

*DEDICATED*

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*MY BELOVED PARENTS*

# **PATTERNS OF PRESIDENT'S RULE : RECENT TRENDS AND ISSUES**

*Dissertation submitted to the Jawaharlal Nehru University  
in partial fulfilment of the requirements  
for the award of the degree of  
MASTER OF PHILOSOPHY*

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INDIA  
1994**



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*21st July, 1994.*

## CERTIFICATE

Certified that this dissertation entitled "**Patterns of President's Rule : Recent Trends and Issues**" submitted by **Debdutt Panda** in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is his own work and has not been submitted to any other University for the award of any Degree.

We recommend that it should be placed before the examiners for evaluation.

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## ACKNOWLEDGEMENT


I am deeply indebted to my supervisor Prof. Balveer Arora for giving me a great insight into the topic. The personal care that he took in guiding me to the right sources helped me immensely in completing my work.

I am also thankful to the staff of Parliament Library, Indian Law Institute, Teen Murti Library, Inter-State Council, Central Secretariat Library & JNU Library for the help that they extended to me in completing my work.

I will be failing in my duty, if I do not thank my friends Hara & Alok, who constantly encouraged me and helped me to complete my dissertation.

My friends Santosh, Roopa, Anita, Anil, Satya and Lamboda lent me a great deal of support. Had it not been for their support, this work would not have seen the light of the day.

I must also thank the owner and staff of Sharma Photostat for helping me in completing my dissertation in time.

  
(DEBDUTT PANDA)

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## PREFACE

Frequent use of Article 356 of the Constitution of India which was expected to remain a "dead letter" is a topic of animated discussion and fiery debates among scholars, legal luminaries, politicians of the country. Its use in the past four decades or so has sparked off innumerable controversies affecting the working of the federal system and the parliamentary system of government.

Even though a federal system operates in India with the Union government and State governments having their own jurisdictions, the fathers of our Constitution felt the necessity of incorporating certain emergency provisions in our Constitution to deal with controlled situations. The cardinal principle behind the incorporation of the emergency provisions was to keep the unity and integrity of the country intact. Therefore, our Constitution imposes an obligation on the union government under Article 356 of the Constitution not only to interfere in the affairs of the state but to supersede the duly elected governments.

However, if one looks back at the working of the Constitution in the past forty years, one will definitely come to the conclusion that Article 356 has been grossly misused by the powers that be in Delhi for narrow partisan ends. It has caused a great deal of stresses and strains in Centre-State relations and has been one of the major irritants in smooth working of Indian federalism. These are

some of the reasons which led to my evincing a keen in this topic. The problems involved, the heat generated, the exciting debates and various arguments to weigh the pros and cons have inspired me to make an indepth study of President's rule in the states. The present study has been divided into four chapters.

The first chapter titled Constitutional Provisions and Experience deals with necessity and indispensibility of emergency provisions (in general) in a federal set up. It also traces in particular the genesis of Article 356 and how it came to occupy its position in the present Constitution. So far as experience is concerned, the first chapter basically attempts to study very briefly the use of Article 356 during the Nehru and Shastri era followed by a sketch of Mrs Gandhi's first stint as Prime Minister i.e. during 1966-77. It is followed by a review of President's rule proclamations during the Janata phase 1977-80.

In the second chapter titled "Central rule in the Nineteen eighties", an attempt has been made in the first part to make an analysis of President's rule proclamations issued by the Congress government in the wake of Mrs Gandhi's return to power. In the second part an attempt has been made to study President's rule invocations during Mrs Gandhi's second innings as Prime Minister.

The third part which is the most important part makes an attempt to study the use of Art. 356. This has been done in considerable detail. Each case has been numbered to make



the presentation more systematic and conspicuous.

In the third chapter titled "Recent trends in President's rule", constitutes the most important chapter. In this an attempt has been made to study each and every case and analyse it in the best possible manner. All the cases that came up during VP Singh and Chandrasekhar's Prime Ministership followed by PV Narashima Rao right upto the Manipur case where President's rule was declared on the 31st December, 1993 has been dealt with. For this purpose, I have relied basically on primary materials like the reports sent by the Governors before the invocation of Article 356 in a state and other sources like newspaper reports and reports in various other magazines to supplement my analysis.

The fourth chapter titled "Judicial review of President's rule" proclamations basically attempts to deal with the role of Judiciary vis-a-vis Article 356 of the Constitution. An attempt has basically been made to study the role of the judiciary with regard to Article 356. An attempt has been made to analyse all the high court verdicts and the Supreme Court verdict of 1977 in the first part. In the next part an exclusive analysis has been dedicated to the Jabalpur High Court verdict. The next part contains an analysis of the landmark Supreme Court judgement delivered on the 11th of March, 1994. A trendsetting judgement, it will have far reaching consequences affecting the very working of the federal

system. For the purpose of this chapter, I have relied mainly on judgements of the Supreme Court and State High Courts as published in All India Reporter. For the recent Supreme Court Judgement, my source was a Law Judgement Today.

This chapter is followed by a conclusion.

# Chapter - 1

## CONSTITUTIONAL PROVISIONS

### AND EXPERIENCE

Federalism is a system of government which has two levels of governments, one at the centre and another in the states. Theoretically the national government has the function of looking after matters related to national development and the state governments are assigned the task of looking after matters of local importance. Therefore, there is a Constitutional demarcation of powers between the central and state governments.

A federal system comes into existence as a result of the will of the people to have a common government at the centre and also have such governments at the state level which would help in fulfilling their needs and aspirations.

The need for a federal set up in India was felt due to a variety of reasons, the most important being the peculiar characteristics of India being a multireligious, multicultural state and the need of the hour in the wake of India's independence was to achieve unity amidst diversity.

The founding fathers of our Constitution were acutely aware of the problems that India had faced soon after achieving independence. The Constitution was framed under

the shadow of such gory and bloody events like the war in Kashmir, the Telangana agitation, the belligerent behaviour by some native princes which threatened the very existence of the fledgling state. It was as if efforts were being made to murder a child before it could see the world. Therefore, the founding fathers felt that come what may, to prevent recurrence of such happenings in future and to usher in a strong and united India, there should be a strong centre.

While speaking in the constituent Assembly in favour of a strong centre, one of its members said,

"The whole world has become a seething cauldron of economic unrest and political turmoil. A spirit of violence is abroad. Even in India we saw these world conditions, and our own peculiar problems have aggravated them. Horrible tales of arson, murder and loot continue to be our daily fare of news. Nobody knows when and where the situation will explode. It has therefore, become imperative that apart from the machinery of the government, there shall be reserved somewhere power to deal with a serious threat to law order promptly and efficiently".<sup>1</sup>

Therefore, the fathers of our Constitution were forced to incorporate certain emergency provisions which would

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<sup>1</sup>B M Gupta, Constituent Assembly Debates, Vol. V p. 797.

help the Indian federation survive in emergency situations and hours of crisis. Article 356 was brought into our Constitution to ensure orderly governance in the state and arrest the rise of disruptive forces.

As Ambedkar said in defence of this provision:

"Could we avoid giving residuary powers to the centre when an emergency has arisen? There can be no doubt that in the opinion of the vast majority of the people, the residual loyalties of the citizen in an emergency must lie to the centre and not to the constituent states. For it is only the centre which can work for a common purpose and for the general interest of the country as a whole. Herein lies the justification of giving the centre certain overriding powers to be used in an emergency.....<sup>2</sup>

### **1.1 Genesis of Article 356:**

The genesis of Article 356 of the Constitution can be traced to section 93 of the Government of India Act 1935 which had conferred sweeping powers on the Governor General much to the discomfiture of nationalist leaders. Section 93 of the Govt. of India Act 1935 provided.

"Power to issue Proclamation (1) if at any time the Governor of a province is satisfied that a situation has arisen in which the government of the province

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<sup>2</sup>CAD Vol. IX p. 116.

cannot be carried on in accordance with the provisions of this act, he may by proclamation.

- (a) declare that his functioning shall to such extent as may be specified in the proclamation, be exercised by him in his discretion.
- (b) assume to himself all or any of the powers vested in or exercisable by anybody or authority and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this act relating to any provincial body or authority.<sup>3</sup>

The basic reason behind the inclusion of such a provision in the Government of India Act 1935 was that the British government was of the view that the various state legislatures would not cooperate with the Governor and would create difficulties in the smooth functioning of the provincial government. It was a universal power which was to be used under extraordinary circumstances. It did take long for the Central government to invoke section 93 of the Govt. of India Act. 1935.

History has the uncanny knack of often thrusting on people and institutions roles of which they were at one

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<sup>3</sup>Section 93 of the Govt. of India Act 1935.

time outspoken critics. The makers of our Constitution who were the torch bears of the independence struggle were highly critical of section 93 of the Government of India Act 1935 as it conferred drastic and sweeping powers on the Governor of a province but the same persons who were once bitter critics of this provision became its votaries once it came to making of the Constitution of India.

### **1.2 Position in the present Constitution:**

Soon after India got its independence under the Indian independence Act 1947, the Constituent Assembly got down to the business of Constitution making. The draft Constitution prepared by the drafting committee of the constituent assembly contained art. 188 which empowered the Governor to proclaim the taking over of state government.

The Article read like this:

- (1) If at any time the Governor of a state is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the state and that it is not possible to carry on the government of the state in accordance with the provisions of this Constitution, he may by proclamation declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion and any such proclamation may contain such incidental and consequential provisions as may appear to him

necessary and desirable for giving effect 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 anybody or authority in the state. Provided that nothing in this clause shall authorise the governor to suspend either in whole or in part, the operation of any provisions of the Constitution relating to High Court.

- (2) The proclamation shall be forthwith communicated by the Governor to the President who may thereupon, either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers in him under article 278 of the Constitution.
- (3) A proclamation under this Article shall cease to operate at the expiration of 2 weeks unless revoked by the Governor or by the President by public notification.
- (4) The functions of the Governor under this article shall be exercised by him in his discretion.

However, there were certain basic anomalies in Article 188 which were responsible for it being scrapped. It made way for Article 278 which on renumbering became Article 356. Before Article 356 was adopted certain important amendments were moved by Dr BR Ambedkar.

The very first amendment was for the deletion of Draft Article 188 of the Constitution. The second amendment was



for the adoption of Article 277A which provided.

"It shall be the duty of the Union to protect every state against external disturbance and to ensure that the Government of every state is carried on in accordance with the provision of this Constitution".

His third amendment was related to the revision of Article 278 which empowered the President to intervene in the state of affairs at the time of emergency. According to this revised article the President could intervene in the state of affairs, either "on the basis of the report of the Governor or otherwise" if he was satisfied that the Government of the State could not be carried on in accordance with the provisions of the Constitution. It is important to note that this new provision of Ambedkar enabled the President to intervene on his own initiative even without getting a report from the Governor.

Article 278 which later on became 356, when it came up for discussion in the constituent assembly came in for sharp attack by some very prominent members of the Constituent assembly.

HN Kunzru strongly protested against the acceptance of this article. He observed:

"If the Central Government and Parliament are given the power that articles 277, 278, 278A lead together propose to confer on them, there is a serious danger that whenever there is dissatisfaction in a province

appeals will be made to the central government to come to its rescue. The provincial electors will be able to throw their responsibility on the shoulders of the central government. Is it right that such a tendency should be encouraged? Responsible government is the most difficult form of government. It requires patience and the courage to take risks. If we have neither the patience nor the courage, our Constitution will virtually be still born. Sir, the articles that we are all discussing are not needed.<sup>4</sup>

Shiban Lal Saxena was also of the view that "by these Articles we are reducing the autonomy of the states to a force."<sup>5</sup>

Notwithstanding the protests of such stalwarts, Act 278 was endorsed by the Constituent Assembly. Even though it is a unique feature in a federal Constitution, it was endorsed in the Constituent Assembly due to the tense atmosphere that prevailed in India in the wake of independence due to communal riots, partition and other such events. It dawned on our Constitution makers that to avoid further disintegration of our fledging Republic there must be a strong centre.

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<sup>4</sup>Constituent Assembly debates, Vol. IX, 3 August 1947 p. 154-6.

<sup>5</sup>Ibid.

Assuring the Constituent Assembly, Ambedkar said "I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection was applied to every part of the Constitution which gives power to the Centre to override provinces. The proper thing we ought to expect that such articles will never be called into operation and they would remain a dead letter.<sup>6</sup>

To sum up, Article 278 on renumbering became Article 356.<sup>7</sup>

#### EXPERIENCE

In this part an attempt will basically be made albeit very briefly to study the experience of Article 356 or in other words how it has been used. This part will basically be limited to study of the use of Article 356 till 1980. In order to make the study systematic a periodisation has been made (which may be arbitrary) but it would be a convenient tool to make a suitable analysis of the experience of Art. 356 during the period in question (1950-80).

The first phase started with the inauguration of the Constitution in 1950 and may be called the Nehruvian and Shastri phase (1950-66). The occasions of President's rule during this period were few in comparison to the frequency

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<sup>6</sup>CAD Vol. IX: p. 177.

<sup>7</sup>For details, see Appendix-I.

with which Article 356 was invoked after Mrs Gandhi came to power. Until then the political map of India was unvarying. The Congress party was ruling at the centre as well as in the states (except for brief spells in Kerala and Pepsu) and the problems and issues were normally tackled in the party fora. As a result the Constitutional provision entailing central takeover of state administration did not acquire any significant measure of urgency. Rather it was a period of over stability.<sup>8</sup>

The second phase started with Mrs. Indira Gandhi assumption of office. In the 1967 general elections that followed, the erstwhile ruling party the congress was thrown out of power in many states but at the same time no single party could get a majority in the various legislatures of the states sufficient enough to constitute the ministry single handed. The disenchantment of the people with the Congress led to the sprouting of Samuykta Vidhayak Dals which went on to form governments in many states of the country. This led to an era of coalition politics. There were several invocations of Act 356 during this time. However the political scene underwent a great change with Mrs. Gandhi's landslide victory in 1971 elections. A period of hegemonic leadership followed. This period also saw several invocations of Art. 356. Thus the

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<sup>8</sup>Maheswari, S. R., President's rule in India, Macmillan company limited. Delhi, 1979 p. 21.

second phase can be broadly categorised as the Indira phase (1966-1977).

The third phase is the Janata phase. It started after Janata Party government assumed office at the centre. One of its first acts was to dismiss 9 Congress state governments ostensibly on the plea that they did not enjoy the support of the people because of the massive mandate the Janata Party got at the hustings at the national level. Moreover, there were several other invocations of President's rule. This phase started in 1977 and ended in 1980.

### **1.3 The first phase or the Nehru Phase (1950-1966)**

During the Nehru era, President's rule was imposed on six occasions. These six occasions were Punjab in 1951, Pepsu in 1953, AP in 1954, Travancore Cochin in 1956, Kerala in 1959 and Orissa in 1961.

President's rule was imposed in Punjab because the Congress High command in Delhi wanted the then CM GC Bhargava out of office even though he continued to enjoy the allegiance of the majority of MLA's. Not surprisingly, some MP's who had opposed Art. 356 in the Constituent Assembly bitterly criticised the government and told Parliament that their predictions came true.<sup>9</sup>

The Pepsu coalition broke because of defections and because the elections of the CM Giani Singh Rauwale, 2

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<sup>9</sup>Ibid. pp. 24-28.

other ministers and six MLA's were set aside by the Court. A phase of political uncertainty followed. Moreover there were not any attempts to create a congenial atmosphere with the help of other MLA's to form a stable ministry.<sup>10</sup>

Next was the Andhra case. It was a coalition Ministry with the Congress as the dominant partner. The ministry of T Prakasham basically fell because the government did not withdraw the prohibition programme even after the Ramamurthy Committee had declared the programme a flop. T Prakasham's ministry fell. Nagi Reddy, the communist leader who was the leader of the single largest party having 40 MLA's out of 137 was not given an opportunity to form a Ministry. The Governor Trivedi instead of exploring alternatives vis-a-vis the formation of a new Ministry recommended imposition of President's rule. This was seen as an attempt to keep the communists at bay.<sup>11</sup>

In Travancore-Cochin, Thanu Pillai's ministry fell because Congress withdrew support from the PSP Ministry and they themselves formed a ministry in 1955. The Govinda Menon Congress Ministry resigned following resignations by party members over the issue of handing over certain districts to Tamil Nadu. The PSP again staked its claim to form a ministry because they had a strength of 57 in the 118 member assembly. They were denied the opportunity to

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<sup>10</sup>Ibid. pp. 28-30.

<sup>11</sup>Ibid. pp. 30-33.

form the government and instead President's rule was imposed.<sup>12</sup>

Next on the list was Kerala. That the Congress was partisan in its attitude towards non-congress ministries even during Nehru's time is amply proved by the happenings in Kerala. The formal reason for the imposition of President's rule in Kerala was that there was administrative chaos and the law and order machinery had completely broken down. The government of Namboodripad was accused of trying to control private educational institutions. It was also accused of trying to introduce totalitarian communism. However, it was believed that the Congress had developed cold feet over the rising popularity of the communists. Therefore, congress members went in for regular agitations, demonstrations and engineered troubles regularly for the government.<sup>13</sup>

Next came the turn of Orissa. The Congress-ganatantra parishad ministry fell because the 2 dominant coalition partners developed serious differences of opinion. Moreover the government was afflicted with the ailment of defections and regular change of loyalties by MLA's. However, the Governor YN Suthabhar did initiate the process of consultations in terms of formation of an alternative

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<sup>12</sup>Ibid. p. 33-35.

<sup>13</sup>Siwach, J.R., Politics of President's rule in India, Shimla, Indian Institute of Advanced Studies, 1979, pp. 172-173.

ministry. However, after having failed President's rule was imposed in Orissa.<sup>14</sup> The use of Article 356 during this phase i.e. the Nehru phase was not totally non-partisan. Just to settle an internal problem of the Congress party, President's rule was imposed in Punjab.

A charismatic CM Namboodripad having the majority support of MLA's in the Kerala Assembly was ousted. This case went down in the history of Indian federalism as one of the earliest misuse of Article 356. In the Travancore-Cochin case, the Andhra communists were not allowed to form a ministry following the fall of the Prakasham led ministry. Even though the misuse was not as acute as it was in later years, the rot started during Nehru's Prime Ministership.

During Shastri's tenure as PM there was the lone Kerala case. A coalition government ruled Kerala during the 1960-62 period. The CM was the PSP leader PT Pillai. Pillai was offered a Governorship and in his place a Congress Ministry was installed. However the Congress ministry fell following the withdrawal of support by 15 MLA's led by KM George who formed the Kerala Congress. The then Governor VV Giri, explored alternatives and finding none recommended the imposition of President's rule and dissolution of Assembly.<sup>15</sup> The Kerala saga did not end here. Following

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<sup>14</sup>Maheswari, S.R. op. cit. pp. 42-45.

<sup>15</sup>Siwach, J.R. op. cit. p. 173.



fresh elections results of which did not go in favour of any particular party, President's rule was again imposed.

**1.4 The second phase or the Indira Gandhi phase (1966-1977)**

The use of President's rule during the years when Indira Gandhi was Prime Minister can be put under the following heads.

- (a) President's rule pending elections in a newly created state.
- (b) President's rule following Congress party instructions following confusion in states with Congress ministries.
- (c) President's rule on the basis that there was confusion in states with non Congress ministries.
- (d) President's rule following an election which did not produce a majority.
- (e) President's rule where the Congress withdrew support from a minority ministry.
- (f) President's rule following the break up of coalition ministries due to defection.
  - (a) President's rule pending elections in a newly created state following the creation of Manipur and Tripura, President's rule was imposed pending election to their legislatures.

(b) President's rule following Congress party's instructions following confusion:

**Punjab:**

The decision to divide Punjab into 2 states - Punjab and Haryana led to a great deal of protests and agitations. The decision to divide Punjab was taken on June 10, 1966. Ten days after the Congress high command asked the CM Ram Kishan to tender his resignation which he did. A new Governor Dharamvira was sent who in turn sent a report recommending President's rule. The transition of Punjab into 2 provinces was relatively smooth due to President's rule. However the Congress actions of dismissing the CM, changing the Governor and keep the house under suspended animation were not overboard.<sup>16</sup>

**Andhra Pradesh**

The Punjab episode was followed by the Andhra episode. In 1970, Brahmananda Reddy was asked to resign. He was followed by Mr PV Narashima Rao who also resigned because of the High Command's desire in January 1973. The main reason behind the resignations was that the Congress in Andhra Pradesh was a house divided marred by internal wranglings and factional rivalries. President's rule was imposed in January 1973. The Assembly was just suspended. However, a fresh ministry headed by JV Rao was sworn in

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<sup>16</sup>Dua, B.D., President's rule in India, New Delhi, S. Chand and Co., 1979 pp. 193-197.

December 1973. This brief spell of President's rule in Andhra Pradesh was basically due to fact that Mrs. Gandhi wanted to get aid of PV Narashima Rao as CM.<sup>17</sup>

### **Gujarat**

A Congress ministry in Gujarat was ruling. It was headed by G. Oza. He was replaced by Chimanbhai Patel in 1973. Chimanbhai Patel faced a lot of rough political weather because of food riots and the Nav Nirman agitation which earned him the sobriquet of Chiman Chor. The Congress party was also a house divided. Chimanbhai resigned and President's rule was imposed in February 1974. The Assembly was kept under suspended animation. MLA's started quitting the Congress. The Congress high command had thought that it could form an alternative government. In the meantime, Chimanbhai resigned from the Congress. However in the face of constant protests and demands by the opposition, the assembly was dissolved in June 1975.<sup>18</sup>

### **Uttar Pradesh**

In UP, the situation was not of an altogether different kind. The provincial armed constabulary rose in revolt and this led to the resignation of Mr Kamalpathi Tripathy as the CM of UP in June 1973. President's rule was imposed but the Assembly was kept under suspension. Tripathi resigned ostensibly because the law and order

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<sup>17</sup>Maheswari, S.R., op. cit., pp. 94-95.

<sup>18</sup>Dua, B.D. op. cit. pp. 353-355.

situation had deteriorated following the PAC revolt. However in reality he resigned because the Centre wanted HN Bahuguna to be CM instead of Kamalapati. Bahuguna rightly took over as CM after President's rule was lifted in November 1973. Once again this very important article was used in order to sort out internal problems of the Congress on the ostensible plea of breakdown of law and order. There is no doubt that in all these cases the President claimed to have imposed president's rule because there was something wrong in the states of Andhra, Gujarat and UP in 1966, 1973, 1974 and 1975 respectively. In all these Congress ministries had majorities but they were made to go and President's rule was imposed only to sort out internal wranglings and bickerings of the party. Moreover, it is also ironic that the argument that was advanced, that law and order broken down for imposition of President's rule in most of the cases was not acceptable. The same party was again given an opportunity to be at helm of affairs in the states after some time.

(c) President's rule on the basis that there was confusion in states with non-Congress ministries.

### **Haryana**

The first case relates to Haryana where a Congress ministry fell due to large scale defections by the Congress in March 1967. This led to the formation of a Samuykta Vidhayak Dal ministry under the leadership of Rao Birender

Singh. Rao Birendra stated the brand of Aya Ram Gaya Ram politics of Haryana which was popularised in Haryana by the Devi Lals, Bhajan Lals and Bansi Lals. Corruption became rampant, defections and floor crossings became an everyday affair and Rao Birender offered ministerial berths to all and sundry to keep his flock together. Finally in view of the fluid political situation, the Governor decided to act and President's rule was imposed because the central government could not allow the situation to come down to such low levels in Haryana. President's rule was imposed in Nov. 1967. However the central reaction would have been different if a Congress Ministry was placed in similar circumstances.<sup>19</sup>

#### **West Bengal**

Ajoy Mukherjee led a United Front government which faced with PC Ghosh quitting the government over handling of communist party workers. This happened on November 2 1967. As P C Ghosh left the government and the majority of Ajoy Mukherjee was in doubt, the Governor asked the CM to convene the Assembly for a floor test. The Governor asked Mukherjee that the Assembly be convened latest by November 23, 1967. The CM wanted it postponed till December 18, 1967 because he wanted to negotiate with other parties to save his government. Following the refusal of the CM to convene the Assembly he was sacked as CM on November 21 1967. PC

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<sup>19</sup>Siwach, J.R. op. cit. pp. 154-155.

Ghosh, the minister who had quit the government was appointed CM and the Assembly was convened on November 29.

The PC Ghosh ministry with Congress support faced the Assembly on November 29 1967 when the Speaker raising the question of Constitutionality of the appointment of PC Ghosh as CM adjourned the House sine die. In order to nullify the Governor's order the government prorogued the assembly which was reconvened on February 14, 1968. Meanwhile, splits in the Congress led to dwindling support for Ghosh's Ministry. The Speaker adjourned the Assembly sine die again when it was reconvened. The Governor was uncertain about the majority of the Ghosh ministry and the effects of the speaker's ruling.

This case for the first time brought to the fore one very important point and i.e. the role of the Governor. Moreover, it further lent credence to the popular belief that the Centre was hell bent upon dispensing with non-Congress ministries. A new dimension to the whole controversy was added by the role of the Speaker.<sup>20</sup>

#### **Uttar Pradesh**

The Congress ministry of CB Gupta fell in UP following Charan Singh's resignation from the Congress government to form the Bhartiya Kranti Dal. The BKD joined the Samuykta Vidhayak Dal. Charan Singh became the CM. Differences within the coalition led to the resignation of Charan Singh

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<sup>20</sup>Ibid. p. 326-330.

on February 17, 1968. Since the SVD was unable to elect a new leader President's rule was imposed on February 25 1968. The attempt by both the sides to muster a majority was of no avail and the Assembly was dissolved on April 10 1969.

### **Tamil Nadu**

The final case was that of Tamil Nadu. The DMK had been in power for almost eight years. Less than 2 months before its term was to expire the Governor KK Shah recommended President's rule on the ground that the Tamil Nadu government was corrupt and appointed a commission of inquiry to probe it. It was a bizarre step because only 2 months were left for the Assembly's term to be over and such a step was uncalled for.<sup>21</sup>

(d) President's rule following an election which did not produce a clear majority

### **Rajasthan**

In the state of Rajasthan following the elections of 1967, the distribution of seats was as follows:- Congress 89, Swatantra Jana Sangh 22, Janata Party 11, Samuykta Socialist party 8, Communist Party of India 1, Independents 4. A United front government consisting of Swatantra, Janata, SSP, Jana Sangh was formed. It was at this time that the Governor Sampurnananda started indulging in the politics of manipulation. In a show of partisan conduct, he

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<sup>21</sup>Ibid. pp. 307-311.

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counted the Janata members as independents and refused to swear them in on the plea that the united front had a strength of only 60 members as against Congress's 89 members. He argued that the united front was formed after the election and there was no common programme. Therefore, the Congress leader ML Sukhadia was called to form the ministry. A lot of demonstration and processions took place. On March 13, 1967, President's rule was imposed and the Assembly suspended. This gave the Congress enough time to jack up their support. In the mean time a new Governor came, who interviewed the MLA's and a Congress ministry was formed. Finally, the Governor did recommend President's rule because there was a break-down of the law and order situation.<sup>22</sup>

### **West Bengal**

In sharp contrast to the Rajasthan situation was the West Bengal situation. Following the 1971 elections, there was no clear majority. Governor Dhavan asked the leader of the CPI (M). Jyoti Basu to form a ministry provided he could prove he had a majority. Basu insisted on proving his majority on the floor of the house. In the meantime, some members of the United Left Democratic Front decided to support the Congress, which formed a coalition ministry. The ministry lasted for a few months. There were some problems on the refugee issue and some MLA's withdrew

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<sup>22</sup>Dua, B.D. op. cit. p. 250-253.



support. The CM advised the Governor to dissolve the assembly and recommend the imposition of President's rule.

(e) President's rule where Congress withdrew support from a minority ministry.

In the late sixties and early seventies, the politics of the state of Punjab was dominated by a combination of defections and factional politics. Therefore, it gave the Congress an advantageous position to make and unmake ministries during the 3 years 1968-1971. Soon after the 1967 election, the Congress emerged as the single largest party with 47 seats in the assembly which had 104 seats. A United Front ministry was sworn in with Gurnam Singh as the CM was sworn in. In March 1967, a vote censuring the ministry was moved. It was a vote against the Governor's address because the vote was a free vote on an issue on which the government had conceded.

In November 1967, Gurnam Singh resigned following the desertion of LS Gill who formed the United Punjab Janata Party to which the Congress promised support. After Gurnam Singh's ministry was reduced to a minority, the Governor swore in L.S. Gill as the Chief Minister. The Congress after some time withdrew support and the government fell. President's rule was imposed on August 28, 1968.

The 1969 elections also did not provide any concrete result. An Akali Dal-Jana Sangh ministry was sworn in, in February 1969. Six weeks after, factionalism in the Akali

Dal and an adverse vote in the Assembly led to Gurnam Singh's resignation. The coalition headed by PS Badal continued until the Jana Sangh left the ministry on July 7 1970. The Congress stepped in to prop the ministry till June 1971. However differences between the Congress and Badal led to his resignation on June 13 1971. The assembly was dissolved. President's rule was imposed.<sup>23</sup>

(f) President's rule following the breakup of coalition ministries due to defection.

### **Bihar**

After the 1967 election no party had a clear majority. A SVD government was formed which fell on the issue of granting Urdu the status of a second language. A ministry headed by BP Mandal of the Soshit Dal was formed which survived from Feb. 1 to March 18 1968. It was replaced by a ministry headed by Bhopa Pawan Shastri, the leader of the new party called the Lok Tantri Congress Dal. This ministry lasted from March 22 1968 to June 25 1968 when Bholu Pawan Shastri recommended dissolution. The Governor invited the Congress to form a ministry. But he advised President's rule turning down a request by the Congress to consult the high command in Delhi. The problems of Bihar were not over. The elections in 1969 did not produce any definite result. A Congress coalition ministry was sworn in which lasted

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<sup>23</sup>Arora, S.C, President's rule in Indian states, New Delhi, Mittal Publications, 1990, p. 141-144.

from Feb. 26 to June 20 1969. Another Soshit Dal ministry lasted from June 22 1969 to July 1969. President's rule was imposed. The legislature was suspended. Then followed a Congress coalition ministry by DP Rai. It lasted till December 1970 and another coalition followed. It ruled till 1971 when it resigned due to defections and recommended the dissolution of the assembly. President's rule was imposed. Elections were held a Congress ministry came to power.<sup>24</sup>

### **West Bengal**

Jyoti Basu, leader of the CPI (M) who had only 80 seats in the 280 member Assembly was invited by Governor Dhavan to form the ministry in 1970 following the break-up of the United Front ministry. Basu opined that this matter could only be decided in the Assembly. As Basu was not prepared to show his strength, President's rule was imposed in West Bengal.

### **Uttar Pradesh**

The Congress split into Congress (R) and Congress (O) in UP in 1970. Charan Singh headed a Congress (R) and BKD coalition ministry. Following differences between the 2 partners, President's rule was imposed and the Assembly kept under suspended animation. It was lifted when a Samuykta Vidhayak Dal ministry was formed under TN Singh. This ministry lasted a few months and a Congress ministry

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<sup>24</sup>Siwach, J.R. op. cit. p. 338-339.

came to power after the 1971 polls.<sup>25</sup>

### **Orissa**

Reactions to Biju Patnaik's presence in the Congress in the mid 60's had led to the creation of the Jana Congress. In 1970, the Jana Congress teamed up with the Swatantra Party to form a government under the leadership of RN Singh Deo. In the meantime, Biju Patnaik left the Congress to form the Utkal Congress. Patnaik's exit from the Congress led to Jana Congress return to the Congress fold. The Singh Deo Ministry fell in January 1971. The Governor ignored the CM's request for dissolution. President's rule was imposed on January 11, 1971, two days after exploring the possibility of an alternative ministry. The Congress toppled a ministry but was unable to provide an alternative. The 1971 elections were inconclusive. A United Front Ministry was formed in 1971. In June 1971, a Congress ministry under Nandini Satpathy assumed office. It lasted till 1973. The government fell because HK Mahatab a top Congress leader led some MLA's out of the CLP. President's rule was imposed two days later and the Governor BD Jatti did not entertain Patnaik's claim to form a ministry. Satpathy's right to appeal to the electorate was also not headed. Finally President's rule was imposed and the Assembly was dissolved.<sup>26</sup>

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<sup>25</sup>Maheswari, S.R. op. cit. pp. 338-339.

<sup>26</sup>Siwach, J.R. op. cit. pp. 240-242.

In the division of spoils following the Congress split of 1969, Mysore and Gujarat both had Congress (O) ministries under Virendra Patil and Hitendra Das respectively. Both these ministries fell because there was defection from the ranks of Congress (O) into the Congress (R) after Congress (R)'s convincing victory at the hustings in 1971.

### **Mysore**

Patil's ministry resigned soon after the resounding victory of the Congress (R) at the hustings in 1971. President's rule was imposed in March 1971 in the hope that some political solution would be found. The only real political solution would have been for Congress (R) to form a ministry but the Congress (R) wanted to face the electorate in the wake of the Lok Sabha victory. Some of the defectors defected back to the Congress (O). Governor Dharma Vira gave Patil another opportunity to form the ministry. He declined President's rule was imposed and the assembly was dissolved.

### **Gujarat**

In Gujarat, as a result of defections the Chief Minister Desai resigned on March 31, 1971 and again assumed office on April 8, 1971 because some MLA's defected back. But defections continued. He resigned on April 11, 1971. The assembly was dissolved and president's rule imposed. The trail of defection also continued in Nagaland which saw

2 ministries in Nagaland between 74-75.

### **Manipur**

In Manipur also, a coalition government headed by Mohammad Alimuddin fell due to defection.

Thus to sum up one can say that the Congress party tactics was not always clear. On some occasions, they were destroyed ministries without providing an alternative. On other occasions it seemed that Congress politicians in the states were collaborating with Congress politicians at the centre in order to induce further instability in the states. It was obviously useful for state Congress politicians themselves controlled by the centre to know that their party held the final power to impose President's rule.

### **1.5 The third phase or the Janata phase (1977-1980)**

Soon after the Janata Party came to power in March 1977, Charan Singh, the then Home Minister felt that the Congress ministries in nine states should seek a fresh mandate. He therefore sent a letter to the various CM's of the states on April 18, 1977 telling the CM's his views and advising them to get their Assemblies dissolved. On April 22, 1977, Shanti Bhusan the Law Minister gave an interview which seemed to suggest that Charan Singh's advice was serious. Implicit in the advice was the threat that if the CM's did not comply, President's rule would be imposed

because it was affecting the administrative viability of the central government. The Supreme court was also moved by aggrieved parties. The Supreme court opined that its jurisdiction was quite limited in the matter. Some judges even took the view that it was justified under the circumstances. Thus the Janata government went ahead and imposed President's rule on April 30 1977. It was significant for 2 reasons. There are 2 interpretations of the actions of the Janata party government. The wider view is that President's rule can be imposed on a state if the President advised by the ruling party at the centre is convinced that the party in power in a state does not enjoy the support of the electorate. It was also suggested that it must be alleged that this loss of credibility with the electorate must also result in administrative difficulties and the like. This is an extremely wide interpretation. The second significant contribution of this imposition of President's rule was that it was not imposed on the advice of the Governors of the states.

Other examples of imposition of President's rule during the Janata phase are the following :

The Janata party imposed Governor's rule under section 92 of the Jammu and Kashmir Constitution within days of their assuming power. The Congress having lost in the general elections very badly in March 1977, decided to withdraw support to the Sheikh Abdullah ministry. The

Governor LK Jha decide to accept the CM's advice to dissolve the Assembly rather than give the Congress a chance to form a ministry even though 44 Congress members of the 73 member Assembly were ready to form a ministry but Governor Jha did not give them a chance to form the government.<sup>27</sup>

President's rule was imposed in Tripura on November 5 1977. The Janata party government which headed a coalition resigned.<sup>28</sup> The CM Radhika Ranjan Gupta ruled out the possibility of an interim government until elections were held.<sup>29</sup> There was also, according to the Governor no chance of an alternative ministry. The outgoing CM hoped that elections would be held in December 1977. The coalitions had lasted only 190 days and elections were due in Tripura in February 1978.

President's rule was also imposed in the state of Karnataka on the 31st of December 1977. Uncertainty in the politics of Mysore was introduced largely due to the Congress split of 1977. The CM Devraj Urs belonged to the Indira Gandhi faction. Although Governor Govind Narain Singh's report spoke of political intimidation, violence and corruption the main reason was that Devraj Urs had lost

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<sup>27</sup>The National Herald & Amrita Bazaar Patrika, March 28, 1977.

<sup>28</sup>Ibid., Nov. 8 1977.

<sup>29</sup>The Hindustan Times, November 4, 1977.



his majority. It was a highly political decision.<sup>30</sup>

President's rule was also imposed in Sikkim, Manipur, Assam and Kerala during this period.

It is difficult to pin point to any consistent trend in this historical survey. Overall, the Nehru era is marked by a subdued use of President's rule because there was greater political stability in that era. But the six examples of the imposition of President's rule in the Nehru era reveal the shape of things to come. The Congress party at the centre sought to dominate politics in the states. The first imposition of President's rule in Punjab was actually engineered by the Congress party at the centre. This pattern was continued in Indira Gandhi's tenure as Prime Minister. The imposition of President's rule in Kerala in 1959 also showed that the Nehru government was prepared to give a very wide interpretation to the ambit of article 356.

Lal Bahadur Shastri continued the same tradition as existed in the Nehru era. But the Kerala situation in 1965 showed some of the problems faced by state government and their Governors. The most significant feature of the imposition of President's rule in Indira Gandhi years was political instability. There were two ways to deal with this political instability. The first way was to try to persuade the politicians involved to deal with the problem

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<sup>30</sup>The Hindustan Times, January 1, 1978.

politically. The second was to impose President's rule each time there was some sign of instability. These are not two mutually exclusive ways of dealing with the problem; they can supplement each other. The second solution can be used when all attempts to use the first have failed. During the Indira Gandhi years, these methods were combined indiscriminately. This led to various allegations. The less accusative indictment was that President's rule was destroying the possibility of exploring political negotiations further. Indeed, there were many instances where a political alternative could have been found. The second and more serious indictment was that the President's rule provisions were being used by the Congress party to further Congress objectives in the various states. The power to impose President's rule had become a political weapon. It had ceased to be responsible Constitutional power to be used with Constitutional objectivity.

The Janata Party's extensive use of the President's rule provisions within weeks of its coming into power re-enforced the view that the power under article 356 could be used for almost any purposes by any government. These are most dangerous trends and we need to analyse the extensive political interpretation given to the President's rule provisions more closely.

## Chapter - 2

### CENTRAL RULE IN THE NINETEEN EIGHTIES

The Janata Party which ruled the centre from 1977-80 lasted only for 3 years. In the wake of the emergency when people's resentment against the Congress was at its peak, various disparate political elements with no ideological commodity came together to form a party with the sole purpose of capturing power. Thanks to the arduous efforts of JP and Acharya Kripalini the Janata party was born but the functioning of the government was severely affected by the contradictions and differences that existed within the party and the government. Morarji Desai became the PM but the Deputy PM Charan Singh and Jagjivan Ram left no stone unturned in looking for opportunities in order to strike. This led to the fall of the government.

#### **2.1 Dissolution of Nine non-Congress State Legislatures by Mrs. Indira Gandhi**

Mrs. Gandhi's triumphant return to power in 1980 was a victory of sorts. Projecting the failures of the Janata experiment she shrewdly coined a slogan of the government that works. She romped home with a comfortable majority. In order to usher in her hegemonic rule both at the Centre and in the states. One of her first major steps after assuming

office was to seek the dissolution of 9 Non-Congress legislative assemblies. Her Home Minister Giani Zail Singh said that he would be advising the CM's of UP, Rajasthan, Punjab, Orissa, Gujarat, Maharashtra and Tamil Nadu that they should resign.

There was a volley of protests against this move. The opposition parties alleged that the Congress (I) was trying to unseat democratically elected governments of the opposition. In a massive show of strength the Lok Dal organised a mammoth rally at Lucknow to protest against the proposed move.<sup>1</sup> Prominent LD leaders raised their voice against the move. The following week, the Punjab CM, P.S. Badal warned the Centre of dire consequences if it continued its game of toppling non-Congress governments.<sup>2</sup>

The warnings, demonstrations and rallies of the opposition parties had absolutely<sup>3</sup> no effect on Mrs. Gandhi. The Central government went ahead with the retrograde step and on Feb. 17, the 9 state assemblies of MP, Rajasthan, Punjab, Orissa, Gujarat, Maharashtra, TN, UP and Bihar were dissolved. No reasons were stated in the proclamation issued by Rashtrapati Bhavan. The then Law Minister P. Shiv Shankar defended the move by ascribing 3 important reasons, the first being the opposition ruled

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<sup>1</sup>The Indian Express, Feb. 5 1980.

<sup>2</sup>Ibid. Feb. 12 1980.

<sup>3</sup>The Statesman, Feb. 15 1980.

states had failed to satisfy the forty fifth Constitutional amendment bill which provided for the reservation of SC's and ST's. The second reason was that the rejection of opposition at the hustings clearly reflected the mood of the electorate. Thirdly, even though the PM had solicited the cooperation of the opposition ruled governments, the cooperation was not forthcoming.<sup>4</sup> Besides, the RS elections were due and the congress was afraid that it would be reduced to a minority because in these Assemblies, the opposition was in a majority and this would have led to the election of opposition MP's to the Rajya Sabha.

The Centre's decision to dissolve the nine State Assemblies came in for criticism from all quarters. The dismissed Rajasthan CM, BR Shekawat said. The dissolution of state assemblies is the formal declaration of dictatorship and is a challenge for all democratic forces to fight it out.<sup>5</sup>

The ousted Gujarat CM Babubhai Patel was of the view "The decision seemed to have been taken to pave the way for an authoritarian rule."<sup>6</sup>

There was a furore in Parliament over the mass dissolution of 9 state assemblies. Making a strong observation in the Rajya Sabha Bhupesh Gupta said "we

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<sup>4</sup>The Indian Express, Feb. 20 1980.

<sup>5</sup>The Hindustan Times, Feb. 18, 1980.

<sup>6</sup>Ibid.

strongly condemn the arbitrary and almost dictatorial order, malafide action of the present Indira Gandhi government with a view to consolidating and extending not, of course, the RSS and Jana Sangh power, but of one party rule of the Congress (I) which in the context means nothing but personal power of Shrimati Indira Gandhi.<sup>7</sup>

Acharya Kripalini dubbed the Assembly dissolution as the "erosion of India's Federal policy."<sup>8</sup> In the nine states which saw dissolution of state assemblies, elections were held on the 28th and 31st of May 1980. Out of these 9 states, 8 were captured by the Congress (I). Tamil Nadu was the only state which saw an AIADMK government in power. Another very important fact that should also be noted is that the Haryana assembly was spared because the CM Mr. Bhajan Lal defected to the Congress from the Janata party with all his MLA's and his ministry became a Congress (I) ministry. In Himachal Pradesh, Ram Lal formed a ministry by taking in defectors from the erstwhile Shanta Kumar ministry. Karnataka and Andhra Pradesh already had Congress ministries. The 2 other states which saw installation of Congress ministries were Manipur and Nagaland. As a result of the above mentioned developments, Mrs Gandhi was able to establish her hegemonic leadership over the centre as well

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<sup>7</sup>Rajya Sabha Debates, Vol. 113, Nos. 11-14, March 27, 1980, Vol. 119.

<sup>8</sup>Indian Express, March 5, 1980.

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## 2.2 A study of the use of Article 356 after Mrs. Gandhi's return to power in 1980

### MANIPUR

After Mrs. Gandhi's return to power Manipur has the dubious distinction of being the first state to be placed under President's rule.

Elections to the state assembly of Manipur were held in January 1980. No party could secure an absolute majority. The Congress (I) under the leadership of Mr R K Deorendra Singh formed a ministry with the support of Congress (I)-6, MPP-3, 2-Kuli National Assembly and 19 independents. The Congress (I)'s strength was 13.

Mr RK Deorenda Singh did not prove to be an effective administrator because he could not meet the challenges posed by the Manipuri insurgents. He failed to counter the PLA and PREPAK insurgency and the movement of the All Manipur Student's Union.<sup>9</sup>

Due to Mr Deorendra Singh's failure to check the menace of insurgency in Manipur, the Congress (I) High command asked Mr Rishang Keising to take over as CM. Following the resignation of Mr Singh, his Deputy CM Keising became the CM. However the Kesing ministry was no different from the other ministries in Manipur as it was also plagued by the problem of defection. On 23rd February,

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<sup>9</sup>Amrit Bazar Patrika, November 22, 1980.

1980, 10 members of the CLP resigned to form the Progressive Democratic Front and decided to become a constituent of the Progressive Legislature Party headed by Mr KH Chaoba. Shri Rishang Keising resigned after his ministry was reduced to a minority without facing the no-trust motion which was to be taken up in the Assembly. The leader of the PDF met the Governor to stake his claim to form a government. However the Governor refused to entertain his request due to the following reasons:-

Manipur had the history of MLA's changing loyalties too frequently since its formation and as the PDF was a loose conglomerate of six parties, it was least expected to usher in an era of political stability.

Secondly, Manipur being a sensitive border state and insurgency being one of the chronic problems with various groups of extremists operating in different parts earning foreign funding, the Governor stated in his report that a politically unstable ministry would not be able to deal with the situation with the firmness that is required. Therefore, the Governor recommended that the state be put under President's rule. However, the Governor also recommended that the Assembly be kept under suspended animation. The reasons that were advanced were the following. The outgoing ministry was of the view that there should be a suspension because they had hoped that the Congress (I) deserters would return to the parent party.



Secondly, fresh election would prove to be a law and order problem because the atmosphere was highly vitiated with extremist violence and insurgency activities. Moreover election had just been held. A fresh election was also not likely to produce any clear result. Therefore, the Governor recommended that the assembly be kept under suspended animation.<sup>10</sup>

### **Assam**

The Congress (I) under the leadership of Anwara Taimur engineered defections which led to her assumption of office as CM on December 6 1980. This ministry which mainly consisted of defectors and deserters was strongly resented by the AASU and AAGSP.

The Congress (I) was the single largest party with strength of 52 members but it did not have a clear majority and if the opposition would have decided to vote against it on the floor of the house, the government would have fallen.

In the meantime, Assam continued to reel under a series of problems. There were killings, demonstrations, procession and protests organised by the AAGSP and AASU combine on the foreigners issue. The CM Taimur by her style of functioning antagonised even Congress loyalists which led to large scale dissidence even in the CLP (I). She remained in office only due to the support of the splinter

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<sup>10</sup>The Hindustan Times, December 11, 1980.

groups and the neutral stand of the Left. However, the government did not last long. It finally fell when the powerful tea garden lobby and the plains group decided to withdraw their support. The Leftist decided against supporting the government<sup>11</sup>. The Governor LP Singh recommended imposition of President's rule and suspension of state assembly. The proclamation was issued on June 30, 1980.

The step of the Governor to keep the Assembly under suspended animation instead of recommending dissolution of the Assembly was a step which smacked of political impropriety and partisan treatment to the Congress (I). This was basically done to facilitate the ruling Congress (I) to stage a comeback with an alternative leader and form the government. The CLP(I) elected a new leader Shri Keshab Chandra Gogoi who was sworn in as the CM of Assam on January 13, 1982.

#### **KERALA**

The general elections to Kerala Assembly were held in 1980 and no single party got an absolute majority in the Assembly. However, the Left Democratic Front comprising the Communist Party of India (Marxist), Congress (u), the Communist Party of India, Kerala Congress (Mani group), Revolutionary Socialist Party and All India Muslim League emerged as the largest group having a majority in the

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<sup>11</sup>Indian Express, June 30, 1981.

Assembly. The LDF had a strength of 94 in the Assembly.

However, differences within the ruling LDF mainly between the 2 major constituents, the CPI(M) and Congress(S) severely affected the smooth working of the government. The state was rocked by violent clashes and demonstrations which led to the state Congress (S) Chief Shri A K Anthony demanding that a free hand be given to the police to deal with the situation effectively.<sup>12</sup> However, matters came to a head when the Congress (S) a major constituent of the Front, walked out of the ministry. The ministry survived only with a wafer thin majority of 1. However this position was also altered when the Kerala Congress with a strength of 9 members decided to withdraw support and forced the CM EK Nayanar to tender his resignation. Soon after his resignation the outgoing CM said that Central ministers with the active support of state congress (I) leaders had engineered the downfall of the LDF ministry. He even named the then Union Deputy Minister Kalpanath Rai and State Minister Yogendra Makwana as the agents of the Centre.<sup>13</sup> The then General Secretary of the CPI, C. Rajeswara Rao appealed to the President of India to dissolve the Assembly.<sup>14</sup>

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<sup>12</sup>The Times of India, October 21, 1981.

<sup>13</sup>The Hindustan Times, October, 22, 1981.

<sup>14</sup>Ibid.

President's rule was imposed in Kerala after the Governor Smt. Jyoti Venkatachellum sent a report to the President stating clearly that the formation of an alternative ministry was not possible. The Assembly was kept under suspended animation. The Governor's action evoked strong criticism from the opposition benches in both the houses of Parliament.

President's rule was lifted after a brief spell of two months and new ministry headed by K Karunakaran assumed office on December 28, 1981.

#### **KERALA**

The United Democratic Front, an eight party conglomerate headed by Mr K. Karunakaran assumed office on December 28, 1981. It was well known that the Karunakaran government did not enjoy the requisite support for a majority. However, the Governor in a show of partisan conduct stated that she was convinced that the Karunakaran ministry enjoyed majority support. In reply to the declaration the opposition demanded that the Governor had stated very clearly the names of the MLA's outside the UDF who supported the government.<sup>15</sup> An interesting twist to the whole controversy was added by the dubious role played by the Speaker of the state Legislative Assembly who threw norms of morality to the winds by casting in vote on eight occasions to save the government from defeat. It is to be

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<sup>15</sup>The Tribune, December, 28, 1981.

noted that for the first time in the history of Indian democracy a Speaker shunned his traditional neutrality to save a government.<sup>16</sup>

The Ministry, however could not last long because of the resignation of an MLA Mr. Lonappan Nambadan belonging to the Kerala Congress (Mani) on the 15th of March, 1982. The Kerala Congress (M) was a constituent of the UDF. Subsequently, the strength of the UDF was reduced and the government was reduced to a minority. However the government headed by Mr. Karunakaran took forty eight hours to resign.<sup>17</sup> The outgoing Chief Minister Mr. K. Karunakaran advised the dissolution of the Assembly which was accepted by the Governor. Moreover, the opposition felt that the Governor by not exploring the chances of the formation of an alternative ministry had acted in a partisan manner. They also took exception to the Governor's role of allowing the Karunakaran ministry to continue despite the fact that it's majority was in suspect right from the beginning.<sup>18</sup> President's rule was imposed in Kerala on March 17, 1982 on the report of the Governor to the President. Kerala subsequently went to the polls and the UDF emerged victorious.

#### **ASSAM**

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<sup>16</sup>The Hindustan Times, March 17, 1982.

<sup>17</sup>The Hindu, March 17, 1982.

<sup>18</sup>The Times of India, March 19, 1982.

On the 13th of January 1982, a Congress (I) Ministry headed by Mr. Keshab Chandra Gogoi was installed in office. The Governor Mr. Prakash Mehrotra (a man with a Congress background) chose to accept a list of 63 MLAs submitted by Gogoi. He had the support of 5 members of Tea Garden Labour Group and 4 members of Plains Tribal Council of Assam.<sup>19</sup>

Gogoi, it was believed would help in bringing stability to the troubled state but his election itself led to dissensions within the ruling Congress(I) with the supporters of the former C M Taimur resigning from the Assembly (4 MLA's): His government would not have survived but for the support of the Assam Janata and the powerful tea garden lobby.

Finally, the Gogoi ministry after a brief sixty five days stint demitted office because it was defeated on the floor of the House when a no-confidence motion was tabled against it by the Left Democratic Alliance of Sarat Chandra Sinha. The Asom Janata Dal tilted the balance against the government. Dissidents in the Congress (I) also played a role. The Governor recommended the dissolution of the Assembly and imposition of President's rule in the state. Assam was put under central rule and the Assembly was dissolved on March 19, 1982.

The opposition criticised the Governor's step and alleged that the Congress (I) was trying to play tricks

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<sup>19</sup>The Indian Express, January, 14th 1982.

just before the biennial elections to the council of states by going in for the dissolution of the Kerala and Assam assemblies.<sup>20</sup>

Finally in one of the bloodiest ever elections in the history of independent India, a Congress (I) Ministry headed by Hiteswar Saikia assumed office in Assam on 24 February, 1983.

#### **PUNJAB**

A Congress (I) Ministry under the leadership of Darbara Singh assumed office in Punjab in May 1980. However, the going was not smooth for the C M due to dissidence within the ruling party as well as the deteriorating law and order situation. Large-scale violence, lootings, killings became very common. On September 29, 1981, even an aeroplane was hijacked by Sikh extremists.<sup>21</sup> A DIG of Police was killed on the premises of the Golden Temple. Hindus became the targets of Sikh extremists who segregated Hindus from the Sikhs and indulged in indiscriminate killings. The Akali Dal, which is the major opposition party in the Punjab launched a peaceful agitation in August 1982 to press the union government for acceptance of it's demands.<sup>22</sup>

Finally the Governor A P Sharma sent a report to the

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<sup>20</sup>The Statesman, March 19, 1982.

<sup>21</sup>The Tribune, Sept. 30, 1981.

<sup>22</sup>The Tribune, Aug. 4, 1982.

President, stating that the Constitutional machinery in the state had broken down. Finally Punjab was brought under President's rule on the 6th of October 1983 and the state Assembly put under suspended animation.

#### **SIKKIM**

After the 1979 Assembly elections, the Sikkim Janata Parishad led by Mr. N B Bhandari emerged victorious by gaining 16 seats in the 32 member Assembly. It subsequently merged with the Congress (I) in 1981. It also managed to get the support of 9 MLA's who defected to the Congress (I) fold. The strength of the Congress (I) went up to 25.

Soon after assuming office, the C M Shri Bhandari took up the cause of 30,000 Nepalese settlers whom he wanted to be made Indian citizens. He also wanted that the people who were of Nepalese descent should be given reservation of seats in the Assembly.

The C M's strident postures on the Nepalese citizens issue was seriously resented by the Centre. This was the major cause of difference between the C M and the Governor which led to serious differences of opinion between the C M and the Governor. Matters reached a boiling point when on the morning of 11th May 1984, the Governor dismissed the Bhandari government on charges of corruption, maladministration, arbitrary style of functioning, anti-national activities in disregard of Constitutional provisions, even though Bhandari commanded the support of



the majority MLA's in the Assembly.<sup>23</sup> This step of the Governor was criticised by almost all the major opposition parties. The coordination committee of the then National Democratic Alliance described the Governor's action as "blatant violation of the Constitution"<sup>24</sup>

At a meeting of the Congress Legislature Party held on 12th May, as many as 20 MLA's of the Congress (I) wholeheartedly supported the leadership of Shri Gurung in writing. On the 16th of May. 5 more ministers were sworn in. Thereafter, one Minister, Shri Ram Lopcha one of the 20 MLA's who had extended his full support in writing, together with the others resigned on the 20th May 1984.<sup>25</sup> The following day two more Ministers ere sworn in to take the cabinet strength to 10.<sup>26</sup> On the other hand Bhandari along with his 16 hard core supporters who quit the Congress (I), formed the Sikkim Sangram Parishad, a new regional outfit staked his claim to form a new Ministry but was never given a chance. Instead the Governor without exploring the opportunity of formation of an alternative government sent a report stating that there have been frequent shifts in the loyalties of the legislators due to various tactics including intimidation, kidnaping,

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<sup>23</sup>The Hindustan Times, May 12th, 1981.

<sup>24</sup>The Indian Express, May 13th, 1981.

<sup>25</sup>The Hindustan Times, 21st of May 1984.

<sup>26</sup>Ibid. 22nd of May 1984.

blackmail and monetary inducements thus vitiating the political atmosphere in the state. As a result, the new government has found it extremely difficult to conduct the administration and its majority is in jeopardy. Therefore, the Governor recommended to the President that the state be brought under President's rule and the Assembly be dissolved.

The opposition parties were highly critical of the dismissal of the Bhandari government and the subsequent developments. Even in Parliament, opposition parties were highly critical of the role of Governor and the dismissal of the N B Bhandari government. Elections were held in the state in May, 1985. The SSP won a massive majority of 29 seats.

### **2.3 Central Rule under Rajiv Gandhi**

Soon after the assassination of Mrs. Indira Gandhi, her son Rajiv Gandhi donned her mantle to become the P M of India. Mr. Gandhi won a massive mandate from the people of India and rode to power to the euphoric support of all sections of the people. The sudden demise of his mother generated a lot of sympathy for him and saw him firmly in his mother's saddle. He started his rule well by initiating a large number of economic reforms and on the political front did very well by signing the Punjab Accord with Sant Longowal and the Mizo accord with the exiled MNF leader Mr.

Laldenga.

With regard to imposition of President's rule under Article 356, however Rajiv Gandhi proved to be no different from his mother, the Late Mrs. Indira Gandhi. During his tenure President's rule was also imposed in a number of states. Thus, he was no different from Mrs. Gandhi in adopting a partisan attitude with regard to the invocation of Article 356 of the Constitution to do away or dispense with non-Congress (I) governments or misuse of Article 356 as had been done by previous governments at the Centre.

In the following paragraphs, an attempt has been made to study the cases of invocation of Article 356 during Rajiv Gandhi's rule.

#### **Case No. 71 - JAMMU AND KASHMIR**

The troubled border state of Jammu and Kashmir was the first state to be placed under President's rule after Rajiv Gandhi assumed office as the Prime Minister of India. After the death of the charismatic Chief Minister of Jammu and Kashmir Sheikh Abdullah his son Dr. Farooq Abdullah became the C M. He won a massive mandate from the people and became an immensely popular leader. Dr Abdullah's popularity was resented by the Congress at the centre. The then Prime Minister Mrs. Indira Gandhi resented Dr. Abdullah's to alliance with various opposition parties of the country in his quest for a litteral alternative.

Mrs. Indira Gandhi settled her political scores with Dr. Farooq Abdullah when she engineered defection within the ruling National Conference to support a new leader G M Shah, Dr Abdullah's brother-in-law. On the 2nd of July 1984,<sup>27</sup> the Governor Mr. Jagmohan dismissed Dr. Abdullah's Ministry and it was reduced to a minority following withdrawal of support by 13 National Conference MLA's 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 the Congress (I). The drama could not have been played without the strong arm did not by any means perform his Constitutional function in an objective and fair manner in contrast to the correct attitude adopted by his predecessor B K Nehru.

The Governor also gave Shah one month's time to prove his majority on the floor of the Assembly. On July 31, the front comprising the Shah group of National Conference and the Congress (I) voted the Speaker Wali Mohammad Itoo (who had earlier disqualified 13 MLA's under the so called Anti Defection Law in the face of a contrary verdict by the state High Court) out of office and later adopted a vote of confidence in the Chief Minister, G M Shah amidst unprecedented stormy scenes in the J and K Assembly.<sup>28</sup>

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<sup>27</sup>The Hindustan Times, July 3, 1984

<sup>28</sup>The Indian Express, August 1, 1984.

Despite the sharp contradictions that surfaced soon after the minority government was installed, it continued to rule the state. The law and order situation also started to deteriorate. The Al Jihad Gang was responsible for a series of bomb blasts in the valley. There was also a large infiltration of terrorists from Pakistan.

The Government lost complete control of the situation. The administration was neither clean nor stable. Pro-Pakistan outfits like Jammāt-e-Islami and Islami-Jammāt-Tuleba were very active in the valley.

The situation became worse when in February 1986, the state became a victim of communal violence and disturbances with a large number of desecrated, houses burnt and property worth crores of rupees damaged.

Ten leading opposition MP's also demanded the removal of the unrepresentative and incompetent government of G M Shah to restore peace and normalcy in the region. The leaders condemned the government of J and K for having remained a silent spectator to the deteriorating law and order situation in the state. They said that the communal disturbances, deteriorating law and order situation had created a sense of insecurity among the people.<sup>29</sup> Finally, on March 6, the Congress withdrew support to the 20 month old Shah ministry reducing it to a minority. After the withdrawal of support by the Congress (I), no party was in

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<sup>29</sup>The Tribune, February 23, 1986.

a position to form a Ministry on its own strength. So on March 7, the Governor, Jagmohan dismissed the Shah ministry and placed the state under Governor's rule under Section 92 of the Jammu and Kashmir Constitution. However, the Assembly was put under suspended animation.

Governor's rule was welcomed by all opposition parties. The puppet government of G M Shah would not have been allowed to be installed in office. This was a step for which the Congress government was vehemently criticised by the opposition parties. However, the Governor Jagmohan again played to the bosses in Delhi by keeping the Assembly in suspended animation and not dissolving it. The opposition parties interpreted this move basically as a ploy to give the Congress (I) a chance to engineer defections from both the factions of the National Conference in order to install a Congress government in power. They repeatedly demanded dissolution of the Assembly.

The life of Governor's rule was to expire on September 7 and it was necessary either to install a popularly elected government or to replace the present arrangement by imposing President's rule under Article 356 of the Constitution. Seeing no solution in sight, President's rule was imposed on the 7th of September for the first time. However, the Assembly continued to remain under suspended animation.

It should be noted that this change was more Constitutional than real.

As Rajiv Gandhi was in no mood to dissolve the Assembly, the National Conference leader Dr. Farooq Abdullah initiated talks with the Prime Minister. They reached an agreement that a coalition government would be formed. President's rule was revoked on November 7 before the installations of a 10 member coalition ministry headed by Dr. Abdullah.

**Case No. 72 - PUNJAB**

In the wake of the dismissal of the government led by Shri Darbar Singh and subsequent dissolution of Assembly, Punjab was under the shadow of the gun and the extremist menace had reached new proportions. It was in such a situation that the accord was signed. It was hoped that it would usher in an era of peace and tranquillity on July 24, 1985.<sup>30</sup> The Akali Dal got a commendable victory at the hustings in the election that followed after the accord. Following the victory, Shri S S Barnala, a front ranking Akali leader and former Union Agriculture Minister during the Janata phase was sworn in as the C M on the 29th of September 1985. There were several contenders for the coveted job which included Mr. Balwant Singh, Captain Amarinder Singh a former Congress (I) MP who had just joined the Akali Dal, Mr. P S Badal a former C M of Punjab

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<sup>30</sup>The Tribune, July 25, 1985.

and prominent Akali Dal leader. Finally after a lot of consultations and confabulations Mr. Barnala was chosen to head the government and Mr Balwant Singh was given the portfolio of finance. Captain Amarinder became the Agriculture Minister. Despite a lot of efforts Mr. PS Badal could not be taken into the Ministry.<sup>31</sup>

The main tasks before the government were the assuage of the hurt Sikh psyche because of Operation Bluestar and mass murders that had taken place following the assassination of Mrs. Indira Gandhi in various parts of India. However, under Barnala the situation did not show any signs of improvement. Terrorism was on the upswing, Hindu insecurity went on rising and the mass migration of Hindus to other parts of India continued unabated. The Central government kept a close watch on the situation and took a very important step of transferring Dr. Shankar Dayal Sharma and installing Mr. S S Ray, a former C M of Bengal known for his administrative abilities as the Governor of Punjab. The law and order situation continued to deteriorate passing from bad to worse day by day. Matters came to a real head when a five member Panthic committee consisting mainly of secessionists and extremists declared that they had formed Khalistan and sought the recognition of foreign states including India on April 29, 1986. The government of Punjab in a swift move ordered the

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<sup>31</sup>The Tribune, October 1.



raid of the Golden Temple complex by the police. This operation popularly came to be known as Operation Woodrose. This was basically done to rid the Golden Temple of all terrorists.<sup>32</sup>

However, this step though an administratively sound decision, had broad political ramifications. On the 2nd of May 1986, 2 senior Ministers Captain Amarinder Singh and Shri Sukhjinder Singh tendered their resignations from the Ministry. Senior Akali leaders Mr. P S Badal and Mr. G.S. Tohra resigned from the party's working committee.<sup>33</sup>

The crisis reached a logical culmination when 27 Akali Dal MLA's formed a separate group in the Assembly. The Speaker Mr Ravi Inder Singh who was himself sympathetic to the dissidents recognised them as a separate political party in the Assembly. Before a motion for his removal could be moved in the Assembly he resigned as the Speaker.<sup>34</sup>

The Akali ministry of Barnala however had the support of the Congress, BJP, CPI and other which helped it survive. When the Assembly session started, a new Speaker was elected. The new speaker disqualified 22 MLA's who had formed a separate group. Mr. P S Badal and other disqualified by the High Court and subsequently the Supreme

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<sup>32</sup>The Tribune, May 1 1986

<sup>33</sup>The Tribune, May 4, 1986.

<sup>34</sup>Ibid., May 28, 1986.

Court upheld their disqualification. With their disqualification, the Akali Dal (L) was no longer dependent on Congress support because it had 46 members and the strength of the Assembly had come down to 91.

In the meantime, the law and order situation deteriorated. Fundamentalism started taking new turns with the terrorists adopting an eleven point programme and later a thirteen point programme. The all parties rally which had promised to be useful and producing a sobering effect lost all their meaning and effect. Lawlessness, lootings, snatchings bank robberies, burning of kiosks, khokas, the brutal maiming or murdering of innocents became an every day affair. Thus fundamental rights were violated day in and day out. The basic right i.e. right to life was also not guaranteed. Corruption was also rampant. What aggravated matters was the involvement of a large number of ministers in terrorist activities. There was total anarchy and chaos. There was a reign of terror in the state. The above were the observation of the Governor in his report to the president. The Governor recommended the imposition of President's rule under Art. 356.<sup>35</sup> The 21 month old Ministry was dismissed. The assembly was kept under suspended animation. The imposition of President's rule evoked mixed responses. While the opposition opposed it, particularly the move of the central government to keep the

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<sup>35</sup>The Indian Express, May, 12 1987.

assembly under suspended animation, the Congress welcomed it. The assembly was ultimately dissolved in May 1988.

**Case No. 73 - TAMIL NADU**

The AIADMK under MGR emerged victorious after the 1984 elections to the Assembly. Till the time MGR was alive, the factionalism within the AIADMK was under control. However, after his death following a prolonged illness on the 24th December, 1987, the Finance Minister Mr. V R Nedunchezian was appointed the interim C M. However, immediately after the death of MGR, a factional feud ensued between the Nedunchezian-Jayalalitha faction and the Verrappan faction. Jayalalitha, a powerful Rajya Sabha MP and propaganda Secretary of the AIADMK was a contender for the plum post. On the other hand, Mr Verrappan the powerful Information Minister in the MGR cabinet also wanted to be the C M. Verrappan pulled off a virtual coup when he succeeded in roping in Mrs. Janaki Ramachandran, the widow of the late MGR into the fray.

On December 28, 1987, the Nedunchezian-Jayalalitha faction claimed to have majority support and stated their claim to form the government.<sup>36</sup> On the other hand, the other group led by Mrs. Janaki Ramachandran stated her claim to form the government because she claimed she had the support of 97 MLA's. Finally, the Governor Mr. S L Khurana sworn in Mrs. Ramachandran as the C M of Tamil

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<sup>36</sup>The Hindu, December 29, 1987.

Nadu. She was given 3 weeks time to prove her majority.<sup>37</sup>

On the appointed day, January 28, 1988, the Speaker of the Assembly Shri P H Pandian played a dubious role trying to save the government by hook or by crook. He went in for adjournments on the ground that 5 Congress (I) MLA's had resigned from the Assembly and the Congress party. It had been made very clear that the fate of the motion of vote of confidence would depend upon the total number of members present and voting and the absence by the five MLA's of the Congress would not make any difference to the ultimate outcome subsequently, the Speaker again adjourned the House for three more hours after disqualifying six former AIADMK ministers in pursuance of show-cause notices issued to them much earlier. During the adjournment, bedlam prevailed in the House with MLA's indulging in trading of abuses, hurling of paper weights, wrenching mikes leading to serious injuries to some of the MLA's. The drama become so sordid that the police had to be summoned. Moreover, the manner in which the voting was conducted also cast a serious doubt because only 110 members out of 222 were present raising a serious question whether the AIADMK (Janaki) had majority support or not. On January 29, 1988, all the 59 Congress (I) MLA's and 9 MP's demonstrated in front of the Assembly to urge the President of India to

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<sup>37</sup>The Hindu, December, 1988.

dismiss the Janaki government.<sup>38</sup> On January 30, the President Mr. R. Venkataraman dismissed the shortlived Janaki government, dissolved the Assembly. The Governor in his report detailed the facts stated above very clearly.

**Case No. 74 - NAGALAND**

After the November 1987 polls, the Congress (I) secured an absolute majority in 60 member assembly by winning 34 seats. Shri Hokishe Sema was sworn in as the C M of Nagaland. However, after eight months of stability, thirteen MLA's of the Congress (I) deserted the party, formed the Nagaland Regional Congress and joined the Joint Regional Legislature Party of which Vamuzo, the leader of the NNDP was the chief.

Soon after the withdrawal of support by the Congress (I) MLAs and their subsequent joining the Regional Legislature Party Mr. Vamuzo staked his claim to form the government because according to him he had the support of 18 NNDP MLAs, 13 dissident Congress (I) MLA's and 4 independents who had withdrawn their support to the Sema Ministry. Thus in all he had the support of 35 MLA's.<sup>39</sup> The Governor did not head his claim. Vamuzo even threatened to parade his 35 MLAs before the President in Delhi. The political impasse continued. The Congress (I) high command sent a team headed by the then Union Minister Shri Buta

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<sup>38</sup>The Times of India, January 30, 1988.

<sup>39</sup>The Indian Express, July 15, 1988.

Singh who tried all the tricks in the Congress (I) bag to woo the 13 disgruntled MLAs. He even threatened them with the imposition of Art. 356 in Nagaland and their disqualification under the anti-defection law.

It is to be noted that the Governor Gen. KV Krishna Rao chose to stay away from the state capital in order to facilitate the Congress (I) leaders to indulge in the politics of manipulation. Opposition leaders in Delhi met the President R. Venkataraman to express their concern over the state of affairs in Nagaland. The meeting took place on the 5th of August. They urged the President to ask the Governor to return to the state capital and to get a floor test done on the floor of the house.<sup>40</sup>

The Governor on the other hand did not entertain the claim of Vamuzo with regard to the formation of the Ministry. Instead he sent a report to the President recommending the imposition of President's rule and dissolution of the State Assembly. Thus, the Sema government went out of office and President's rule was imposed in Nagaland. The Assembly was also dissolved.

What should be noted in this regard is the role of the Governor. The Governor instead of exploring alternatives in terms of formation of a new government simply recommended the dismissal of the government and dissolution of the Assembly. In this case, the Governor should have given an

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<sup>40</sup>The Indian Express, August 6, 1988.

opportunity to Mr. Vamuzo to prove his majority on the floor of the house. Moreover, the Governor by staying away from the state capital when the state was passing through a Constitutional crisis, facilitating Congress (I) leaders from the centre to indulge in political manoeuvring, was highly deplorable. The imposition of President's rule was criticised by the opposition leaders.

**Case No. 75 - MIZORAM**

In the wake of the Mizo accord signed between the Centre and the Mizo National Front headed by Mr. Laldenga, the exiled MNF leader, peace returned to the sensitive border state. The Congress (I) sacrificed its own government headed by Mr. Lalthanhawla to pave the way for the formation of a coalition government with Laldenga as C M and Lalthanhawla as Deputy C M. The experiment did not last long. Lalthanhawla resigned from the Ministry.

After the elections, that were held to the Assembly in 1987, the MNF emerged victorious by capturing 25 seats. The Congress (I) bagged 13 seats, P C-2. Mr. Laldenga was sworn in as the C M of Mizoram.

The Ministry of Laldenga however could not function without the traditional hiccups of dissidence. Laldenga's style of functioning was too centralised and dominant. This led to a lot of resentment within the MNF. On 29th August 1988, Pu Lalhmingliana an MLA submitted a letter to the Governor which stated that a new political party MNF

(Democratic) comprising of nine MLAs had been formed. This group had also written to the Speaker, praying to be recognised as a separate group which had splitted from the parent MNF. They subsequently also gave in writing to the Governor that they had withdrawn their support to the government.<sup>41</sup> However, the major bone of contention was in relation to the support of the Deputy Speaker Mr. Pu Thanfiange who was convalescing in the USA. The leader of the breakaway group however asserted that the Deputy Speaker before leaving for the USA had pledged his support to them.

Event moved very swiftly soon after the MNF (D) joined hands with the 13 Congress (I) MLAs to form a Joint Legislature Party known as the United Legislature Party under the leadership of Mr. Lalthanhawla former C M and Congress leader. On 31st August all the eight MLAs of the MNF (D) met the Governor to formally intimate him about the formation of the Joint Legislature Party.

On the other hand, the MNF leader and C M Laldenga moved swiftly as he had the tacit support of the Speaker who issued showcause notices to the eight MNF (D) MLAs under the Anti Defection Law.<sup>42</sup> He also suspended them from attending the House and taking part in its proceedings, pending a final decision.

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<sup>41</sup>The Hindustan Times, August 31st, 1988.

<sup>42</sup>The TOI, 31st August, 1988.



The Speaker refused to take into cognisance the wireless message sent by the Deputy Speaker to the Speaker reiterating his stand that he had joined the MNF (D). Thus, the Speaker was hell bent upon disqualifying the eight MLAs. He even made it explicit in his interviews and comments to the national dailies. Thus the Speaker did not consider the desertion of the break away group as a split but a case of defection. The Speaker was doing everything possible on this earth to save the Laldenga government. The congress leader Mr. Lalthanhawla in his several meetings with the Governor kept up his claim to form an alternative government. He even visited Delhi to convince the party high command. However, the Governor Mr. Saikia, a former C M of Assam, an experienced hand in the North-East, sent a report to the President recommending President's rule and dissolution of the state assembly. He justified his action because the formation of a Congress coalition ministry with a water-thin majority would have led to a lot of rustability and confusion which this sensitive border state could ill afford. The Centre's action in giving priority to national interest over party interest was commendable. It was a step in the right direction.

**Case No. 76 - KARNATAKA**

After the resignation of Shri R K Hegde as C M of Karnataka owing moral responsibility for the telephone tapping scandal, Shri SR Bommai was elected to lead the

government in Karnataka. Although there were differences within the government, the major crisis which the government faced was related to the formation of the Janata Dal at the national level. The dilemma within the government was whether to join the Janata Dal or retain the Janata Party identity. The dominant group led by Bommai joined the Janata Dal and Deve Gowda chose to retain the Janata Party identity intact with 27 MLAs.

Although dissensions continued in the government, the first to raise the flag of rebellion was a young MLA K R Molakeri and it did not take much time for 12 other MLAs to follow suit. Six other MLAs also promised to join Deva-Gowda-Molakeri group.<sup>43</sup> Molekeri started his rebellion on the 18th of April 1989.

Subsequently, 18 MLAs of the JD and 1 BJP MLA gave in writing that they were withdrawing their support to the Bommai government. The Governor got the signatures verified from the Secretary (Assembly). This reduced the strength of the Janata Dal from 118 (including 7 independent MLAs) to a minority. The Council of Ministers headed by Shri SR Bommai lost majority support.<sup>44</sup> Therefore, the Governor recommended the dissolution of the Assembly and also that the state should be brought under President's rule under

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<sup>43</sup>The Hindustan Times, April 19, 1989.

<sup>44</sup>Governor's report to the President (dated 19th April, 1989).

Article 356 of the Constitution. Certain basic questions that arise and which must be probed are the following - that the Governor Shri P. Venkatasubbiah acted in haste in coming to the conclusion that the Bommai government had lost majority. He was obviously interested in seeing the fall of the Bommai government at the bidding of the centre. After he concluded that the Bommai government had been reduced to a minority, Bommai demonstrated his support before the Governor by parading 118 MLAs which included 12 dissident Janata Dal MLAs (who had since retracted their signatures) and the 7 independent MLAs (6 communists, 1 BJP). The pleas of Bommai fell on deaf ears. It was yet another attack on the working of an opposition government.

## Chapter - 3

### RECENT TRENDS IN CENTRAL RULE (1990-93)

In the wake of a strong negative verdict by the electorate in the 1989 general elections against the Congress, the Janata Dal government headed by Mr. V.P Singh came to power. This government popularly known as the National Front government was a loose conglomeration of several opposition parties like the Janata Dal, Congress (S), Asom Gana Parishad, DMK with the Left parties and the rightist BJP supporting the government from outside. The government of Mr V.P. Singh was plagued by crises virtually everyday. Factionalism was one of the principal causes for the fall of the Janata Dal government. Severe infighting and internecine quarrels coupled with the BJP's Rath yatra led by Mr. L.K Advani to garner support from the people belonging to various parts of India to build the Ram Janmabhoomi temple at Ayodhya and his subsequent arrest finally led to the withdrawal of support by the BJP to the NF government and the government fell on the 9th of November, 1990 after a marathon debate in the Lok Sabha.

Soon after the fall of the VP Singh government, a large number of MP's belonging to the Chandra Sekhar faction of the JD defected enmasse to form the JD (Socialist) Shri Devi Lal, Deputy Prime Minister in the VP

Singh Ministry, also joined the JD (S) bandwagon to be a part of the new establishment. The Congress promised to support the government from outside and thus the Chandra Sekhar government was sworn in. Even this government could not last long and fell due to a very trivial matter. The Congress President alleged that he was being kept under surveillance by the ruling JD(S) government.

### **3.1 National Front government and President's rule**

#### **Case No. 77 : Jammu and Kashmir**

The first state where President's rule was imposed was Jammu and Kashmir. The state of Jammu and Kashmir had been under Governor's rule under section 92 (1) of the Jammu and Kashmir Constitution since the 19th of January 1990 when the then Governor Gen. K.V. Krishna Rao before laying down office recommended that the state be placed under Governor's rule under section 92(1) of the J and K Constitution. He had also recommended that the State Assembly be kept under suspended animation. This development followed the resignation of the Farooq Abdullah government. Soon after Mr. Jagmohan succeeded General Rao, he issued a proclamation under section 92 of the state Constitution on 19th January 1990 for Governor's rule in Jammu and Kashmir after receiving President's assent. As the said proclamation at had a life of only six months and was due to expire on 18th July 1990, the Governor in his

report recommended President's rule under Article 356 of the Indian Constitution.

The Governor in his report said that the "current security and political situation is such as would not permit the carrying on of the government of the state in accordance with the provisions of the Constitution of Jammu and Kashmir when the present proclamation expires. The terrorist elements have stepped up their attacks on the security forces and have been carrying out selective killing of people on a large scale. The quality of weapon being used by the terrorists is also becoming more and more sophisticated. Reports being received indicate there has been a steady and sharp rise in the number of terrorists infiltrating into the Kashmir valley after receiving training in the use of arms and ammunition in Pakistan occupied Kashmir and Pakistan. At this juncture, it is not possible to hand power to a duly elected representatives. My predecessor, Shri Jagmohan had dissolved the Legislative Assembly of the state on February 19, 1990 in exercise of power under clause (b) of subsection 2 of section 53 of the Constitution of Jammu and Kashmir. The situation is also not conducive to holding of early elections to the state Assembly".<sup>1</sup>

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<sup>1</sup>Governor's report to the President, dated July 3, 1990.

Therefore, the governor Mr. G.C. Saxena recommended President's rule under Article 356 of the Constitution and President's rule was imposed on the 18th of July, 1990.

The imposition of Presidents rule in the state of Jammu and Kashmir was very much necessary and highly justified from the point of view of the maintenance of law and order.<sup>2</sup>

**Case No. 78 : Karnataka**

The second state to be placed under President's rule during Mr. VP Singh's Prime Ministership was Karnataka. Imposition of President's rule in Karnataka was basically the result of internecine quarrels and inner party squabbling in the ruling Congress (I). In the wake of the then Chief Minister Mr.Veerendra Patil's illness due to a stroke and subsequent directive by the Congress (I) high command to Mr.Patil to quit office and his refusal, precipitated the crisis. What aggravated matters further was the fact that Karnataka became a victim of communal violence which claimed 45 lives and property worth crores of rupees. The government which was in a state of total paralysis due to utter political chaos that prevailed at that time could not come to grips with the deteriorating law and order situation.

The Governor in his report to the President said that when undivided attention of the state government was needed

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<sup>2</sup> The Statesman, July 19, 1990.

to quell communal disturbances, it's own foundations had been shaken by dissident activities within the ruling party. To add to the difficulties of the state government, the CM Shri Veerendra Patil had suffered a mild stroke from which he had not fully recovered.

"The scene at the political level is one of utter confusion. The ministers, on the one hand are attending cabinet meetings and on the other, meeting of legislators opposed to the CM. Though many Ministers say, that they have resigned from the Council of Ministers, none have sent their resignation either to the CM or to me. Those ministers who are reported to have resigned attended cabinet meeting presided over by the CM yesterday the 9th October 1990. This anomalous situation has resulted in utter confusion in the administration. The ruling party instead of keeping heads together to resolve the problems of the state, is busy in head counts and horsetrading. While the legislators led by the KPCC(I) President who met me last evening with a number of legislators and MPs submitted a memorandum claiming that they have the support of 145 legislators, the CM has sent a letter claiming that he has the support of 103 MLAs. Obviously both the claims cannot be true. MLAs have been coerced to affix their signature to the memorandum".<sup>3</sup> Therefore, the Governor

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<sup>3</sup>Governor's report to the President, dated October 10, 1990.



recommended President's rule under Article 356 of the Constitution. He also recommended that the Assembly be kept under suspended animation.

The imposition of President's rule in Karnataka was deplored by a large number of political parties and even civil rights organisations. Dr. Subramaniam Swamy, working President of the Janata Party, said that the action and statements of Karnataka Governor Bhanu Pratap Singh qualified him to be called the 20th century Mohammed Bin Tughlak. "The Governor's patently unconstitutional and grossly immoral action readily endorsed by the Union Cabinet in recommending President's rule in Karnataka has wide and pernicious political repercussions. The Governor has stated to the press that "after reading the news papers this morning (about communal riots), I took the decision that I should not hesitate to recommend President's rule : Should the Union Cabinet therefore, endorse that the Rashtrapati, after reading the same newspapers about self-immolation everywhere would be justified in dismissing of PM V.P. Singh" he asked<sup>4</sup> The then CM of Tripura questioned how President's rule could be imposed when a party had not lost its majority "who should be the leader of a political party in majority is an internal matter of the Party. If President's rule is imposed on such flimsy grounds, we are

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<sup>4</sup>The Hindustan Times, 12th Oct, 1990.

throwing away all Constitutional proprieties to the wind".<sup>5</sup>

What is shocking in the entire Karnataka episode is the role played by the Governor. Even though 145 MLAs of the Congress marched to the Raj Bhavan demanding that Mr. Patil be dismissed, on the 9th of October,<sup>6</sup> the Governor recommended the imposition of President's rule in his report four days later without the dissolution of the Assembly. Another important point which should be taken note of is the fact that the Governor also questioned the validity of the Congress legislature party meeting on the plea that it was not called by the CM, the leader of the Congress legislature party.<sup>7</sup> Thus the role of the Governor was purely and entirely partisan in nature. President's rule was revoked after a brief seven days spell. A popular government assumed office.

### **3.2 The Chandra Shekhar Prime Ministership**

#### **Case No 79 : ASSAM**

Assam was the first state to be placed under President's rule soon after Mr. Chandra Shekhar assumed office as PM. President's rule under Article 356 of the Constitution was imposed in the state of Assam on the 28th of November 1990. The Asom Gana Parisad government led by

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<sup>5</sup>Ibid.

<sup>6</sup>The Hindustan Times, 10th October 1990.

<sup>7</sup>The Times of India, 10th October, 1990.

PK Mohanta was dismissed and the Assembly was kept under suspended animation. This action followed a report by the Governor Shri DD Thakur about the deteriorating law and order situation in the state. In all 113 people had been killed by ULFA activists. The ULFA was basically an organisation which was an off shoot of the All Assam Students Union which spearheaded the popular students movement against the foreigners during the phase 1979-85. The ULFA basically consisted of youths who parted ways with the AGP and started this terrorist outfit to spread terror and fear amongst the people of Assam. Their main intention was to extort money from the affluent sections of the society. Anybody who dared to oppose was eliminated. Apart from killings, they also indulged in looting plunderings, rapes etc. Their sphere of influence was limited at the beginning but they spread their tentacles later on to other parts of the state due to the ineffectiveness of the state government. Worst affected by the ULFA menace were the districts of Dibrugarh, Sibsagar. The ULFA virtually ran a parallel administration. By conservative estimates, the total amount collected by the ULFA from the people was to the tune of Rs.500 crores. The money that they collected was used to buy weapons of a very sophisticated nature to wage a war against the government of India. Their principal aim was to make Assam an independent sovereign state.

Coming to the attitude of the state government the Governor said in his report that "it is extremely surprising that out of 113 murders communicated so far, not even a single case has been fully investigated by the police. The reports received suggest that if at all the accused were arrested, the designated courts released them on bail without any resistance from the state. The order granting bail under the TADA can be passed only in rare cases and that too after specifying certain conditions. Everywhere else in the country the states concerned agitate the matter like the High Court and Supreme Court. Not ever in a single case an appeal or revision has been filed against the orders of the lower court before the High Court or Supreme Court.<sup>8</sup>

The state government had been warned by the central government at several high level meetings that were held to deal with the situation very firmly. The CM demanded additional forces which were supplied but the situation continued to deteriorate day by day. As a result of the ULFA menace, the administration became totally paralysed. The Council of Ministers could not function as a cohesive unit because there were doubts that some of the Ministers were hand in glove with the ULFA people. As a result of the above said developments, the Governor recommended to

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<sup>8</sup>Governor's report to the President, dated Nov. 16, 1990.

the President that the state be placed under President's rule.

Almost all the major opposition parties reacted sharply to the imposition of Article 356 in Assam. It was termed as "murder of democracy".

However, the step of the central Government to impose President's rule in the state of Assam became a subject of intense debate among opposition parties. The perception of the opposition parties was that, the step of the Chandrashekar government was purely political in nature. Mr PK Mohanta was a close ally of the NF government and the Chandrasekhar government wanted to settle political scores with the Assam government<sup>9</sup>. A comparison was sought to be made between Punjab and Assam because Punjab had also been badly hit by the terrorist menace. The Chandrasekhar Government had ordered that elections to Parliament be held in Punjab but Assam was deprived of this privilege. Moreover, the opposition felt that President's rule should not have been imposed when elections were only a month away. It was an attack on democracy. It was belittling the democratic processes and institutions. Their view was that in Assam the situation was not as bad as the situation in Punjab was.<sup>10</sup>

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<sup>9</sup>The Tribune, Nov 29, 1990.

<sup>10</sup>Ibid, Nov. 30, 1990.

President's rule came to an end on June 30, 1992. Hitheswar Saikia assumed office as the Chief Minister of Assam.

**Case No. 80 : GOA**

Soon after Assam, it was the turn of Goa to come under a spell of President's rule. A series of political developments, were responsible for imposition of President's rule and suspension of the state Assembly in Goa.

The Governor Shri K.A. Khan sent a report to the President on the 30th of Nov. 1990 in which he stated that the Deputy CM Shri Ramakant Khalap met him along with the Education Minister and the President of Maharashtra Gomantak Party verbally informed him that they had decided to withdraw support to the government of Shri Barbosa. On the other hand, the CM Dr. Barbosa met the Governor and said that he enjoyed the support of the majority of MLAs. Hectic political activity continued in the state capital with the MGP trying to convince all its MLAs to withdraw support to Barbosa but 2 MLAs were not in a mood to comply. The Governor also brought to the notice of the President the differences that existed between the 2 dominant partners of the PDF the MGP and GPP over matters relating to allocation of portfolios and appointment of members of planning and Development Authorities. The situation also took a new turn when the MGP MLA, Shri Mohan Aushelpar

filed a petition before the Speaker on 21 November 1990 seeking disqualification of all the seven GPP MLA's including the CM, Dr. LP Barbosa. This move was made to preempt the seven MLAs of the GTP including the CM Barbosa from rejoining the Congress (I).

The Governor described the situation as fluid and also said that the administration was in a state of paralysis.<sup>11</sup>

The Governor sent another report on the 4th of December 1990 as a continuation of his earlier report in which he said that as a result of the political instability, the ministers had stopped attending office and the government was not working.

He also stated that the leader of the MGP had submitted a letter formally informing him of withdrawal of support to the Barbosa Government. He further stated that the MGP enjoyed majority support and therefore their leader R.D. Khalap should be invited to form the government. In the meantime, five MGP ministers resigned from the Barbosa government. On being asked on what basis the MGP was staking a claim to form the Government, the MGP leaders said that they were expecting support from the Congress (I). The Governor made it clear that the Congress (I) should make this statement in writing. The CM who belonged

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<sup>11</sup>Governor's report to the President, dated Nov. 30, 1990.

to the GPP on the other hand, was also expecting support from the Congress (I)<sup>12</sup>.

Therefore, the situation was one of utter confusion because the picture was very blurred and confusing.

In yet another report which was the third in the series of reports, the Governor detailed the steps that he had taken to get over the stalemate. The Governor said that both the C.M. Dr. Barbosa as well as the ex Deputy CM of MGP were to prove their majority on the floor of the house. The Governor said that he had summoned the state Legislative Assembly solely for this purpose on the 10th of December 1990 giving both the parties 4 days notice to both the parties.<sup>13</sup>

The C.M. Dr Barbosa made a desperate bid to save his beleaguered PDF ministry by trying to persuade the Congress (I) leadership to extend support to him in order to save his government. Dr. Barbosa who had deserted the Congress (I) eight months ago tried desperately to woo the leaders of his erstwhile party in the face of stiff opposition from a section of the state party unit.<sup>14</sup>

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<sup>12</sup>Governor's report to the President, dated 30th Nov. 1990.

<sup>13</sup>Governor's report to the President dated 7th of Dec. 1990.

<sup>14</sup>The Hindustan Times, 6th Dec, 1990.



The special Assembly session ended in a few minutes with the Speaker Mr. Surendra Shirsot reading out a communication from the Governor announcing the CM's resignation. The Assembly was adjourned sine die<sup>15</sup>. The Governor in his last report dated 11th December, 1990 said that in the wake of the CM's resignation the leader of the Congress Legislature Party Dr. Wilfred D'Souza along with 12 MLA' of the Congress met him. Also accompanying him were 2 MLAs of the MGP and one independent MLA. They informed the Governor that they had formed a "Congress Democratic Front" to function as a party in the Goa Assembly from 9th Dec. 1990. They had also elected Dr. Wilfred D' Souza the leader of the Front.

On the otherhand, the leader of the Progressive Democratic Front, Shri R.D. Khalap and some MLAs of the MGP and three MLAs who were formerly with the GPP staked his claim to form the government. In all, their strength was 19 excluding the Speaker who was a member of the MGP but willing to quit the Speaker's post if the need arose. Thus, the strength of the PDF was also 20.

Thus, the Governor said that there was no possibility of any party to function independently and form a stable government. The Governor also brought to the attention of the President the desperate attempts made by all to win over MLAs to their side.

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<sup>15</sup>Ibid.

The position had become more complicated due to the fact that seven MLAs of the GPP, four of whom switched over to the Congress Democratic Front and 3 with the Progressive Democratic Front were likely to face disqualification under the Antidefection Law. Similarly 2 MLAs of the Maharashtra Gomantak Party were also likely to be disqualified under the Anti-defection Law because of their support to the Congress Democratic Front.<sup>16</sup>

Due to the above circumstances, President's rule was imposed and the Assembly was kept under suspended animation.

President's rule was revoked when a splinter group of the MGP headed by Ravi Naik assumed office on January 26, 1991.

Imposition of President's rule in Goa was perfectly justified due to political instability that prevailed in the state.

#### **Case No. 81 : Tamil Nadu**

Tamil Nadu was the third state to be placed under President's rule on Dec. 14, 1990. This case there was no report of the Governor recommending imposition of President's rule in the state. The Prime Minister Mr. Chandrasekhar said that the Centre had got certain

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<sup>16</sup>Governor's report to the President dated 11th Dec. 1990.

informations which the Governor did not have.<sup>17</sup> The PM also said that they had passed on the information, on the Tamil Nadu situation to the Governor Shri SS Barnala.<sup>18</sup> Therefore, he justified the action of the central government of dispensing with the practice of getting the Governor's report in this case. The PM said that the law and order situation in Tamil Nadu was deteriorating day by day and the DMK government failed to take any effective steps to solve the problem.

All the major parties were highly critical of this move by the Chandrasekhar government. At a meeting of the JD, TDP, AGP, CPI, CPI (M), RSP, AIFB, this move was criticised vehemently. The move was termed anti-democratic and an attack on the very federal base of the Constitution. The opposition also said that such a move smacked of political partisanship and alleged that the Chandrashekar Government had done it primarily to appease the Congress (I) and its ally the AIADMK. They termed it as 'operation blackmail' and said they would call bandh and rallies throughout India to protest against this move.<sup>19</sup>

The opposition parties criticised the dismissal of the DMK government because they considered it as a ploy by the central government to get rid of an opposition regime. It

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<sup>17</sup>The Tribune, January, 26, 1991.

<sup>18</sup>The Indian Express, February, 6 1991.

<sup>19</sup>Hindustan Times, Feb. 1, 1991.

was a blatant case of misuse of Article 356 for petty political ends. As the DMK was an ally of the National Front which was opposed to the Congress and its ally the AIADMK which had its own stake in Tamil Nadu, this move was initiated. This was an out-right case of misuse of Article 356.

**Case No. 82 : HARYANA**

The next on the list was Haryana. Haryana was brought under President's rule and the Vidhan Sabha was dissolved on the 6th of April, 1991. The imposition of President's rule in Haryana was the culmination of a series of political developments which started with the assumption of office of Chief Ministership by Shri OP Chautala following the resignation of MR. Hukum Singh. Mr. Chautala became the Chief Minister on March 22 for the third time on 15 months. On March 26, the Speaker Mr. HS Chautala, disqualified three members of the Janata Dal (S) led by Mr. Chautala. The CM held a cabinet meeting the same day recommending dissolution of the House.<sup>20</sup> The Governor in a detailed report sent to the President in the wake of the advice tendered to him for dissolution of Assembly by the CM narrated the sequence of developments which led to his recommending President's rule under Article 356 of the Indian Constitution. On March 26, 3 JD (S) MLAs namely Shri Vasudev Sharma, Rao Ram Narain and Shri Azmat Khan

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<sup>20</sup>Tribune, 7th April 1991.

were disqualified from the membership of the House by the Speaker under the Anti Defection Law. These 3 MLAs were signatories to the resolution of JD (S) Legislature Party electing Shri Chautala as its leader. Major political parties and press felt that this disqualification decision had materially affected the strength of the Haryana JD(S) Legislature Party and that the JD(S) government was reduced to a minority. This led to political uncertainty in the state and the situation became very fluid.

On 27th March, the Council of Ministers met and resolved that the Governor be advised to dissolve the Haryana Legislative assembly forthwith. It was under these circumstances and background that the Council of Ministers met on 27-3.91 and recommended the dissolution of the Assembly as there were apprehensions that the government had been reduced to a minority. The JD(S) support base was coming down substantially day by day because 3 JD(S) MLA's had been disqualified. What made the situation worse was the fact that the decision was taken by a CM who had taken over as CM barely 5 days and had not even faced the Assembly once.

The Governor after giving a thoughtful consideration to the advice of the CM came to the conclusion that it would set a bad Precedent if he accepted the advice of a CM who had not even faced the Assembly once. Therefore, the Governor advised him to convene the session of the Assembly

so that floor testing could be done to see if the CM enjoyed majority support. In reply to the suggestion Shri Chautala said that he still enjoyed majority support as he had the support of some independents <sup>21</sup>. The CM was in no mood to comply with the directive of the Governor that the CM convene a session of the Assembly in order to facilitate floor testing. The CM also submitted a seven page reply drafted by the Advocate General Sushil Mohanta and Principal Secretary LM Jain in which it was pointed out that the Governor should go by the advice of the CM and his Council of Ministers.

In an interview, the Governor Mr. Dhanik Lal Mandal clarified that if the CM was unable to prove his majority then he would recommend President's rule.

Mr Mandal said that after the disqualification of 3 MLAs there was no machinery to verify the signatures of the MLAs and the only alternative was to ask the CM to prove his majority on the floor of the House as this was the only appropriate forum. He stated that it was a crucial decision especially when the Lok Sabha elections were round the corner. "It is not the question of dissolution of Assembly alone but of the caretaker government and unless Mr. Chautala is able to prove his majority how can he be

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<sup>21</sup>Governor's report to the President, dated April 2, 91.

asked to continue as caretaker CM.<sup>22</sup>

On 31st March the Governor received another communication from the CM wherein he again requested for the dissolution of the Assembly, for holding fresh elections and for making administrative arrangements during this period on merits, provision of the Constitution and precedents. This clearly indicated that he had refused to comply with the government's directive. Refusal of the CM to comply with the directive of the Governor further strengthened the belief of the Governor that the Chautala Government had lost majority. Not only did he refuse to prove his majority, he did not adopt any alternative method to prove his majority.

As a result of the CM's failure to comply with the Governor's directive, he was left with 2 alternatives-to explore the possibility of formation of an alternative government and the second alternative was to propose immediate dissolution of the Assembly. As regard the first alternative, the Governor had not received any proposal from any political party. Moreover the strength of political parties were Congress (I) 5, CPI 1, CPM 1, JD 13, independents 6. Therefore, none was in a position to form the government.

Therefore, the only other alternative was the imposition of President's rule under Article 356 of the

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<sup>22</sup>Hindustan Times, 30th of March, 1991.

Constitution and dissolution of the Assembly. The Governor recommended that President's rule be imposed under Article 356 of the Constitution. He also recommended dissolution of the Assembly.<sup>23</sup>

### **3.3 Return of Congress Party and use of Article 356**

#### **Case No. 83 : Meghalaya**

Meghalaya was the first state where President's rule was imposed after P.V. Narasimha Rao assumed office.

As a result of the general elections of 2nd February 1988, the party position in the Meghalaya Assembly was as follows : Congress (I) 22, Hill People's Union 19, Hill State People's Democratic Party 5, All Party Hill Leaders Conference 2 ; Public Demand Implementation Convention 2 ; independents 9. The election followed the formation of the PA Sangma Ministry. However, the PA Sangma Ministry resigned following withdrawal of support by Shri BB Lyagdoh. Lyagdoh became the leader of a new group called MUPP and formed the government on the 26th of March 1990 with a strength of 32 in a House of 59. In July 1991, there were reports that some members of ruling MUPP had switched their support to the UMPF group. 3 members of the ruling MUPP including 2 Ministers defected to the opposition group. It was also reported that the Speaker Shri PR Kyndich was elected as leader of the opposition. Amidst this confusing situation, on the advice of the CM a

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<sup>23</sup>Governor's report to the President dated April 1991.



special session of the Assembly was convened on 7th August, 1991 in order to enable Shri BB Lyndoh to prove his majority in view of certain claims and counter claims of support between the ruling party and the opposition.

On 7th August when the confidence motion was moved in the House, it was found that the ruling side had 30 members against 27 members of the opposition in a house of 58. However before the motion was formally disposed of, the Speaker on a complaint from a Congress (I) MLA suspended the voting rights of 5 independent MLAs. On 8th August, after ascertaining the facts on receipt of legal opinion of the Advocate General, the Governor prorogued the House as advised by the CM. On 17th August, the Speaker passed the final order on the complaint of the Congress (I) MLA disqualifying five independent MLAs belonging to the ruling group.

In the meantime the UMPF informed the Governor that Shri. JD Poherman was the leader of the Congress Legislative Party and its allies. Shri JD Poherman formally staked his claim to form the government. The Governor informed Shri Poherman that an Assembly session would be called to examine the question of the government's majority on the 27th of August.

In the meantime, the Supreme Court on a special leave petition filed by the disqualified MLAs passed an order on 23rd August 1991 to maintain the 'status-quo'. The CM

wrote to the Governor that it would be possible to convene the Assembly on or before 28th August in view of the 'status-quo' order of the Supreme Court. On 29th August the CM advised the Governor to summon special session of the Assembly on 9th September. The Supreme Court on 6th September issued an interim order staying the operation of Speaker's ruling in respect of 4 independent MLA's only. The next day, there were reports in the newspapers that the speaker had announced that he would reluctantly ignore the Supreme Court ruling as in his view, the Supreme Court had no jurisdiction in the matter. On 7th September, the Cabinet advised the Governor that in view of the tension created by the Supreme Court ruling and decision of the Speaker not to allow the disqualified MLAs (entry passes were not issued to these Members) and in view of the likelihood of large-scale disturbances leading to serious law and order problem, it would be prudent to postpone the Assembly session. Finally, the session was postponed. The Governor after this development wrote to the CM asking him to advise him on a fresh date to convene an Assembly session. The CM finally advised the Governor to summon the assembly on 8th October 1991.

On 7th October evening, the Governor received a letter from the Deputy Registrar of the Supreme Court enclosing copy of the Supreme Court order saying that the ruling of the Speaker dated 7th and 17th August 1991 had been stayed

by the Supreme Court and that the Court expected the Governor of Meghalaya to take the necessary steps to ensure its strict compliance and prevention of its violation by any person as provided under Article 144 of the Constitution. On receipt of this letter, the Governor immediately sent a copy to the Speaker.

On the 8th of October 1991, when the Assembly was convened, one MLA Shri Dentist Mohan Roy Kharkongor who had earlier crossed over to the opposition UMPF group, had again crossed over to the ruling MUPP group and thus there were 26 members of the opposition UMPF group and 30 members of the ruling MUPP group, including the four members who had earlier been disqualified by the Speaker, but in respect of whom the orders of the Speaker were stayed by the Supreme Court. After the division, 30 members had affixed their signatures for the motion and 26 against. But the Speaker announced the result saying that 26 members had voted for the motion and 26 against the motion, and therefore, there was a tie and he was using his prerogative to use his costly vote in favour of the opposition UMPF group. Thereafter, he adjourned the house sinedie. The Speaker did not take into cognizance the Supreme Court ruling<sup>24</sup>.

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<sup>24</sup>Governor's report to the President, dated 8th October 1991.

**Case No. 84 : Manipur**

Manipur was brought under President's rule on January 7, 1992 and the Assembly was put under suspended animation.

The ruling United Front Government had 34 MLAs in the House. The party position on December 3, 1991 : was Congress 13, MPP-11, Janata Dal-11, CPI-3, KMA-2, NPP-1, Congress (S) 6, unattached members-6.

On December 4, 1991, the ULF's, strength was reduced due to the withdrawal of support of three congress(S) members, which had six members. On 6th December, 1991 5 ministers on the advise of the CM were dropped. As the situation was very confusing, the Governor advised the CM to prove his majority on the floor of the House. A special session of the Assembly was convened on 9th December, 1991.

On the refusal of the Speaker to allot seats to seven disqualified MLAs (the Supreme Court delivered a judgement on 12th November 1991, removing the disqualification of seven MLAs) alleging that the Speaker was acting in a partisan manner by not obeying the Supreme Court's order and the ULF government was able to secure a vote of confidence with 29 members voting in favour of it excluding the Speaker. In this special session of the Assembly the United Front was able to secure the support of the unattached members viz., Shri Soso Lorho and Shri ID Dijuanang.

The Janata Dal, a constituent of the United Front expelled one of its defecting MLAs, Shri Selkat Heanxchal for anti-party activities and moved for the disqualification of the other two, namely Shri N Komol Singh and Shri L Ibomcha Singh. Similarly, the Congress(s) another constituent of the ULF, expelled 2 members, Shri W. Jagol Singh and Halkhomong Haokip and moved for the disqualification of one member, Shri C Doun Doungel.

On the motion of the two above named parties, the Speaker issued show cause notices to the 3 members under the Anti-Defection Law and fixed 23rd December, 1991 for hearing. None of the members appeared that day and the Speaker adjourned the hearing and fixed 31st December, 1991 as the date of next hearing. On 31st December, the three members were represented by their legal counsel who made a prayer for further adjournment which was rejected by the Speaker, who passed an order disqualifying Shri C Doun Doun, N Komol Singh and L Ibotite Singh under the Tenth Schedule of the Constitution.

On December 17 1991, Shri Lorno, who only eight days before supported ULF on the floor of the House, changed his loyalty and reaffirmed his loyalty to the leader of the Congress (I) party. On December 26, 1991, Shri Hanghalikzan again shifted his loyalty to the leader of the Congress (I), while he was physically present in the camp of ULF.

In view of the sensitive location of Manipur which is a border state and the infiltration of NSCN insurgents from neighbouring Nagaland who were out to create trouble, the law and order situation had also deteriorated considerably. This had manifested itself in the gruesome killing of three intelligence officials of the Army, two officers of the SIB on June 11 1991. There was also a preplanned attack on the Superintendent of Police, Imphal on the 30th of November, 1991 killing one police man and one civilian. Attacks were also made on CRPF personnel December 9 and 15 1991, killing 13 CRPF personnel, one Sub-Inspector and one civilian snatching away of Rs. 73.20 lakhs along with a cache of arms and ammunition etc.

Frequent shifting of loyalties by some of the MLAs sitting on the fence added to the political instability. As a result of these events, the administration came to a virtual standstill and the political system was vitiated making it an object of public ridicule.

The Governor after taking stock of the situation recommended that the state should be brought under President's rule with the Assembly being kept under suspended animation. The main argument in favour of suspension of the Assembly was that none of the political parties would have favoured election. Moreover, an election would have been marred by violence due to the fact that several extremist organisations were at work. They would

have created havoc with the help of foreign funding. Thus imposition of Presidents rule was perfectly justified.

Subsequently, the CM was asked to resign by the Governor in view of the impasse created by the Speaker. As the CM refused to resign, the Governor did not find the prospect of formation of an alternative Government very bright as in a House of 58 members, 5 had been disqualified by the Speaker. The Supreme Court had stayed the disqualification of 4 members, but in respect of the fifth one, it had not given any ruling.

The Speaker was of the view that a stable ministry would not be possible as it would constantly need the Speaker's casting vote to transact business. Therefore, even if the opposition group is given a chance the Speaker would not allow the smooth functioning of the government. Therefore, the Governor recommended that President's rule be imposed with the Assembly being kept under suspended animation.<sup>25</sup>

#### **Case No. 85 - NAGALAND**

Nagaland was brought under President's rule on April 3, 1992. The imposition of President's rule in Nagaland led to a volley of protests from the opposition members. It led to a walkout by the opposition. The opposition was really agitated over the issue and it even led to an adjournment motion being raised by the veteran Janata Dal MP Mr. George

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<sup>25</sup>Governor's report to the President dated 7th October, 1991.

Fernandes. The main grouse of the opposition against the government was that the Parliament was kept in the dark about the issue. It had been kept away from the Press. The opposition described the step by the Central government as an attack on the federal character of the Constitution. Describing it as a blatant misuse of the Article 356 of the Constitution, the opposition lambasted the government for its act of imposition of President's rule in Nagaland. The opposition basically attacked the government because the Governor Mr. M.M Thomas, had not recommended President's rule, the Centre could simply dissolve the Assembly. In this case, there was no report by the Government.

The Government of Mr. Vamuzo was in office for 21 months. Twelve MLAs of the ruling Nagaland People's Council withdraw their support to the Vamuzo government accusing the CM of mismanagement of funds. The leader of the opposition in Lok Sabha Mr L K Advani criticised the government vehemently for having acted in a hasty manner. However, the Human Resources Development Minister Mr. Arjun Singh stoutly defended the government.<sup>26</sup> JD leader and former Prime Minister Mr. V.P. Singh criticised the Centre's action and said that the Centre was indulging in the politics of manoeuvrability to destabilise non-Congress governments.<sup>27</sup> The dismissed CM Vamuzo described the

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<sup>26</sup>The Tribune, April 4, 1992.

<sup>27</sup>The Statesman, April 4, 1992.



imposition of President's rule as "illegal, unconstitutional and politically motivated. He was of the view that the action of the Central government was a severe deterrent to the peace process that had been initiated by his government to bring to the mainstream the various Naga insurgent groups"<sup>28</sup>.

**Case No. 86 - UTTAR PRADESH**

The Babri-Masjid was demolished on the 6th of December, 1992. The structure fell basically due to the act of connivance of the Uttar Pradesh government with the Kar Sevaks of the RSS who had collected there in lakhs to commit this heinous crime. The Uttar Pradesh government remained a silent spectator to the pulling down of the mosque because the BJP government of Kalyan Singh was trying to woo the Hindus of India by whipping up an anti-Muslim wave.<sup>29</sup>

The demolition of the mosque sent shock waves throughout the country. It was a vicious attack on the secular fabric of the country. It was for the first time that a state government failed to fulfil the assurances given by it to the Supreme Court of the land.<sup>30</sup> As a result of the demolition of the Babri Masjid, the Kalyan Singh government was dismissed. The Chief Minister Shri Kalyan

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<sup>28</sup>The Tribune, April 6, 1992.

<sup>29</sup>The Hindustan Times, December 7, 1992.

<sup>30</sup>Ibid.

Singh Kalvi however, claimed that he had resigned. An urgent meeting of the Union Cabinet was held where it was decided that the states which were ruled by the BJP (Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh) would be dismissed. In case of Uttar Pradesh, there was no report by the Governor Mr. Satyanarayana Reddy. President's rule was imposed and the Assembly was dissolved.<sup>31</sup>

**Case No. 87: RAJASTHAN**

In the wake of the demolition of the Babri Masjid, the Rajasthan government led by Mr. Bhairon Singh Shekhawat was also dismissed and the Assembly was dissolved.

The Governor in his report said that "the Ayodhya episode has created a flutter in the whole country. In that direction the state of Rajasthan run by the BJP has played an obvious role"<sup>32</sup>.

The Governor in his report further said that the BJP and the RSS and VHP were hand in glove with each other. Moreover, the ban that had been imposed by the Union government on the VHP and RSS was not being implemented. Only 2 arrests had been made by them. One minister resigned and he along with 22 MLAs formed a group of Kar sevaks which took active part in the demolition of the Babri Masjid. The law and order situation was also deteriorating

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<sup>31</sup>Ibid.

<sup>32</sup>Governor's report to the President dated. December 15, 1992.

in the state. The government remained a mute spectator to the atrocities that were being committed on the minorities. As a result of all these, the Governor recommended to the President that President's rule be imposed under Article 356 of the Constitution. He also recommended the dissolution of the Assembly.<sup>33</sup>

**Case No. 88 - HIMACHAL PRADESH**

The Himachal Pradesh Government led by Shri Shanta Kumar was also dismissed in the wake of the demolition of the Babri Masjid. The Assembly was also dissolved.

The Governor in his report said that "in the wake of the events of 8th December 1992 at Ayodhya (UP) and imposition of ban on five communal organisations under the Unlawful Activities (Prevention) Act, 1967. Since then the Chief Minister had in many public announcements made it clear that he and his party supported the Kar Seva at Ayodhya"<sup>34</sup>.

The Governor further said that he was keeping a close watch on the activities of the RSS and VHP and he asserted that the CM and his ministers were instrumental in sending a large number of Kar Sevaks to Ayodhya from Himachal Pradesh in order to take part in the demolition of the Babri Masjid. Even some BJP MLA's took part in the

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<sup>33</sup>Governor's report to the President, dated December 15, 1992.

<sup>34</sup>Ibid.

demolition. Although the CM met the Governor and said that he had issued instructions for the imposition of the ban on the RSS and the VHP but only 3 arrests were made. Moreover, the Governor felt that the CM being a member of the banned organisation himself would not be able to do justice to the ban. Therefore, the Governor recommended imposition of President's rule under Article 356 of the Constitution. He also recommended dissolution of the Assembly.<sup>35</sup>

**Case No. 89 - MADHYA PRADESH**

The Governor of Madhya Pradesh sent three reports to the President. This shows that the situation in Madhya Pradesh was much more serious than the 3 other BJP ruled states viz., UP, Rajasthan and HP.

In his first report the Governor said "the death toll due to unabated violence for the second day in succession in various parts of Madhya Pradesh risen to 39. About half of them are reported to be in police firing. Unconfirmed reports have put the death toll at 50 of which 34 were said to have taken place in Bhopal alone. At least 365 persons were injured in the violent incidents in the state. Of them 62 policemen were injured in Bhopal alone. The condition of one of them was said to be serious. Total number of police persons injured in the state is said to be 90. Of the 39 deaths, 24 were in Bhopal, 4 in Burhanpur, 2 in Jaora, 8 in

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<sup>35</sup>Governor's report to the President, dated December 15, 1992.

Ujjain and 1 in Jabalpur. Curfew had been clamped for an indefinite period in 8 police stations of old Bhopal, dark dawn to dusk curfew was been clamped in New Bhopal. Curfew was also in force since in Indore, Mhow, Jabalpur, Khandwa, Burhanpur, Ratlam, Jaora, Mominpura, Seoni, Ujjain, Dewas, Neemuch, Shajapur and Khargone. Prohibitory orders have been imposed in 29 towns of MP.<sup>36</sup>

The report also stated that the Army had been deployed in certain areas because of incidents of arson and stone throwing. Moreover, the ban imposed on the VHP and RSS had also caused a great deal of dissatisfaction among the BJP rank and file. As a result of the deteriorating law and order situation, the Governor in his report itself recommended imposition of President's rule in the state.<sup>37</sup> In the second report, the Governor said that violence continued to rock the state even though prohibitory orders were in force. The death toll in the state went up to 82. The Governor further said that more columns of Army had to be called in as the situation was fast deteriorating. Violence had become very acute in the state and some areas which had not seen violence even once had got affected by it.<sup>38</sup> In the third report, the Governor stated that the

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<sup>36</sup>Governor's report to the President, dated December 3, 1992.

<sup>37</sup>Ibid.

<sup>38</sup>Governor's report to the President, December 10, 1992.

death toll in the violence had gone up to 125. The total number of injured persons was 600. The report stated that the situation in Bhopal was really grave and this was reflected in the fact that the public sector unit BHEL had to close down for the first time since its inception due to the deteriorating law and order situation. There was a police firing on the 11th of December. There were cases of banning on 12th December. The CM's statement that the banning of the VHP and RSS has unfortunately added to the confusion and brought the credibility of the government to implement the ban was under a cloud. In view of all these developments, President's rule was imposed under Article 356 of the Constitution and the Assembly was dissolved.<sup>39</sup>

Therefore, imposition of President's rule was perfectly justified.

#### **Case No. 90 - TRIPURA**

Tripura was the next state to be brought under President's rule. It was brought under President's rule in the wake of the resignation of the ministry headed by Mr Samir Ranjan Mazumdar on March 10, 1993. This ministry was functioning in a caretaker capacity. The tenure of the state assembly expired on February 28. The elections to the state assembly were to take place on the 15th of February but they were postponed due to an Election Commission

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<sup>39</sup>Governor's report to the President dated December 13, 1992.

order.<sup>40</sup> As a result President's rule was declared. It was a step in the right direction to avoid a Constitutional crisis. President's rule was imposed on the 11th of March 1993.<sup>41</sup>

**Case No. 91 - MANIPUR**

President's rule was imposed in Manipur on the 31st of December 1993. The step was long overdue due to the fact that differences among its members on any number of issues had plagued the coalition since its formation under the leadership of RK Ranbir Singh in 1990. Petty jealousies and unseemly squabbles were so much there that 2 coalition partners-the Congress(S) and the Janata Dal campaigned against each other in a bye-election.<sup>42</sup>

Within the Congress (I), there was intense factionalism and there were as many as three factions one led by Shri RK Deore Singh, the other led by Rishang Keising and the third led by RK Jaichandra Singh. There were sharp differences between Shri Rishang Keising and the CM. Shri Rishang Keising was also responsible for precipitating the Nagakuki conflict. On the other hand, Shri Jaichandra Singh openly criticised the party leadership for its failure to take action against ministers for their links with underground elements. The government

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<sup>40</sup>Times of India, 13th Feb. 1993.

<sup>41</sup>Ibid. March 11, 1993.

<sup>42</sup>The Telegraph, 10th January, 1992.

was virtually ineffective in dealing with the Kuki-Naga clash.<sup>43</sup>

As a result of this state of affairs, there was total instability and there was complete alienation from the people.

The Governor, therefore, said in his report that the Assembly which had been elected in February, 1990 as a matter of logic should be put under suspended animation. However, keeping in view the unstable nature of the last 2 ministries, the Governor recommended that Manipur should be brought under President's rule. He also recommended dissolution of the Assembly.

It is evident from the above discussion that proclamations have been made many times for political considerations and that is due to the ineffectiveness of the meagre checks imposed by the Constitution over the exercise of the power. Over all the pre-Indira Gandhi era was marked by a subdued use of President's rule because there was greater political stability in that era. The Congress party at the Centre sought to dominate politics in the state. The first imposition of President's rule in Punjab in 1951 was actually engineered by the Congress party at the Centre. But the Kerala situation in 1965 showed some of the problems faced by state Government and

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<sup>43</sup>Governor's report to the President, dated Dec. 7, 1993.



their Governors during this era.

The most important features of the imposition of President's rule in Indira Gandhi 3 years was political instability. The first way was to persuade the politicians involved to deal with the problem politically. The second solution can be used when all attempts to use the first have failed. During the Indira Gandhi regime, these methods were combined indiscriminately. This led to various accusations. The accusative indictment was that President's rule was destroying the possibility of exploring political negotiations further. The second and more serious indictment was that the President's rule provisions were being used by the Congress party to further Congress objectives. The power to impose President's rule had become a political weapon. Post Indira Gandhi years continued the same tradition as existed in the Indira Gandhi years. The Janata party's extensive use of President's rule provision reinforced the view that the power under Article 356 could be used for almost any purpose by any government. The present government has also not reversed the trend. It continues. There have been cases even during Mr. V.P. Singh's and Mr. Chandrashekhar's tenure which were highly controversial and attracted a lot of flak. This drives home the dominant argument that Article 356 of the Constitution is a convenient tool which can be used by the central Government to dispense with uncomfortable state

Governments. The Rao Government is no exception to this general rule. It has also been accused of misuse of Article 356 to the Constitution. The dominant trend that is discernible after making a detailed study is that art 356 which was supposed to be a "dead letter" has been very frequently used.

## Chapter - 4

# JUDICIAL REVIEW OF PRESIDENT'S RULE PROCLAMATIONS

In the past forty years of the working of our Constitution, there have been innumerable instances when President's rule declaration in a state led to a series of controversies. The fact that Article 356 has been used for political gains by political parties is an irreversible truth. As a result, the affected parties have gone to court. What has been the role of the courts in this regard? How the Judiciary has approached this problem? An attempt will basically be made to study the role of the judiciary with regard to Article 356.

### **4.1 An analysis of the earlier judgements given by the Supreme Court and State High Courts on Art. 356 and suggestions of Sarkaria Commission.**

#### **- K K Aboo vs Union of India**

The first judgement was delivered by the Kerala High Court. Kerala was under President's rule since 1965, when the Governor found that no single party was in a majority. The Governor began the process of talking to various political parties so that a government could be formed.

After having failed in his mission, he recommended imposition of President's rule under Article 356 of the Constitution. President's rule was imposed on the 24th of March, 1965. This gave birth to the famous *KK Aboo vs Union of India* case.

His main contention was the following: That the Governor could not impose President's rule when the state was already under President's rule. Secondly, he argued that the Assembly should have been convened before its dissolution or in other words he argued that convening of the Assembly was a necessity for its dissolution.

Thirdly, he argued that the Governor's duty was not to hold talks with leaders of various parties for the formation of a government but as the constitutional head should have called the Assembly. The fourth argument related to the allegation being levelled against the Governor that he had acted in a malafide manner. Adding a new twist to the entire controversy was the statement of the then Speaker of the Lok Sabha that the constitutionality of the President's action should be tested by courts and not in Parliament.

The last argument did not quite impress Justice M Madhavan Nair who commented "If the 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 action on the part of the Parliament. The necessity for urgent relief from this court urged by counsel on behalf of the petitioner is fanciful only."<sup>1</sup>

It is submitted that, while Parliament has to decide whether or not a particular proclamation should or should not be confirmed, it is only courts which must decide whether or not a particular action purported to be made under the Constitution is valid.

This does not mean that courts are obliged to upset the declaration of every Presidential proclamation. It merely means that courts must consider the constitutionality of a proclamation. In this particular case Justice Madhavan Nair was not impressed by any of the contentions raised by the petitioner, even prima facie, to issue a rule nisi in this motion."<sup>2</sup>

Justice Reddy further said that the Governor made every effort to find out if a government could be formed "There is no impediment to the Governor attempting to ascertain the possibility of a constitutional government in the state before he submitted his report contemplated under Article 356 of the Constitution."<sup>3</sup>

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<sup>1</sup>AIR, 1965, Kerala 229.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

He went on to say further that "I do not see any illegality, unconstitutionality, or even impropriety in the Governor's acts in the above regard. The characterisation of his deliberation with the party leaders as unlawful and his report to the President as illegal and unconstitutional deserves only to be repelled summarily."<sup>4</sup>

Another point which the Judge mentioned was that as a result of the failure of any party to get a clear majority in the wake of the elections, a crisis came into being and not as a result of Kerala having been under President's rule earlier.

The judge also said that the Governor had not acted in a malafide manner, even if some political leaders had been preventively detained. He argued that the President, when he issued the proclamation did not act as the agent of the central government but in his own right and the only sanction against him was, impeachment. Another very important question which Justice Madhavan Nair considered was whether President's rule should be imposed when an elected legislature was already in existence, he basically said.

That Article 356 of the Constitution does not prescribe any condition for the exercise of powers thereunder by the President, except the satisfaction of the President "that a situation has arisen in which the

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<sup>4</sup>Ibid.

government of the state cannot be carried on in accordance with the provisions of the Constitution." Justice Nair said that President of India had enough material to issue the proclamation.

#### **Rao Birender Singh vs Union of India**

The second case which came before a High Court relating to Article 356 of the Constitution was the case of Rao Birender Singh vs Union of India. The politics of Haryana was plagued by defections. There were frequent floor-crossings and this had become a chronic problem. As a result there was no governmental stability. Due to this, President's rule was imposed following the recommendation of the Governor. The dismissed CM Rao Birender went to court. His main contentions were the following (a) that the petitioner commanded majority in the legislative assembly and as long as he had the majority the Central government was not competent to issue the proclamation, which it could only issue when it had become impossible to carry on the government (b) satisfaction of the President while issuing the proclamation in fact was the satisfaction of the Union Home Minister (c) that the action was malafide due to the fact that he continued to enjoy a majority but still his government was dismissed (d) that the proclamation was malafide due to the fact that he had taken a bold stand on the Chandigarh issue as whether Chandigarh should belong to Punjab or Haryana and he had also opposed the

candidature of Dr Zakir Husain in the Presidential election.<sup>5</sup>

To the charges Justice Mehar Singh said "It is thus settled that the constitutional power of the President under Article 356 is apart and independent of the executive powers of the Union referred in Articles 53, 73 and 77. Those Articles do not apply to the exercise of such a power by the President. On this approach the whole edifice of the argument on the side of the petitioner that the proclamation was issued by the President in exercise of the executive powers of the Union crumbles.<sup>6</sup> Moreover, the court also made it clear that "President having issued the proclamation pursuant to his constitutional power under Article 356 and it not being an executive act of the Union and the President not being amenable to the jurisdiction of this court in view of sub article (1) of Article 361, this Court cannot go into the validity of his proclamation. He cannot be present in Court and in his absence his proclamation is not open to consideration by this court, not even the relevancy of the recital as to his satisfaction. None of the grounds urged by the learned counsel for the petitioner can alter this position. If there is any substance in these grounds, there would be the basis of a debate in both the Houses of Parliament on the

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<sup>5</sup>AIR, 1968, Punjab.

<sup>6</sup>Ibid.



question of approval or otherwise of the proclamation. Secondly, the reconsideration of the proclamation has specifically been vested by the Constitution in Parliament and that in my opinion, excludes the jurisdiction of this court in so far as the proclamation is concerned in that respect. Nothing has been said against the power of parliament to approve or to with hold approval of the proclamation. There is not even a suggestion that parliament has done anything beyond its constitutional power. It is a constitutional power and it is a power which excludes the jurisdiction of this court to consider any aspect of the proclamation."

To the other charges of the petitioner that the proclamation has been issued malafide, the judge replied "No malafide has been alleged in the President or in the Governor, and the Union Minister of Home Affairs does not come into the picture at all. The court has no jurisdiction in view of Article 74 (2) even to inquire whether he tendered any advice to the President in regard to the issue of proclamation. So in as far as the question of malice in fact is concerned, no allegation in this respect can be considered in this petition. There remains the question of malice in law on the ground that the report of the Governor discloses no ground which would have satisfied that the Government of Haryana was not being carried on according to the provisions of the Constitution. In the first place, the

report of the Governor has to be taken as such and facts stated in it, cannot be questioned.

In re A Sreeramalu,<sup>7</sup> the petitioner moved the Andhra Pradesh High Court in the year 1974 following the imposition of President's rule in Andhra Pradesh on the recommendations of the Governor without exploring the possibility of an alternative ministry. This situation arose basically due to the fact that the Congress High command had asked its party's CM to resign. The petitioner felt that Article 356 had been misused and abused. The petitioner alleged "that there were no circumstances whatever which could have led the President to be satisfied that a situation had arisen in which the Government of the state could not be carried on in accordance with the provisions of the Constitution."<sup>8</sup> The truth according to re A Sreeramalu, an MLAs of the Andhra Pradesh Assembly was that the CLP leader Shri PV Narashima Rao had lost the confidence of the majority of MLA's on the Mulki Rules issue. Justice Chinnappa Reddy said that "the issue of the President's satisfaction under Article 356 is basically a political issue. There is a wide range of situations when the President may act under Article 356 and the Constitution does not enumerate the situations and there is no satisfactory criterion for a judicial determination of

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<sup>7</sup>AIR 1974, AP.

<sup>8</sup>Ibid.

what are relevant considerations. The very nature of the questions involved in the circumstance is that it is the Head of the state that is entrusted with the discharge of the duty, it is the Parliament that is the final arbiter lead to the only conclusion that the court can never go beyond the proclamation issued by the President on the ground of malafide or on the ground of absence of any ground for the action. The ouster of the jurisdiction of the courts being intrinsic to the very nature of the power exercised by the President, it is immaterial that there is no article (like 363 (1)) expressly ousting jurisdiction of the courts."<sup>9</sup>

Justice Chinnappa Reddy said that the President's power in this regard were of a special constitutional nature and not just an exercise of executive action. Justice Reddy was of the view that the president's powers were subject to political control and were not amenable to judicial review in the same way as the powers of any administrative officer. He said "I do not think that the shackles of judicial review which the courts have so rightly put upon the arbitrary exercise of discretion by administrative agencies can be permitted to be put on the expression of satisfaction by the President in a matter specially confided to him by the Constitution. The satisfaction of the President in a matter entrusted to him

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<sup>9</sup>Ibid.

by the Constitution can not be equated to the discretion conferred upon an administrative agency by some legislation or subordinate legislation. There is indeed a great ocean of difference between the Head of the State expressing his satisfaction on a constitutional issue, aided and advised by a Council of Ministers responsible to the Parliament and the minors of the state exercising their discretion on administrative issue."

The judge further said the court should not indulge itself in political issues. He made it very clear that Article 356's interpretation was very wide. He discounted the view of the petitioner that simply because a government enjoys absolute majority it cannot be dismissed. A variety of situations may arise. A natural calamity, outbreak of violence which may paralyse the government may necessitate Presidential intervention.

Another important point that should be noted is that the Judge firmly held the view that simply because internal disturbance was mentioned in Article 355 that could not be the basis for Presidential action under Article 356.

Therefore, Justice Reddy made it very clear that the courts had no power of judicial review with regard to Article 356.

What were the reasons that were responsible for Justice Chinnappa Reddy to adopt such a stand. Basically there were 2 reasons. As the petitioner was a Member of the

State Legislative Assembly and he complained of loss of civil and political rights, if he was serious about his complaint, he should have rushed to the court immediately after the proclamation was issued. Instead he waited and tarried. The learned Judge argued that soon after the proclamation was issued, the Governor's administration had started functioning. Therefore, he said it would not be proper on the part of the court to "issue a rule on a belated application after so much has happened".<sup>10</sup> The other important reason cited by the Judge related to the events that occurred in the state. The Judge said that there was a complete breakdown of law and order due to strike by a large section of government employees. The Judge opined that these were relevant considerations which necessitated Presidential intervention. Thus there was sufficient justification for Presidential intervention, if proof of such justification is needed.

#### **Bijaynanda vs President of India**

The next case to come up before a High Court was the famous Bijaynanda v President of India case.<sup>11</sup> The Orissa situation was born following the resignation of Mrs. Nandini Satpathy as the CM of Orissa. The CM found it difficult to administer the state and also take part in coalition politics. The Governor BD Jatti, prorogued the

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<sup>10</sup>Ibid.

<sup>11</sup>AIR 1974, Orissa 52.

Assembly and sent 2 reports to the President, who imposed President's rule. The writ in this case was filed by 74 MLA's of the 140 member Legislative Assembly who were of the view that the opposition leader, Shri Biju Patnaik should be given a chance to form the government.

Chief Justice Mishra was of the view that the Constitution made it clear that the courts could not enquire into what kind of advice the Council of ministers headed by the PM gave to the President." Moreover, the kind of advice tendered by CM and his Council of Ministers to the Governor could not be enquired into by the courts.<sup>12</sup> In any case, it was made clear that there are gubernatorial functions, including the power to summon, dissolve or prorogue the legislature or submit report under Article 356 which were not amenable to judicial control.<sup>13</sup> Chief Justice Mishra felt that the President's action under Article 356 could also not be challenged and that the President was acting malafide was very difficult and was not made out in this case.<sup>14</sup>

Two important arguments in the case which are of importance and need attention are the following: President's discretion may be subjective but at the same time the courts could impose objective criteria to

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<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

elucidate those fact situations when there is a failure of the constitutional machinery in the states. It was also argued that no exercise of power was so completely untrammelled that it was not subject to jurisdictional control of courts.<sup>15</sup> The court demolished these arguments. It said that the Constitution clearly mentions that the courts cannot inquire what advice the Council of Ministers headed by the PM gave to the president. Moreover, the Constitution also states that the President and Governors are not answerable to any court for the exercise and performance of the powers and duties of their offices or for any act done or purporting to be done by them in the exercise and performance of those powers and duties.

In this particular case, even though 74 out of 140 MLAs were prepared to support the formation of a new government nothing was done. The Governor could have acted in haste. The Governor could not have made a proper assessment of the situation. Chief Justice sought to get out of this wrangle by considering whether the Constitutional convention of inviting the leader of the opposition to form a government applied in this case. He found that there existed such a constitutional convention and it had been approved by the Supreme Court. But in the same vein, he said that constitutional conventions could

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<sup>15</sup>Ibid.

not be enforced in a court of law.<sup>16</sup> Justice Mishra by giving this judgement sent certain signals which should be taken note of the learned judge seems to have accepted albeit indirectly that the proper constitutional action would have been to permit the leader of the opposition to form a government. The judge went a step further by stating that such matters should be tested on the floor of the House whether it was in session or not.

The judgement had far reaching political ramifications and implications. Even though the courts are unable to act in a matter related to Article 356 of the Constitution, the judgement clearly suggests that the Governor or the President may have done something improper. This decision had the legal effect of stating that the President's powers are untrammelled because, he acts on information from the Governor or otherwise.

If an assessment of the various High Court judgements is made then one can say that the Kerala and Punjab High Courts washed their hand off completely by stating that a Presidential proclamation issued under Article 356 was beyond judicial review. The Orissa High Court followed the same line but it sent certain clear signals that the Governor and President acted in violation of constitutional conventions. This judgement was indirectly critical of the Governor's act but at the same time expressed the fact that

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<sup>16</sup>Ibid



the actions of the President and Governor with regard to Article 356 of the Constitution could not be subject to judicial review.

Justice Chinnappa Reddy even though he followed the "total oustee" approach, he brought to the fore certain realities and limitations within which the courts function but at the same time he made it very clear in his judgement that a presidential proclamation in that particular case was necessary and warranted due to the existing circumstances. Even though this argument was a secondary one, it contained within it the possibilities of an extremely wide power of review.

#### **State of Rajasthan vs Union of India**

The next verdict related to Article 356 of the Constitution was delivered by the Supreme Court.

Indira Gandhi imposed a national emergency in 1975. She extended the life of Parliament by one full year till 1976. General elections were called in 1977. The Congress was totally routed at the hustings. The opposition Janata Party formed the government at the centre. Soon after assuming power, the Home Minister, Shri Charan Singh wrote letters to the Congress CM's of 9 states saying that due to the massive mandate given by the people to the Janata Party, the CM's of these states should seek a fresh mandate from the electorate. This letter episode was followed by a radio interview given by the then Law Minister Shanti

Bhushan who suggested that if the states did not comply with this advice, the governments would be dismissed.

This led to the famous state of Rajasthan vs Union of India<sup>17</sup> case. The broad features of this judgement are the following : As a result of the emergency, the Congress party suffered a set back at the hustings. The verdict of the people was against the Congress party's ideology and programme. In these circumstances, "It cannot be said that the inference drawn by the Home Minister that the State Governments may have forfeited the confidence of the people is not a reasonable one or had no nexus with the action proposed to be taken under Article 356 for the dissolution of the Assemblies."<sup>18</sup> It was however argued by the plaintiffs and petitioners that the mere fact that the Congress government lost power was not sufficient ground to lead to the inference that the Congress state governments had also lost the confidence of the people.<sup>19</sup> Mr Gokhale appealing for the state of Punjab argued that even in the past people voted for one party in the Lok Sabha elections and another party in the Assembly elections. He cited the 1967 election. The Judge however said that it was a solitary instance and was not of much use. The Central government after making a thorough assessment of the

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<sup>17</sup>AIR 1977 SC 1961.

<sup>18</sup>Ibid.

<sup>19</sup>Ibid.

situation that prevailed during the emergency like suspension of fundamental rights, strict press censorship right of detenus to move Court was almost banned and this state of affairs continued for more than 20 months. This was ground enough for the state government to come to the conclusion that the state governments of the congress lost the confidence of the people. "It is time that if the opinion of the Central government was based on extraneous or irrelevant materials or it was guided by purely personal considerations or ulterior motives, the court could have held such an action as malafide and stench it down.

But the important question that must be asked in this regard is that whether the action of the Central government in trying to persuade the CMs to advise the Governors to dissolve the Assemblies was malafide or guided by personal motives or extraneous considerations<sup>20</sup> It was argued by the petitioners that the ruling party wanted to have its own President and therefore wanted its own governments in the states. The court said that there was no reliable material to prove that the Central Government was swayed by these considerations. Further, if one looks at the circumstances preceding the dissolution of the Assemblies, the step can be said to be a reasonable one. Moreover, if the argument forwarded by Mr Gokhale is taken into account, that the electorate may return candidates of a different party in

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<sup>20</sup>Ibid.

the Parliamentary election and another party in the Assembly election, the action of the Central government cannot be termed ultra vires. Therefore, the court concluded that the circumstances preceding the dissolution and the people's verdict against the Congress were ground enough for the central government to act. The central government was thus not guided by extraneous motives. The other facet of problem relates to the advice tendered by the Union Council of Ministers to the President. The judges made it clear that the court could probe into it. It is true that while an order passed by the President under Article 356 is put beyond judicial scrutiny by clause (5) of Act. 356, the courts have a limited sphere of operation in that on the reasons given by the President in his order if the courts find that they are absolutely extraneous and irrelevant and based on personal and illegal considerations, the courts are not powerless to strike down the order on the ground of malafide if proved.

The other contentions raised by the petitioners was that the President of India had no power to dissolve the Assembly. The judge said that the satisfaction of the President mentioned in Clause (I) of Article 356 shall be final and conclusive and shall not be questioned in any court on any ground.

The first part of Article 356 (1) gives power to the President to issue a proclamation if he is satisfied on a

report of the Governor or otherwise to make a proclamation. In the instant case, as there was no report of the Governor of any of the states, the President can act on other methods which include the advice given to him by the Council of Ministers. Another condition that is necessary is that the President must be satisfied that the government of a state cannot be carried on in accordance with the Constitution. A great deal of stress was laid by the counsel. On this the court however concluded that, the satisfaction of the President is a subjective matter and the court cannot go into it.

Another point that was raised by the counsel that a perusal of Clause (3) of Article 356 and the proviso there of clearly shows that the proclamation can operate only for the period of 2 months and automatically expires at the expiration of this period. It is argued that if the Assembly is dissolved and this action is not capable of being confined by the Parliament within that time then it is incapable of ratification by the Parliament and therefore the reasonable inference should be that Article 356 clearly excludes any power to do any-thing which cannot be ratified including dissolution of Assemblies of the states. This argument however did not appeal to the Judge.

Under article 356 (1) (a) the President is empowered to 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 including the power to dissolve the Assembly is contained in Article 174 (2) of the Constitution which empowers the Governor to prorogue or dissolve the Legislative Assembly.

As Article 356 occurs in part XVIII of the Constitution which relates to emergency provisions, it is obvious that when the Assembly is dissolved no Council of Minister is in existence and therefore there is no occasion for either the Governor or the President to take the advice of the council of ministers of the state. Therefore, the judge opined very clearly that Article 356 (1) (a) confers the power of the Governor under Article 174 (2) on the President in clear and categorical terms. Even if an order dissolving the Assembly under clause (3) of Art. 356 that makes no difference because clause (3) does not touch actions taken, proceedings completed, consequences and orders ensued. At the time when Parliament exercises the control all these actions have already taken place and it is not possible to put the clock back or to reverse actions which have already taken place nor was such a contingency contemplated by the founding fathers of the Constitution. Therefore, the argument of Mr. Garg was not accepted.

It was further argued that even if it is assumed that Article 356 (1) (a) confers the power given to the Governor under Article 174 (2), it would be proper on the part of the President to prorogue the Assmebly instead of

dissolving it. The learned judge however said that, it was a matter for the President to decide and the court could not act in this matter.

#### **S R Bommai vs Union of India**

The next case relating to Article 356 of the Constitution came up before the Karnataka High Court in the wake of the dismissal of S R Bommai government. The case is known as S R Bommai vs Union of India<sup>21</sup> in which it has been held that the proclamation made under Article 356 of the Constitution is justiciable to the extent that the courts could look into the material or reasons disclosed for issuing the proclamation to find whether those materials or reasons were wholly extraneous to the formation of the satisfaction and had no rational nexus at all to the satisfaction reached under Article 356 of the Constitution.

The facts of the case were that S R Bommai and others had filed a writ petition under Article 226 of the Constitution of India calling in question the legality and Constitutional validity of Presidential proclamation dated 21st April 1989. It was contended that Shri Ram Krishna Hegde was elected as the leader of the Janata Party and was sworn in as CM in March 1985. On August 10, 1988, RK Hegde, resigned and S R Bommai was elected as the leader of the Janata Legislature party and was sworn in as CM of the

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<sup>21</sup>AIR, 1990, Karnataka.

state on August 13, 1988. In the month of September 1988, Janata party and Lok Dal (B) merged resulting in the formation of Janata Dal. On April 17, 1989 one Shri Kalyan Rao Molkari who was with Shri HD Deve Gowda all along, but had joined the Janata Dal and supported the petitioner defected and presented a letter to the Governor purporting to withdraw his support to the Janata Dal government headed by Shri S R Bommai. On April 18, 1989 he again met the Governor and presented 19 letters purported to have been signed by 17 Janata Dal MLA's, 1 associate independent MLAs and 1 BJP MLA which were to the same effect.

Referring to the observations made by Chandrachud and Bhagwati JJ expressed earlier in Rajasthan case it was held by the court that it found no escape from the condition that the courts should base their decision on the disclosed material and going beyond it would be to enter a field from which the courts must scrupulously stay away. The learned Judges, therefore concluded that the proclamation made under Article 356 of the Constitution was justiciable and that the courts could look into the materials or the reasons disclosed for issuing the proclamation to find out whether those material or reasons were wholly extraneous to the formation of the satisfaction and had no rational nexus at all to the satisfaction reached under Article 356 of the Constitution.



It was further added that the satisfaction of the President should be the result of comprehending in his own way the facts and circumstances relevant to the subjective satisfaction. Satisfaction was to be of the President and President alone: The basic facts to be determined was the relevancy of the grounds disclosed, and if the same were found to be relevant, then no exception could be taken to the power under Article 356 (1). In this particular case, the court found no escape from the conclusion that the grounds stated and material supplied in the reports of the Governor were neither vague nor irrelevant and hence the satisfaction of the President must be treated as conclusive and there was no scope at all for holding the President's action as a flagrant violation of Article 356. Therefore, the petition was dismissed.

From the above discussion, it is clear that as a result of the misuse of Article 356 of the Constitution by successive governments at the centre, aggrieved parties went to the court (both the High Courts and Supreme Court). Therefore, there exists a real problem. Various solutions have been suggested from time to time. The Administrative Reforms Commission and the Rajmanna committee gave various suggestions. However the Sarkaria Commission which submitted its report in 1987 made certain important suggestions.

Despite bitter historical experience, the Commission did not recommend deletion of Article 356. It emphasised that it should be used very sparingly and as a measure of last resort in case of genuine breakdown of constitutional machinery in a state. It suggested an amendment of Article 3 to provide that material facts and grounds justifying President's rule should form part of the proclamation. It also suggested that when President's rule is imposed the Legislative Assembly should not be dissolved before Parliament approves the proclamation.

It further recommended that if during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost majority he or she should not as a matter of constitutional propriety, dismiss the council unless the Assembly has expressed on the floor of the House its want of confidence in it. He should advise the CM to summon the Assembly as early as possible so that the majority may be tested. Generally, it will be reasonable to allow the CM a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing the budget, in which case, a shorter period may be allowed in special circumstances, the period may go upto 60 days. Another recommendation of the Commission is that "The Governor should not risk determining the issue of majority support on his own outside the Assembly. The prudent course

for him could be to cause the rival claims to be tested on the floor of the House. In order to avoid conflicts between Governors and state governments, the Commission recommended that a ruling party politician at the Union should not be appointed as Governor of a state.<sup>22</sup>

#### 4.2 The Jabalpur High Court verdict

The next case relating to Article 356 of the Constitution relates to Jabalpur High Court verdict. In the wake of the demolition of the Babri Masjid and dismissal of 4 BJP governments by the Centre, the dismissed CM of MP Mr. Sunderlal Patwa moved the High Court.

Giving a judgement on the petition filed by Shri Patwa, the Jabalpur High Court<sup>23</sup> delivered a verdict quashing by a two to one majority the Presidential order dated December 15, 1992.

The majority judgement delivered by Chief Justice Jha and Justice Dharmadhikari running into 35 pages said that "whether the purpose behind imposing President's rule in the state be preventive or curative, 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

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<sup>22</sup>Report on Centre-State relations (Sarkaria Commission report)

<sup>23</sup>AIR, 1993, Madhya Pradesh 214.

particular provision of the Constitution or worsening law and order situation. In order to justify the application of Article 356 of the Constitution, mere failure on the part of the state government to maintain public order cannot be a good ground for suspension of the government. To justify invoking of Article 356 of the Constitution public disorder must be of such an aggravated form so as to result in the failure of the entire law and order machinery. The expression "internal disturbance" used in Article 355 of the Constitution can furnish a ground of action under Article 356 of the Constitution only when an internal disturbance is of such a serious magnitude and extent that the local government is unable to control it."<sup>24</sup>

The judges were of the view that Article 356 of Constitution authorised the central government to enter into the domain of the state government. Clause (1) of the Article use the words "cannot be carried on in accordance with the Constitution." The words having far reaching ramifications and they might mean that a state government would be dismissed for violating any of the provisions of the Constitution. However if one goes back to the history of the provision one will find that it was thought that this provision would be used very sparingly. This was supposed to be an exceptional provision. The fathers of our Constitution were of the view that it would be used in the

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<sup>24</sup>Ibid.

eventuality of the breakdown of the constitutional machinery of the state. Even though it was supposed to be a dead letter, it is being used for political ends. The only way to prevent its misuse is when it is considered in its original form.

Article 356 of the Constitution should not be invoked when there is a law and order problem in the state. It should be invoked only in case of failure of responsible government in a state. Since Article 356 of the Constitution was clubbed with the emergency provision even though it does not have any link with Article 352, it should be concluded that the situation contemplated in Article 356 is not one of mere irregularity but one in the nature of emergency breakdown of the constitutional machinery which calls for an abnormal remedy.

The judges were of the view that a mere worsening of the law and order situation does not warrant imposition of President's rule unless to the satisfaction of the President, the law and order situation in a state, due to sudden disturbances, has made it or likely to make the functioning of the government impossible in the state. The central intervention in such an extreme difficult situation may be justified in deploying the Army in the affected area or by sending help to the state by sending its reserved force. In fact, Article 355 of the Constitution enjoins upon the Union to help the state in maintaining its

government. That duty is not to be discharged only by proclaiming the Presidential rule.<sup>25</sup>

Another important point that the judges raised was that both Article 355 and 356 should be read together because they have a common purpose. Article 355 of the Constitution stipulates the duty of the Union towards the state to protect them against any external and internal disturbances to ensure that the government of every state is carried on in accordance with the Constitution. Therefore, the extent and limitation of the powers of the President must be determined in the light of the provisions of Article 355 and for all practical purposes they should be read together. In this regard a dissenting note was given by Justice K M Agrawal who opined that Article 356 is independent of Article 355 and the exercise of power thereunder cannot be regulated by the duty cast on the union under Article 355 of the Constitution to protect every state against external aggression and to ensure that the government of every state is carried on in accordance with the constitution.<sup>26</sup>

Another important point that the judges stated was that if there is violence in a state, the central government should first invoke Article 355 of the Constitution of extending assistance and only when a state

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<sup>25</sup>Ibid.

<sup>26</sup>Ibid.

erred by not cooperating or by defying the directions of the Union, can the Central government use Article 356.

With regard to the satisfaction of the President, the court made it clear that the decision to proclaim President's rule by the President is in reality the decision of the Union Cabinet, therefore the Union Cabinet cannot have the privilege of such otherwise information which was the basis of the proclamation.

The most important part of the judgement is that the judges concluded that the circumstances that led to the imposition of President's rule in the state of Madhya Pradesh were not relevant for the invocation of Article 356. The Governor's reports that were sent to the President in no way constituted any relevant material nor was there in existence any other material which could be considered relevant for the invocation of Article 356. There were incidents of arson and killings but that in no way indicated that the constitutional machinery in the state had broken down. Therefore the proclamation was quashed.

Moreover, the judgement also stated that there were incidents of rioting and killings in other states also. Why is it that the 4 BJP ruled states were singled out. The Union government was not in a position to show any valid ground justifying such a step. The Union government could not produce any valid material. No central directives were issued under Article 355 of the Constitution. Therefore

there was no question of its violation. The Governor referred to the dilemma of the CM with regard to the banning of the RSS and VHP but he stated nowhere that the government actually failed to implement the ban.

Both the judges further contended that the Union's contention on the effect of grant of approval to the proclamation by the Parliament did not appear to be acceptable as the proclamation in any case was valid for a period of 2 months under sub article (3) of Article 356 of the Constitution and it was irrespective of its approval or disapproval by 2 Houses of Parliament and added that its life for a period of 2 months cannot be cut short by Parliament.

They pointed out that the constitutional provision in Article 356 sub clause (3) of the Constitution was very clear in this respect. The approval of Parliament merely gives the proclamation further lease of life for six months.

The Parliament, therefore, in approving or disapproving the proclamation did not sit in judgement over the satisfaction of the President reached on the advice of the Central Cabinet for imposing the Presidential rule for 2 months. But the Parliament only considers the desirability of the proclamation being continued beyond 2 months.



### 4.3 The Supreme Court Judgement

The next judgement relating to Article 356 was recently delivered by the Supreme Court on the 11th of March 1993.<sup>27</sup>

In a verdict which could have far-reaching political implications, the Supreme Court ruled that secularism is a basic feature of the Constitution and any state government seem to be acting against the secularist ideal can be dismissed by the President.

The ruling was made in the verdict of a nine-member Constitution bench upholding the dismissal of the BJP governments in Madhya Pradesh, Rajashtna, Himachal Pradesh in the wake of the Ayodhya incidents of December 6, 1992.

The bench chaired by Mr Justice S Rathaval Pandian, further ruled that "in matters of state, religion has no place. No political party can simultaneously be a religious party and politics and religion cannot be mixed. The Supreme Court, however struck down the imposition of President's rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991 and categorically ruled that all Presidential proclamations dismissing the state governments could be subject to judicial review."<sup>28</sup>

In these three cases, however no action was deemed necessary as elections had subsequently taken place in all

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<sup>27</sup>Judgements Today vol. 2, No. 8 March 1, 1994.

<sup>28</sup>Ibid.

the concerned states. The court, however decreed that it had the power to revive a dissolved state assembly if the dissolution was found to be judicially indefensible.

It also laid down certain specific norms regarding imposition of President's rule and declared that no state assembly could be dissolved simultaneously with the imposition of President's rule. Dissolution of an Assembly could be done only after Parliament had ratified the Presidential proclamation, the court held.

There was no difference of opinion among the judges that the Presidential proclamation under Article 356 was subject to judicial review but these were differences among them about the ambit and scope of judicial review.

However, the majority view was that if the court strikes down the proclamation, it has the power to restore the dismissed government to office and revive and reactivate the legislative assembly. In such cases, the court has the power to declare that acts done, orders passed and laws made during the period of the proclamation was in force shall remain unaffected and be treated as valid.

The court also ruled that the President can only dissolve the state Assembly after the proclamation was approved by both Houses of Parliament and not before "until such an approval is given, the President can only suspend the Legislative Assembly by suspending provisions of the

Constitution under Article 356 of the Constitution." The majority judgement said.

Agreeing with the seven judge bench decision in the Rajasthan case that Presidential proclamation was justiciable and the court could undertake judicial review if allegations of malafide exercise of power etc. were made in the petition, a majority of the judges, in their separate judgements, took the view that simply because a political party had overwhelming majority at the centre, it could not on that ground alone advise the President under Article 356 of the Constitution to dissolve the assemblies of opposition ruled states.

Six judgements were delivered by Mr. Justice SR Pandian, Mr Justice A M Ahmadi, Mr Justice J S Verma on behalf of Mr Justice Yogeshwar Dayal, Mr Justice PB Samant for himself and Mr Justice Kuldip Singh, Mr Justice K Ramaswamy and Mr Justice B P Jeevan Reddy for himself and Mr Justice S C Agrawal.

Mr Justice B P Jeevan Reddy who was supported by other judges,<sup>29</sup> which formed the majority view held that the power conferred by Article 356 of the Constitution was a conditioned power "it is not an absolute power. The existence of material - which may comprise of or include the reports of the Governor - is a precondition. The President's satisfaction must be formed on relevant

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<sup>29</sup>Ibid.

material. The recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 of the Constitution merit serious consideration at the hands of all concerned, the judge said in his 211 page judgement.

Mr. Justice Reddy in his judgement said that the proclamation under clause (1) can be issued only where the situation contemplated by the provision arises. In such a situation, the Government has to go. There is no room for holding that the President can take over some of the functions of the state government while keeping the state government in office. There cannot be two governments in one sphere. The majority judgement said in case both Houses of Parliament disapprove or do not approve the Presidential proclamation, the proclamation lapses at the end of the 2 month period. In such a case, the dismissed government revives. Referring to Article 74 (2) of the Constitution which bars an enquiry into the question whether any or what advice was tendered by the Council of Ministers to the President the majority judgement said, it does not ban 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" Mr Justice Reddy

in his judgement said.

Mr Justice Reddy said that 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. It's enquiry is limited to see whether the material was relevant to the action.

Even if part of the material was irrelevant, the court cannot interfere so long as there was some material which was relevant to the action taken, the judgement said.

Mr Justice Pandian, in his six page judgement, agreed with the reasoning given by Mr Justice Reddy and said that the power under Article 356 should be used very sparingly and only when the President was fully satisfied that a situation had arisen where the government of the state could not be carried on in accordance with the Constitution. Otherwise, the frequent use of this power and its exercise were likely to disturb the constitutional balance.<sup>30</sup> Mr Justice Sawant, who delivered the 150 page judgement on<sup>31</sup> his behalf and on behalf of Mr Justice Kuldeep Singh, said that in appropriate cases, the court will have the power by an interim regulation to restrain the holding of fresh Assembly elections to the Assembly

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<sup>30</sup>Ibid.

<sup>31</sup>Ibid.

pending the final disposal of the challenge to the validity of the proclamation to avoid fait accompli and the provision of judicial review being rendered fruitless. Mr Justice Ramaswamy, who disagreed with the majority view<sup>32</sup> on the issue of restoration of a legislative Assembly in his 140 page judgement said that "there is no express provision in the Constitution to review the assembly dissolved under the Presidential proclamation or to reinduct the removed government of the state".

In interpreting the Constitution on the working of the democratic institutions set up under the Constitution, it is impermissible to fill the gaps or to give directions to revive the dissolved assembly and to reinduct the dismissed government of the state into office. Equally, stay cannot be granted of the operation of Presidential proclamation till both Houses of Parliament approve the Presidential proclamation."

The judge said suspension without dissolution of the Legislative Assembly of the state also creates functional disharmony leading to a constitutional crisis. The grant of stay of elections to the legislative assembly, occasioned pursuant to the Presidential proclamation, also creates a constitutional crisis. Therefore, the court should not issue such directions leaving it to parliament to amend the Constitution if need be.

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<sup>32</sup>Ibid.

The land mark Supreme Court judgement delivered in March evoked a variety of opinions from constitutional experts and political commentators.

Says Supreme Court lawyer and constitutional expert Rajeev Dhawan "President's rule was and remains the death of federalism. Till this decision, the courts were reluctant to authoritatively say that the centre is wrong. But now, it has been laid down that procedural discipline and substantive requirement must be maintained."<sup>33</sup>

Soli J. Sorabjee termed it as the "zenith of judicial activism. The underlying rationale is the court's concern for the federal principle, social pluralism and pluralist democracy which form the basic structure of our Constitution and its (the court's) legitimate anxiety to give full and complete relief when the action is found to be unconstitutional."

Even though the judgement was widely approved and generally welcomed certain reasoned criticism of certain aspects of the judgement were made.

According to veteran political commentator Madhu Limaye "The judgement should be generally approved, but I differ on one point - that assemblies not be dissolved till Parliamentary approval is given to the proclamation of President's rule. This point is not in the Constitution, and even the highest court in the land is not authorised to

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<sup>33</sup>The Times of India, March 20, 1994.

remake the Constitution". Dr Subash C. Kashyap former Secretary General of the Lok Sabha also voiced certain reservations about the Judgement "secularism has not been defined anywhere in the Constitution and if the BJP governments could be dismissed merely because they were suspected, could not the centre's economic liberalisation policies also be questioned on the grounds that they are anithetical to a basic feature of the Constitution, that is socialism?"<sup>34</sup>

Despite certain reservations, the judgement was widely welcomed because of its far-reaching ramifications and implications. The judgement would help to a great extent in ushering in an era of smooth centre-state relations, so far as the use of Article 356 is concerned. It would certainly help in easing the tension that exists between the centre and state (with regard to this article).

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<sup>34</sup>Ibid.



## CONCLUSION

So far as incorporation of Article 356 in the Constitution is concerned, on the one hand, there was a feeling that introduction of these articles were necessary to ensure that responsible government contemplated by the Constitution functioned in the States. It was emphasised that the centre should have the authority to interfere when there was actual breakdown of the constitutional machinery in the states. Incorporation of these articles was further found to be justified in view of our historic past and fissiparous tendencies that stared our country in its face. The units which the country was composed of were of different dimensions and responsible governments had not been at work, in some units at any rate for a long time. Under such circumstances, in the interest of sound and healthy functioning of the Constitution itself, it was necessary that there should be some check from the Centre so that people in the provincial governments work in a responsible manner.

On the other hand, there were those who warned the framers of the Constitution against ruling the executive with unnecessary, uncalled for, tyrannical and dictatorial power. These members of the constituent assembly found grave danger lurking in these articles. The danger according to them was that on the pretext of resolving a

ministerial crisis or on the pretext of reforming maladministration obtaining in a state, the centre might intervene in the administration of a state. It was further maintained that this article had the effect of reducing state autonomy to a farce.

Then, there were those who expressed their serious suspicions on the desirability of such a provision and hoped that the provision would be used on rare occasions.

Despite the hopes and expectations so emphatically expressed by the framers of the Constitution, in the last forty three years, Article 356 has been used very frequently. An analysis of the cases of President's rule has shown that this article has not been used for legitimate purposes. More often than not, its provisions have been misused, to promote the political interests of the party in power at the centre.

During the Nehru era incidence of President's rule was quite low as it was sparingly used. During the tenure of Lal Bahadur Shastri there was only one case of President's rule. During the period of 20 years (from 1966 to 1977 and 1980-89) the frequency of President's Rule increased.

One of the factors which afforded the centre an opportunity to abuse this provision was the fact that the political map of India underwent a sea change after the fourth general elections. This election is considered a landmark in the annals of Indian history as it ended the

monopoly rule of the Congress party. After the elections, the United Front governments comprising parties of heterogeneous and conflicting ideologies came to be formed in various states of the country. As a matter of fact, half of India came to be governed by the non-Congress political parties. Even the strength of the Congress in the Lok Sabha dwindled to 282 seats in a House of 520. This was an era of Samyukta Vidhayak Dals and United Leftist Fronts in the country. Many of these coalitions were unstable and based on convenience rather than on principles. The state of affairs accounted for sharp rise in the incidence of cases of President's rule in the states. After Mrs. Gandhi's massive victory in the 1971 Parliamentary elections, Presidential rule became not only the first choice of federal leaders but also the normal choice to dislodge the recalcitrant state governments. By doing so she was able to establish the hegemony of the Congress both at the centre and in the states. Contrary to the expectations of the people, Article 356 was frequently used more on political reasons than administrative compulsions during Morarji Desai and Charan Singh's Prime Ministership. The unprecedented use of Article 356 by the Janata Government in dislodging Congress from the seat of power in nine state and dissolving their assemblies.

Mrs. Gandhi after returning to power in 1980 also retaliated by going in for the dissolution of the Janata

Assemblies in the states. During this phase there were invocations of Article 356 for which her government got a lot of flak.

During the Rajiv era, there were also some cases which were not only highly controversial but also against Parliamentary democracy.

There was absolutely no change with regard to use of Article 356 during Mr V P Singh's and Chandra Sekhar's Prime Ministership. Article 356 was certainly used by them on certain occasions like their illustrious predecessors.

Even PV Narashima Rao decisions regarding the use of Article 356 have not been thoroughly and totally non-controversial.

Since Article 356 has been grossly misused, political analysts have also felt that some healthy guidelines be evolved to direct President's rule so that constitutional obligations do not get subordinated to political expediencies.

The Rajamannar Committee (1967), the Administrative Reforms Commission and the Sarkaria Commission in 1987 gave various suggestions. The judiciary of the land has not been a mute witness. It has given several decisions and judgements from Kerala in 1965, Andhra Pradesh and Orissa in 1974, the Supreme Court in 1977, the Karnataka case of 1989 and Jabalpur High Court verdict of 1992. The process of judicial review reached its zenith with the Superme

Court giving a land mark judgement on the 11th of March 1993 which has been discussed in detail in chapter 4.

The Supreme Court has done the Indian polity a service by laying down the rules of the game under which the Central government can dismiss the state governments by exercising powers under Article 356 of the Constitution. The political significance of the verdict of the special nine judge Constitution bench is that it will act as a ban on motivated and arbitrary dismissal of state governments as had happened in a number of cases in the past. The unseating of a Ministry commanding a majority in the assembly by applying Article 356 is a virtual dismissal through the back door. Now after the Supreme Court verdict, the court can go into the circumstances of the dismissal and declare the act unconstitutional leading to restoration of status quo ante. This will compel the political party in power at the centre to think twice before embarking on the adventurous course of imposing President's rule. The proclamations were made on different occasions on the advice of the Council of Ministers of the central government belonging to different political complexions. Some of the dissolved states valiantly fought, honourably bled and pathetically lost their legal battle, the judges observed and said that since the commencement of the Constitution the president had invoked article 356 on as many as 91 occasions which was quite a performance for a

provision which was supposed to remain a dead letter. The only check envisaged by the Constitution apart from judicial review, is the approval of the parliament which in practice has proved to be ineffective as the judgement demonstrated. If an analysis of the Supreme Court verdict is to be done in brief the following are the salient features.

That the President had the power to dissolve the legislative assembly but dissolution was not a natural course and could be done only after Parliament ratified President's rule. Till the ratification took place the President could keep the assembly under suspended animation. Even after the proclamation, the court clarified that the High Court and Supreme Court could entertain a challenge to the proclamation as also after its approval by Parliament. Coming to the restoration of government to office in case it finds the proclamation unconstitutional, the court held that it had the power to restore the dismissed government. The judges said that Article 74 (2) merely bans enquiry into the question whether any, if so, what advice was tendered by the Council of Minister to the President. It does not ban the court from calling upon the Union Government to disclose to the court material upon which the President, had formed the satisfaction. It's enquiry is limited to see whether the material was relevant to the action. Even if part of the material was irrelevant,

the court cannot interfere so long as there is some material which is relevant to the action taken. The court also said in appropriate cases, the court will have the power by interim injunction to restrain the holiday of fresh elections to the Legislative Assembly pending the disposal to the caliditing of the proclamation. The court also stoutly came out in defence of secularism terming it as a basic feature of the court it and upheld the dismissal of the four BJP state government.

Thus, it can be fairly said that the landmark Supreme Court judgement will go a long way in ushering in an era of smooth centre-state relations, vis-a-vis Article 356. At least, now there is a set of guidelines to which the central government must adhere to because they have been pronounced by the highest court of the land. This would serve as a solution to problems that may arise in future with regard to use of this Article.

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## APPENDIX - I

### Article 356 of the Constitution

Provisions in case of failure of constitutional machinery in States. - (1) If the President, on receipt of report from the Governor<sup>1</sup> 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 by 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<sup>2</sup> or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect 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 authorise 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 Courts.

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

(3) Every Proclamation issued under this article shall be laid before each House of 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 resolutions 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 is dissolved or the dissolution of 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 Proclamation has been passed by the House of the People before the expiration of that 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 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<sup>3</sup> [six months] and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of 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.

<sup>4</sup>[Provided also that in the case of the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to <sup>5</sup>["five years"].]

Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unls-



- (a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and
- (b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:]]

<sup>6</sup>[Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab.]

(Source: The Constitution of India, Lucknow: Eastern Book Company, 1993.)

APPENDIX - II

**A CHRONOLOGICAL PRESENTATION OF USE OF ARTICLE 356 DURING  
THE PERIOD 1950-84**

Case No.	States
1	Punjab
2	Punjab
3	Andhra Pradesh
4	Kerala
5	Kerala
6	Kerala
7	Orissa
8	Kerala
9	Punjab
10	Rajasthan
11	Rajasthan
12	Haryana
13	West Bengal
14	Uttar Pradesh
15	Bihar
16	Bihar
17	Punjab
18	West Bengal
19	Kerala
20	Uttar Pradesh
21	Orissa
22	Karnataka

23	Gujrat
24	Punjab
25	West Bengal
26	Bihar
27	Manipur
28	Tripura
29	Gujrat
30	Andhra Pradesh
31	Orissa
32	Manipur
33	Uttar Pradesh
34	Nagaland
35	Uttar Pradesh
36	Tamil Nadu
37	Gujrat
38	Orissa
39	West Bengal
40	Bihar
41	Haryana
42	Himachal Pradesh
43	Madhya Pradesh
44	Orissa
45	Punjab
46	Rajasthan
47	Uttar Pradesh
48	Manipur

49	Tripura
50	Karnataka
51	Sikkim
52	Manipur
53	Kerala
54	Assam
55	Madhya Pradesh
56	Punjab
57	Uttar Pradesh
58	Bihar
59	Tamil Nadu
60	Rajasthan
61	Maharashtra
62	Orissa
63	Gujrat
64	Manipur
65	Kerala
66	Assam
67	Kerala
68	Assam
69	Punjab
70	Sikkim

Source : The data in the table that follows is based on President's Rule In States and Union Territories, New Delhi; Lok Sabha Secretariate, 1991. It has been rearranged chronologically.