, or when some M.L.A.'s convert public trust into ready cash by trading their political loyalties.
...... It seems absurd to take of federalism, or of broader political community in the context of which federalism operates.

**PRESIDENT'S RULE**

**STATE CRISSES AND PRESIDENT'S RULE**

<table>
<thead>
<tr>
<th>Period</th>
<th>Incum</th>
<th>Struc</th>
<th>De-cong</th>
<th>Cong</th>
<th>Syste</th>
<th>presrule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950-'74</td>
<td>4</td>
<td>12</td>
<td>-</td>
<td>25</td>
<td>1</td>
<td>42</td>
</tr>
<tr>
<td>1974-'77</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>1977-'80</td>
<td>8</td>
<td>-</td>
<td>10</td>
<td>1</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>1980-'84</td>
<td>6</td>
<td>-</td>
<td>-</td>
<td>9</td>
<td>2</td>
<td>17</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>20</td>
<td>12</td>
<td>10</td>
<td>36</td>
<td>8</td>
<td>86</td>
</tr>
</tbody>
</table>

Total instances of President's Rule during past ten years (44), exceeded the number of cases of president's Rule in first 24 years (42) (maximum no. between 1977 to 1980 e.g. 1977-13 1978-2, 1979-6, 1980-9 = (30), 1981-3, 1982-2, 1983-2, 1984-1.

Data chronologically, shows a general ecline in the use of president's Rule by Union Government i.e. the Federal Government.
Failure of Constitutional Machinery: A Vague Expression

1. Dr. Ambedkar did not explain the meaning of the expression "failure of the constitutional machinery." Despite the question raised by H.N. Kunzru in the constituent Assembly.

2. Thakur Das Bhargava tried to explain when he said failure of the constitutional machinery cannot be held unless and until all the provisional clauses of the constitution relating to the state are exhausted.

3. Unless and until every attempt has been made,
   (ii) unless he finds that even the ordinary liberties cannot be enjoyed.
   (iii) he (Governor) will come to the conclusion that the constitution has failed.
   (iv) a situation cannot be conceived of in which the governor, first of all, shall not exercise the powers to arrange in such a way that the constitution is worked.

4. NAZIRUDDING AHMED has said -
   Article 356 lacks clarity. It says practically nothing. It says almost everything.

   "It enables the centre to interfere on the slightest pretexts and it may enable the centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is
is its draftsmanship we cannot, but admire, the drafting committee for its vagueness and evasions.

5. Failure of constitutional Machinery has been discussed by the ADMINISTRATIVE PERFORMS COMMISSION thus as under:

1. Where there has been a political breakdown e.g.
   i) Where a Ministry has resigned and alternative ministry cannot be formed without holding a fresh election.
   ii) Or where majority party refuses to form a ministry and co-alition Ministry cannot be formed, (able to command a majority in legislature).

2. Where a Ministry, although properly constituted.
   i) Violates the provisions of constitution
   ii) or seeks to use its constitutional powers for purposes not authorized by the constitution
   iii) and, other correctives and warning fail

3. Where a state fails to comply with my DIRECTION given by the UNION in the exercise of its executive power under any of the provisions of the constitution.

6. C.J. BEG - while interpreting Art. 356 in State of Rajasthan Vs Union of India observe "our difficulty is that
the language of Art. 356, is so wide and loose that to curb and confine it within a strait - Jaket will not be just interpreting or construing it, but will be constitution making legislation which.... does not ...... lie in our domain".

7. At another place, C.J. BEG has sounded a note of suggestion for the development of conventions for the exercise of power under Art. 356 and said: 10

"The subject is one on which appropriate and healthy conventions should develop, so that....Art. 356(i) is neither exercised capriciously or arbitrarily nor fails to be exercised when a political situation calls for it.... and it is not for courts to formulate, and much less to enforce a convention however necessary or just and proper a convention to regulate the exercise of such executive power 'May be'. That is a matter entirely within the executive field of operations."

8. Thus, with Article 356, so widely and loosely worded if over ambitious politicians want to wield power throughout the country, both at the centre as well as the state level how an any one think to protect federalism in India.
THE WORD "OTHERWISE" ITS USE

1. If the president, either on the basis of the report of the Governor 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 the constitutions of the failure of constitution machinery can be declared under Article 356.

2. The original draft of the constitution did not contain the word "OTHERWISE" when this word was included at a later stage, H.V. KAMATH strongly opposed it and said-

"It is a constitutional crime to empower president to interfere not merely on the report of the Governor or ruler of a state but otherwise.

'OTHERWISE' is a mischievous word. It is deabolical word".

In this context an I pray to God that will be deleted from this article. If God does not intervene today, I am sure at no distant date. He will intervene when things will take more serious turn and the eyes of everyone of us will be more awake than they are today."
3. The Drafting Committee did not agree with this view and its Chairman Dr. B.R. Ambedkar justified in the inclusion of the word 'otherwise' in Article 356 on the ground that in such emergent situations the president should come into the field from the very beginning and not after the supersession of the constitution by the Governor as envisaged under Article 188 of the Draft Constitution. Thus, Article 365 empowers the president even to act on his own initiative.

4. In State of Rajasthan vs Union of India C.J. BHAGWATI has conceded that - the inclusion of the word 'otherwise' in Article 356 gave the president very drastic powers which, if misused or abused can destroy the constitutional equilibrium between the union and the states. He says:

5. He says - "Usual practice is that the president acts under Article 356(1) only on Governor's report. But the use of the words - 'or otherwise' show that presidnetial satisfaction could be based on other material as well. This feature of our constitution indicates most strikingly the extent to which inroads have been made by it on the federal principle of Government."

6. It is important to note that a few things which were thought inconceivable in constitutional terms have happened
under the shelter of the word 'otherwise' in article 356 mass dismissal of state governments without report of the Governors, not for constitutional breakdown but to suit the convenience of the party in power at the centre as it happened in 1977 and 1980.

FREQUENT USE OF ART. 356 TO IMPOSE PRESIDENT'S RULE IN STATES

1. As against the expectations of Dr. Ambedkar Article 356 neither remained a dead letter nor it was sparingly used.

2. Upto March '80 President's Rule has been imposed about 60 times in 22 states including union territories.

3. It has been imposed-
   1) 7 times in Orissa
   2) 6 times in Punjab and Uttar Pradesh
   3) 5 times in Kerala and Bihar
   4) 4 Times in Rajasthan, Manipur, Pondicherry, West Bengal.
   5) 3 times in Andhra and Gujrat
   6) 2 times in Haryana, Tripura, Mazoram, Tamil Nadu, Karnataka, Maharashtra, Travancore Cochin.
   7) 1 times in Jammu and Kashmir.

It is also very interesting to note that between 1950-66, the president’s rule was imposed ten times in six states and one union territory.
The NEHRU ERA witnessed only 7 of them, that is in Punjab (1951), PEPSU (1952), ANDHRA (1954), TRAVANCORE CONCHINE (156), KERALA (1956, 1959) and ORRISA (1961).

Between 1964-66, it was imposed times in KERALA in 1963 and 1965, when Lal Bahadur Shastri was the Prime Minister.

4. During Mrs. Indira Gandhi's Prime Ministership between 1966-77 president's Rule was imposed 35 times in 15 states and one union Territory.

5. In March 77 (Janta Government at the centre imposed President's rule in 9 states on April 30, 1977 after dissolving their Assemblies. It was also imposed in Karnataka, Tripura, Mizoram & Pondicherry.


8. This shows that the expectations that Art. 356 would be most sparingly used, have been completely belied.

9. Dr. Ambedkar was emphatically of the view that centre would intervene only when governments is not carried on in consonance with the provisions laid down.... Whether there is good government or not in the province is not for centre to determine. 22

10. Dr. Ambedkar was not unaware of the possibility of the abuse of these provisions, but contended himself with expressing the hope that 'they will never be brought into operation and they will remain a dead letter.' 23

11. Dr. Ambedkar lived to denounce in rajya Sabha - the imposition of President's Rupe in PEPSU in 1953 as "The most violent kind of rape on the constitution." 24

1. Thus, the gross abuse of the centre's power to take over the administration of a state makes a mockery of the federal principle.
मिजोरम में राष्ट्रपति शासन की घोषणा

29 अगस्त, 1988

मिजोरम की विधान सभा बंध करके राष्ट्रपति शासन लागू कर दिया गया है। केन्द्र केन्द्र सरकार ने यह कदम अगस्त महीने के आखिरी दिनों में मिजों नेशनल फॉक के आठ विधायकों के विरोध से उत्पन्न परिस्थिति के बारे में राज्यपाल हितेश्वर सेकिया की रिपोर्ट के आधार पर उठाया। दो वर्ष पहले मिजों नेशनल फॉंट के नेता लालेंगा और केन्द्र सरकार की तरफ से प्रधानमंत्री श्री राजीव गांधी के बीच हुए समझौते के मुताबिक मिजों विधायिकों ने अपने हस्ताक्षर डालकर राष्ट्र की मुख्य घराए में जुड़ने का एलान किया था। उसी के साथ राज्य के विधानसभा के चुनाव हुए थे, जिनमें अपने फॉंट को जितताकर लालेंगा मुख्यमंत्री बने थे, लेकिन वह सारा खेल एक साल रो अधिक न चल सका और इतिहास चक्कर चुकर उसी जगह पहुँच गया लगता है, जहां वह कुछ बरस पहले था।

राज्य विधानसभा बंध करने का अर्थ है कि मिजोरम में विधान सभा का चुनाव एक वर्ष के भीतर हो सकता है। पिछले 29 अगस्त को मिजों नेशनल फॉंट के आठ विधायकों के समर्थन वापस ले लेने से लालेंगा की सरकार अल्पमत में हो गई थी। दूसरी ओर सदन के अध्यक्ष की तरफ से विभिन्न विधायकों के खिलाफ दल-वर्ग विरोधी कार्य के अलावा कांग्रेस कार्यकर्ता का नोटिस जारी किये जाने के कारण विधायक और अधिकांश हो गई। केंद्र: असंसूचित मिजों फॉंट विधायकों ने 13 सदस्यीय विधायक दल से हाथ मिलाकर सरकार बनाने की तैयारियां शुरू कर दी थी। इसी क्रम में उन लोगों ने संयुक्त विधायक दल बना डाला।

मिजों नेशनल फॉंट के असंसूचित विधायकों और कांग्रेस विधायक दल से मिलकर बने संयुक्त विधायक दल ने प्रदेश कांग्रेस अध्यक्ष ललितकर्म ने 22 विधायकों के सम्बंध में सरकार बनाने का एलान किया था, किन्तु राज्यपाल हितेश्वर
सैकिया केन्द्र के निर्देश पर चुप्पी साधे रहे। उधर विधानसभा अध्यक्ष ने भी अस्तुपूर्वक विधायकों के नाम नोटिस जानी करने के अधार और कुछ नहीं किया था। उन्होंने नोटिस के जवाब के लिए एक सप्ताह का समय दिया था, सप्ताह बीत भी गया था। बताया जाता है कि जवाब न आने पर अध्यक्ष कुछ निर्णय करने ही वाले थे कि केन्द्र ने अपना निर्णय घोषित कर दिया।

लालडेगा 30 जून, 1986 को केन्द्र और मिजस नेशनल पूंड के बीच समझौते के बाद मुख्यमंत्री बने थे। कांग्रेस के तत्कालीन मुख्यमंत्री ललितनन्दन अपने पद से स्वतंत्र देकर लालडेगा की अंतरिम सरकार में उपमुख्यमंत्री की हैससति से शामिल हुए थे, जिसमें मिजस नेशनल पूंड कांग्रेस को हरकर स्वतंत्र हुआ था। उसे 25 सीटें मिलीं थीं और कांग्रेस को 12 सीटें बांटीं थीं। 20 फरवरी को जिस दिन लालडेगा ने अपने भ्रष्टाचार की थी, उसी दिन पूर्ण राज्य का दर्जा दिया गया था।

वर्तमान संकट को हल करने के लिए लालडेगा ने घोषणा की थी कि वह 14 सितंबर को राज्य विधान सभा में विश्वास गत प्राप्त करने के लिए प्रताप भेंज करेंगे। उनका कहना था कि अगर वह विश्वास गत प्राप्त करने में विफल रहें तो अपने पद से हट जाएंगे। उधर ललितनन्दन भी दिल्ली में ड्राइ दाले थे और कांग्रेस हाईकमान की समझा रहे थे कि पार्टी का विधायक दल मिजस नेशनल पूंड के अस्तुपूर्वक विधायकों के मिलकर सरकार बना सकता है। राज्यबांध हितकर सैकिया की रिपोर्ट पर केन्द्र ने अपने आदेशों के मुताबिक पैसा दिया और राज्य में राष्ट्रपति आसन लागू कर दिया।

मिजस नेशनल पूंड की फूट के कारण इस नये राज्य में ड्रेड सार के बाद ही आसन में अस्थिरता का पैदा हो जाना ही दुर्भाग्य पूर्ण है, खास कर इसलिए कि पूर्वीतर राज्यों की नाजुक स्थिति के सनद्धों में इनमें भिजिया और मानि अधिवार आए आए है।
केन्द्र सरकार निजीरम की स्थिति पर शून्य से ही निगाह रखे हुए थे। ऐसा लगता है कि असन्तुष्ट विधायकों ने नागालैंड के उन विधायक कांग्रेसों ने प्रेषण कारण की जिन्होंने मुख्यमंत्री होकिंजे सोमा की सरकार से अपना समर्थन वापस लेकर वामुमो के साथ सरकार बनाने का उपक्रम किया था यह दु-दब स्थिति ही कहीं जगही। कि उन दशकों की उपलब्धि और हिंसात्मक गतिविधियों के बाद सामान्य स्थिति की तरफ तेजी से लौट रहा था, यह सही है कि समझौते के बाद हवियार डालने वाले अनेक मिजो कार्यकर्ताओं ने अनुसार विधायकों के बाद हवियार डालने वाले अनेक मिजो कार्यकर्ताओं पुर्तवास आदि के मामलों में सरकार की कार्यप्रणाली से बहुत असन्तुष्ट रहे हैं। मिजो नेशनल फॉंट के अलग होने वाले विधायकों ने अपनी सफाई में इसी आरोप पर अधिक जोर दिया है। असन्तुष्ट विधायकों का यह भी आरोप है कि मुख्यमंत्री लालदेहा का भूमि बहुत निरंतर और कठोर तानाशाह जैसा है।

मिजो नेशनल फॉंट के आमार 1987 में ही प्रकट होने लगे थे जब आत्म समर्पण करने वाले कार्यकर्ताओं के एक दल में आम कांग्रेसों के हल के लिए सरकार पर हमारे डालने की गरज से अपना एक समन्वय बना लिया। इस समन्वय के सदस्यों की संख्या 500 तक हो जाती है। उन्होंने नागालैंड राज्यवर्धिनी की आवाज़ देकर शिकायत की थी कि मुख्यमंत्री लालदेहा उनकी दयनीय स्थिति पर कोई गौर नहीं करते। इसके जवाब में लालदेहा ने केन्द्र पर आरोप लगाया था कि केन्द्र समझौते के कार्यकर्ताओं की सहायता और राहत राशि नहीं दे रहा है। लालदेहा ने यह भी चेतावनी दी थी कि अगर केन्द्र ने उदासीनता का रवैया बनाये रखा तो मिजो नेशनल फॉंट का एक हिस्सा फिर हवियार उठाकर जंगलों में जा सकता है। मगर हुआ इसका उद्देश्य असन्तुष्ट
हिस्सा जंगलों में भूमिगत होने की बनाय वांकेस्वर की तरफ चला गया।

वस्तुतः मिजोरम में 10 दिनों तक जैसी स्थिति बनी रही, उसे देखते हुए राज्यपाल हिलेश्वर से मेजबानी के पास राज्यपति आसान लागू करने के अलावा कोई दूसरा आसान और सुरक्षित रास्ता नहीं था। पहँची राज्य नागालैंड में राज्यपति आसान लागू करने के बाद केंद्र सरकार मिजोरम में करीब करीब वेसी ही टिकियां में कोई दूसरा भिन्न लेती, यह न तो उचित था, न संभव होता और न ही लोकतांत्रिक व्यवस्था के अनुकूल होता। एक अंतर अवसर था। नागालैंड में होकरी की कांग्रेस हूँ सरकार टुटी थी और राज्यपति आसान लागू न होने पर वहां वैर कांग्रेस सरकार का बना निश्चित था। उस समय केंद्र को यह मंजुर नहीं था कि एक और राज्य उसकी हुकूमत से बाहर चला जाय। मिजोरम में लालडेंग के मिजो नेशनल फंट की सरकार थी। इसके टुटने पर वहां कांग्रेस के सामने मोका आया था और वह साता सरकार बना सकती थी। प्रदेश कांग्रेस नेता ललितनाथकार ने राज्यपाल हिलेश्वर से मेजबान उसे सामने वेकल्टिक सरकार बनाने का दावा भी पेश कर दिया था।

अगर राज्यपाल ने इस दावे को तरफ कोई ध्यान नहीं दिया, और कांग्रेस हाईकमान ने इस दावे पर जोर नहीं दिया तो इसके दो कारण हैं। राज्यपाल हिलेश्वर से मेजबानी की मजबूती यह थी कि उनके पास यह जानने का कोई तरीका नहीं था कि विदेश में अपना इलाज करने वाले विदेशवासियों ने भी लालडेंग का साथ छोड़ दिया है अथवा नहीं। दोनों बात अपने-अपने दावे पॉश कर रहे थे। अगर उपाध्याय ने लालडेंग का साथ नहीं छोड़ा तो मिजो नेशनल फंट के अस्तित्व की संदर्भ एक तिहाई से कम 25 में 8 बैठती थी और कांग्रेस हूँ के साथ मिलकर सरकार बनाने का दावा करते वलें उन विदेशवासियों की विदेशसेवा समस्या खत्म हो जाती। दल बदल विरोध कांग्रेस की व्यक्ति ऐसी ही है।
जब राज्यपाल ने किसी सूरत में इस मामले को सुनकर न देखा तो विधानसभा भंग करने और राष्ट्रपति शासन लागू करने की सिफारिश कर दी। कांग्रेस भाई कमान के भी इस बात का आमाल था कि अगर उसने मिजो नेगल फंट से दूसरे विधायकों को मिलाकर सरकार बनाई और लालरेखा को रत्ता से अलग कर दिया तो मिजोरम की स्थिति बिगड़ जायेगी और जनता विधाह के रास्ते पर भी जा सकती है। आखिरकार उस जनता ने मिजो चुनाव में कांग्रेस[ह्व] के मुकाबले लालरेखा को मिजो नेगल फंट को भारी समय दिया था। इस समय भी मिजोरम में लालरेखा के नाम का ढंका बजता है। बहुत संभव है कि उनका साथ छोड़कर हतने वाले विधायकों को मिलाकर सरकार बनाना कांग्रेस[ह्व] के लिए बड़ी कठिनाईयाँ पैदा कर सकता था।

राष्ट्रपति शासन लागू होने की खबर सुनकर लालरेखा ने कहा कि उनकी सरकार भले ही मिर गयी है, लेकिन उनकी पार्टी जंगल और विधाह का रास्ता नहीं पकड़ेगी, बल्कि निहित स्थायीत्व तत्वों की तक्षणों के बारे में जनता की अवधारणा में न्याय मांगेगी। इस पूरे घटनाक्रम से एक सच्चा जस्ते पैदा हुआ है। सच्चा यह है कि एक विधायी से कम सदस्य किसी पार्टी को छोड़ दें तो क्या दल-वदल विरोधी कानून के अन्तर्गत उन्हें विधानमण्डल की सदस्यता के अधिकार से वैधित नहीं किया जाना चाहिए। मिजोरम में 25 में से 8 एक विधायी से कम सदस्यों ने मिजो नेगल फंट छोड़ दिया था। दरअसल उन सदस्यों ने विधान सभा में प्रवेश करने से रोक कर लालरेखा को शामिल परीक्षण का अवसर देना चाहिए था। असंतुष्ट सदस्य अपने फंट की संख्या 9 का बता रहे थे, लेकिन अध्यक्ष की नेटिस की अवधि शीत जाने पर भी वे विधान सभा उपाध्यक्ष का समर्थन अपने साथ नहीं कर सके। ऐसे में 8 असंतुष्टों के सरकार से विधान सभा में शामिल परीक्षण में भाग लेने से वैधित किया जा सकता है। फिर मिजो नेगल फंट के 16विधान सभा के उपाध्यक्ष विदेश में हैं और कांग्रेस[ह्व] तथा पीपुस पार्टी को जोड़कर
14 सदस्यों के बीच जश्नित परीक्षण होता।

इस उद्घाटन से उबरने के बाद उन 8 सीटों पर उप चुनाव हो सकता था।

सचमुच ऐसा करना ही संवेदनशील और कार्यकारी व्यवस्था के अनुकूल होता तथा दल-बदल विरोधी कानून भी कसोटी पर कसकर दंड लिया जाता । जहां तक लालडेगा का सवाल है, वह राष्ट्रपति की धारणा से निराश अथवा नाराज नहीं हुए हैं। अब कह मिजोरम की जनता के बीच यह कह सकते कि विधान सभा में उन्हें अपना बहुमत प्रदर्शित करने का मोका नहीं दिया गया। इसमें कोई शक नहीं है कि इस दलील से मिजो नेष्टल फॉ जनेरसल्ड के पहले से भी अधिक आसानी से प्राप्ति कर सकेंगा।

पूरी भारत के दो सीमावर्ती राज्यों नागलेण्ड और मिजोरम में जो संवेदनशील गतिरोध पैदा हो गया है, वह विधान सभाओं के भीतर दल-बदल विरोधी कानून का प्रयोग में लागू दूर किया जा सकता था। इससे जनता में फिर कोई ऐसा धारणा किया जा सकता है कि राजीव गांधी की सरकार ने , दल-बदल विरोधी कानून सिर्फ अपने फायदे के लिए बनाया है। कांग्रेस[हू] की विधान सभाओं की अपेक्षा केंद्र द्वारा नियुक्त राज्यपालों पर अधिक दबाव है, जो भी हो यह अवध कह जाना चाहिए कि केंद्र सरकार नागलेण्ड और मिजोरम के राष्ट्रपति शासन की अधिकारियों का लेना न करें। मिजोरम में 6 गांवों के भीतर ही चुनाव करवाने जाने चाहिए। महत्वपूर्ण यह नहीं है कि वहां मिजो नेष्टल फॉ बिजली होता है, य कांग्रेस[हू] महत्वपूर्ण बत यही है कि वहां लोकतात्त्विक प्रक्रिया बहाल होनी चाहिए।

यह मानना पड़ेगा कि केंद्र ने जो कुछ किया है वह कुछ गर्वीमत है अगर कांग्रेस[हू] को असुंगत विद्वानों के साथ मिलकर सरकार बनाने की अनुमति दे दी जाती है इतना निश्चित है कि मिजोरम में फिर वही पुराना खूनी माहौल लौट आता। लालडेगा ने संकट शुरू होते ही खुलवाया आरोप लगाया था कि कांग्रेस[हू] की शहर
पर मिजो नेकाल फंट के विधायकों ने निकाल किया है। अगर इस तरह की चालबाजी
से केन्द्र के सत्तास्थल पार्टी को मिजोरम की सत्ता हड़पनी है तो मिजो नेकाल फंट हार
मानने वाला नहीं है। हम जंगलों दोबारा वापस जाकर अपना पुराना संघर्ष शुरू करेंगे।
चूँकि राष्ट्रपति शासन ने ऐसी अधिक और हिस्से भर्ति से मिजोरम को बचा दिया है,
इसलिए आशा की जाना चाहिए कि राज्य में प्रतिनिधि सरकार के गठन के लिए शीघ्र ही
चुनाव करये जाने चाहिए।
MISUSE OF POWER UNDER ARTICLE 356

1. This power was not only used—too frequently but also it was misused at any times.

2. There has been misuse of this power for dismissing state-governments even having the confidence of their respective legislature. on the grounds which were—

   1. Partisan
   2. Unconvincing
   3. Unconstitutional

EXAMPLES

1. EAST PUNJAB (1951): Imposed on June 20, 1951. Main Cause: (1) Rivalry between different groups of ruling congress party, (2) It was used as a solution to end group rivalry within a political party.

PRESIDENT RULE IN PUNJAB

The president rule in Punjab was enforced on 11 May, 1987 when centre issued an ordinance under article 356 of the constitution. It is said in the proclamation that the legislative assembly in Punjab will remain suspended during the president rule. Before it the Governor of Punjab Sri Siddhartha Shanker
Ray studied the law and order situation in the state after a wide tour. The Governor said in his report sent to the centre that terrorist activities have been continuously on the rise for last one month and there is fear and terror in each house of the state. It has become to live specially in the villages. Even the officers hesitate to go there. It is the duty of the government in such circumstances to provide safety there. Central Home Minister Sri Butta Singh presented the ordinance before Lok Sabha for approval and said that since there was no option to meet with the failure of Barnala government in maintaining law and order situation in Punjab, President rule has to be enforced there.

PERIOD OF THE PRESIDENT RULE IN PUNJAB

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
<th>DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 20, 1951</td>
<td>April 17, 19522</td>
<td>303</td>
</tr>
<tr>
<td>July 5, 1966</td>
<td>November 1, 1966</td>
<td>111</td>
</tr>
<tr>
<td>August 23, 1963</td>
<td>February 17, 1969</td>
<td>118</td>
</tr>
<tr>
<td>April 30, 1977</td>
<td>June 20, 1977</td>
<td>51</td>
</tr>
<tr>
<td>February 17, 1980</td>
<td>June 7, 1977</td>
<td>111</td>
</tr>
<tr>
<td>October 6, 1983</td>
<td>September, 1985</td>
<td>724</td>
</tr>
<tr>
<td>May 11, 1987</td>
<td>to still continue</td>
<td></td>
</tr>
</tbody>
</table>
1.a) NAGALAND (1957 and 1987)

The President Venkat Raman dissolved the legislative assembly in Nagaland enforcing president rule on 7th August, 1988. There was the government of congress (I) since last eight month. But some time before 13 M.L.A.'s including four ministers lift the party so congress (I) came to minority. The president issued this ordinance receiving a report from the Government Sri Krishna Rao. The Governor said in his report that such circumstances have arisen in the state that the state government can not be run under the provisions of the constitution. The Governor had proposed to dissolve the legislative assembly too. The M.L.A.'s who resigned claimed to form the government before the governor forming a new party named Nagaland Kshetriya Congress in the leadership of Sri Wamujo with the support of 18 M.L.A.'s of Naga National Democratic Party. General elections were held on 18th November, 1987 in Nagland in which congress won 31 seats out of the 60 seats of the Legislative assembly.

b) JAMMU & KASHMIR (1986)

Issuing an ordinance the president of India honourable Zail Singh Enforced presidential rule in Jamuu and Kashmir on
6th September, 1986. According to the provisions under article 356 of the constitution presidential rule may be enforced for a period of 3 months. The legislative assembly will remain suspended during this period. But all the functions of the legislative assembly will be performed by the parliament. The president took all the official rights in his hand. The period of three months of the presidential rule may be further extended for a period of six months if needed.

2. PEPSU (153) : United Front Ministry of Gyan Singh parewala was dismissed. Grounds of dismissal.

There was no law and order in the state, etc. etc. Before imposition of president's rule no efforts were made to form the united front Ministry with a new leader or an alternative Ministry.

3. KERALA (195) : June 30, 1959.

CAUSE:

Imposed under unusual circumstance without a constitutional precedent. Communist Ministry was formed in 1957. All Opposition parties started agitation outside legislature. Presidents Rule was imposed on a ministry which enjoyed
Confidence of majority on the floor was dismissed.

4. HARYANA, 1967

Ministry of Rao Birendra Singh was dismissed on 4 grounds (i) size of Ministry was too large; (ii) Interference of M.L.A.'s in Administration; (iii) 30 M.L.A.'s defection (Some of them had been defeated more than one - This made mockery of democracy; (iv) No political - Stability.

5. UTTAR PRADESH, 1970

Ministry of Charan Singh in U.P. was dismissed.

CAUSE:

As he refused to resign when asked by the Governor to do so after the withdrawal of support by the Congress (O). the so called major partner.

6. TAMILANDU, 1976 - Ministry of Karunanidhi was dismissed.

CAUSES:

1. There were corruption charges against the ministry:
(2) Emergency powers were missed; 93) Demand for autonomy was made.

7. 9 STATES (April 30, 1977) Janta Government at Centre.

CAUSE: All the 9 State Governments have ceased to represent the people because congress party had been routed out in PARLIAMENTARY elections held in March '77.
8. KARNATAKA (1977). Government of DEV RAJ URS was dismissed.

**CAUSE:**

He has caused to command the confidence of Assembly. This was done inspite of the fact that the Assembly was to meet just after 3 days.29

9. 9 STATES (Feb. 18, 1980) Indira Cameback to power and dissolved 9 state assemblies, which were ruled by Non-Congress (I) Governments.

**CAUSE:**

1. There as delay on the party of states ruled by non congress (I) parties to ratify 45th Amendment Bill relating to the extention of reservation of seats for scheduled castes and scheduled tribes in parliament and state Assemblies.

2. There was likelyhood of these state governrments blocking other progressive measures in future.

3. There was loss of confidence of electorate in these governments as refleted in the defeat of ruling party M.P. candidates in these states.30
CONCLUSION

Thus, the frequent dismissal of state Governments has been an attempt on the part of the centre.

1. To control partisan and political dissent at state level.
2. Also, the federal system is subjected to strains. It impairs the federal structure erodes the autonomy of the states.

A THOUGHT OVER THE POSSIBILITY OF CONSTITUTIONAL SAFEGUARDS AGAINST ABUSE OF POWER UNDER ARTICLE 356:

1. The only constitutional safeguard against the abuse of power under Article 356 is the ratification by parliament as provided under clause 3 of this article.

2. Article 356(3) provides that - Every such proclamation shall be laid before each house of parliament and shall... cease to operate at the expiration of 2 months unless... it has been approved by resolutions of both houses of parliament.

3. This Safeguard is an illusory one, as experience has proved. So far, there is not a single instance to quote in which the imposition of president's rule could not be ratified by the parliament.
4. Suppose even if it so happens that it is not ratified by the parliament and it is declared that president's Rule was wrong. This declaration can not repair the damage that is already done.

5. In the long run, this damage becomes much more serious and often and often unhealthy political trends are created.

6. There is, thus, no parliamentary control over the wugging exercise of this vast power under Article 356.

POWER OF THE PRESIDENT TO DISSOLVE STATE ASSEMBLIES vis a vis

POWER OF JUDICIAL REVIEW

1. The only safeguard against the abuse of power under article 356 is the judicial review.

2. The Supreme Court's Judgement in 1977 in state of Rajasthan vs Union of India31 brought by some state governments against janta Government's proposal to dissolve the state legislatures (has) broken new ground.

3. It upheld the Court's right to strick down a proclamation imposing president's rule if the Action was Mala fide or based
on extraneous or irrelevant considerations, but ordinarily Court would keep away from political questions, in particular, substituting its own judgement for that of executive.

4. As per BHAGWATI and A.C. Gupta JJ.:
   (i) The Court Cannot, in the circumstances, go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based.
   (ii) That would be dangerous exercise for the court both because it is not a fit instrument for determining a question of this kind also because the Court would thereby usurp (Surup) the function of the Central Government and in doing so, enter the "Political thicket" which it must aoid.
   (iii) But, if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds the court would have jurisdiction to examine it"32.

5. Thus, it was only a poineering ruling and may not be regarded as the last word..... The Court might widen the scope of its power of judicial review. It might insist..... on
"substantial evidence" in support of the centre's charges against a state if the latter accused the centre of acting mala fide.

6. Furthermore, there are 2 upshots of the 1977 judgement. FIRST, that even though dead could not be revived i.e. a dissolved state assembly could not be brought to life. The Court would not read into the Presidential Power limitation that did not clearly exist.

This means that by issuing proclamations (which actually means the centre) has committed no constitutional wrong. 33

SECONDLY, that even if the presidential proclamation was not approved by the parliament, actions taken during the period of initial two months could not be invalidated. 34
FOOTNOTES OF CHAPTER - 6


2. Surinder S. Suri, "Crises of Indian Federalism" The Tribune Feb. 27, 1980, P.4

3. Father he (Dr. Ambedkar) said: "It would take me very long now to go into a detailed examination of the whole thing and referring to each article, say this is the principal which is established in it and say if any Government of any legislature of a province does not act in accordance with it, that would act as a failure of the machinery. The expression "failure of machinery" I find, has been used in the Government of India Act, 1935. Every body must be quite familiar, therefore, with its defact and be sure meaning. I do not think further explanation is necessary" C.A.D., Vol. IX, p.77

4. Kunzru asked: "What is the meaning exactly of" the provisions of the constitution taken as a whole. The house is entitled to known from the honourable member what is
his idea of the meaning of the phrase 'in accordance with the provisions of the constitution'. C.A.D., vol. IX p.176.

5. Ibid. Vol. IX, p. 161
6. Ibid. p. 162
9. Ibid, at p. 1380
10. Ibid. at p. 1384.
12. Ibid. P. 140
15. Ibid., at p. 1385.
16. These States were: Punjab, PEPSU, Andhra, Orissa, Gujrat, Rajasthan, Uttar Prades, West Bengal Karnataka, Kerala (1956, 59, 63 and 65) Travancore cochn and Andra.
17. Goa is 1966.
18. The state were: Bihar, Harayana, Punjab, Orissa, Gujrat, Rajasthan, Uttar Prades, West Begal, Karnataka, Kerala, nagaland, Tripura, Andhra, Manipur, Tamil Nadu.

20. These states were: Bihar, Haryana, Orissa, Punjab, Rajasthan, U.P., West Bengal, Himachal and Madhya Pradesh.

21. The States were Bihar, Uttar Pradesh, Punjab, Rajasthan, Madhya Pradesh, Gujrat, Maharasthra, Orissa, and Tamil Nadu.


23. Ibid.

24. Ibid.

25. For Example, the Ministries of Gian Singh Rarewala in PEPSU in 1953 of Namboodripad in Kerala in 1959 of Rao Birendra Singh in Haryana in 1967. Charna Singh in Uttar Pradesh in 1970, of Karunanidhi in Tamil Nadu in 1967. All of them were non-congress Ministers and they were dismissed by the congress party government at the centre when the Janta Party came in power at the centre, nine congress Ministers in Haryana, Punjab, U.P., Bihar, West Bengal, Madhya Pradesh, Rajasthan, Himanchal and Orissa were dismissed on April 30, 1977. The Ministry of Dev Raj Urs in Karnataka was dismissed on December 31, 1977. This shows that Janta Government also did not long behind in the misuse of Article 356, Again when the Congress Party came in Power at the centre in 1980. Nine non-
Congress(I) Ministers were dismissed in Bihar, Uttar Pradesh, Punjab, Rajasthan, Madhya Pradesh, Maharashtra, Gujrat, Tamil Nadu and Orissa.


27. It is important to note that at present in Haryana the Ministry of Bhajan Lal is all of the defections. Similarly, the Ministry of Gundu Rao in Karnataka and of Ram Lal Himachal Pradesh are of defections.

28. Though the demand for State Autonomy was not new Demand and Tamil Nadu Government has been making this demand since 1967. At present the Chief Ministers of West Bengal is taking lead in this regard and he has submitted a memorandum in 1977 to the centre for demanding more autonomy for the states.


30. However, the federal structure of our constitution postulates that there may be one party rule at the centre and quite an other at the state level.

32. Ibid. P 1362.

33. Ibid, p. 1391.

34. Ibid.