CHAPTER VI
EMERGENCY PROVISIONS

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EMERGENCY PROVISIONS

1. *INTRODUCTION*

6.1.01— The framers of the Constitution were conscious that, in a country of sub-continental dimensions, immense diversities, socio-economic disparities and "multitudinous people, with possibly divided loyalties,"[1] security of the nation and stability of its polity could not be taken for granted. The framers, therefore, recognised that, in a grave emergency, the Union must have adequate powers to deal quickly and effectively with a threat to the very existence of the nation, on account of external aggression or internal disruption. They took care to provide that, in a situation of such emergency, the Union shall have overriding powers to control and direct all aspects of administration and legislation throughout the country. A violent disturbance, paralysing the administration of a State, could pose a serious danger to the unity and integrity of the country. Coping with such a situation of violent upheaval and domestic chaos, may be beyond the capacity or resources of the State.Intervention and aid by the Union will be necessary. A duty has, therefore, been imposed[2] by the Constitution on the Union to protect every State against external aggression and internal disturbance.

6.1.02 The Constitution-makers were alive to the fact that several regions or areas of the country had no past experience or deep-rooted tradition of Parliamentary form of Government, and a failure or break-down of the constitutional machinery in a State could not be ruled out as an impossibility. A further duty was, therefore, laid[3] on the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

6.1.03 The provisions of Article 352 have been invoked so far, twice, on grounds of 'external aggression', and once, on the plea of 'internal disturbance'. Article 356 has been brought into action seventy-five times since the commencement of the Constitution. In the initial years it was used sparingly. Upto the end of 1967, it had been invoked only twelve times. However, in the next eighteen years, it was resorted to on as many as sixty-two occasions. The very first occasion of its use (Punjab-1951) for resolving an internal crisis in the ruling party, contained the seeds for future misapplication. It rose to a crescendo in 1977 (again in 1980) when, in nine States, President's Rule was imposed at the same time.

6.1.04 The 'Emergency Provisions[4] of the Constitution form a fasciculus of nine Articles giving the President overriding authority to assume and exercise powers to deal with four types of extra-ordinary situations.

(a) A situation of grave emergency whereby the security of India or any part of its territory is threatened by war or external aggression or armed rebellion. (Articles 352 and related Articles: 353, Proviso to 83(2), 250, 354, 358 and 359).

(b) A situation involving breakdown of constitutional machinery in a State, i.e., where the Government of the State cannot be carried on in accordance with the provisions of the Constitution (Articles 356 and 357).

(c) A situation of 'external aggression' and/or 'internal disturbance' which is not grave enough to satisfy the requirements of either Article 352 or 356, but nevertheless, calls for other action by the Union pursuant to the first part of Article 355.

(d) A situation where the financial stability or credit of India or any part thereof is threatened enabling the Union to give suitable directions (Article 360).

6.1.05 'Emergency' under Article 352 was declared for the first time in October, 1962 following the Chinese aggression. It continued to remain in force during the Indo-Pakistan Conflict (1965) and was revoked only in January, 1968. 'Emergency' was proclaimed again in December, 1971 in connection with 'external aggression'. While this proclamation was already in force, a fresh proclamation of Emergency on the ground of 'internal disturbance' was issued in June, 1975. Both these proclamations were revoked in March, 1977. The propriety of the action under Article 352 on the ground of 'internal disturbance' and the suspension of the enforcement of certain fundamental rights, by orders under Article 359, were major issues in the mid-seventies. However, the scope for action under Articles 352, 358 and 359 has been considerably restricted and hedged in, by incorporating tight safeguards through the Constitution (Forty-Fourth Amendment) Act, 1978. This Amendment replaced in Article 352 the term 'internal disturbance' by the expression 'armed rebellion'.

6.1.06 The Constitution (Thirty-eight Amendment) Act, 1975 and put proclamations under Articles 352 and 356 beyond the ken of judicial review “in any court on any ground”. The Forty-fourth Amendment revoked this impediment. Article 352 has not been invoked since the Forty-fourth Amendment and, considering the adequacy of the safeguards provided by it, apprehensions of its possible misuse are no longer rife. In all the evidence before us, no concern has been expressed about the structure of Article 352 as it now stands. The provisions of Article 360 have not been invoked so far. Its provisions have not been criticised on any tangible ground. 6.1.07 However, there has been persistent criticism, in ever-mounting intensity, both in regard to the frequency and the manner of the use of Article 356. The gravemen of the criticism is that, more often than not, its provisions have been misused, to promote the political interests of the party in power at the Union. In the context of Union-State relations, therefore, a critical examination of the scope and use of Article 356 is necessary.

6.1.08 Article 356 was brought into operation as early as 1951. In the initial years, there were not many instances of its use. But, with passing of years, these provisions have been invoked with increasing frequency. This is evident from the data given below:

Period	Frequency
1950-1954	3
1955-1959	3
1960-1964	2
1965-1969	9 (7 cases in 1967-69)
1970-1974	19
1975-1979	21 (9 cases in 1977)
1980-1987	18 (9 cases in 1980)

These figures reveal a sharp rise in the incidence of such cases from 1967 onwards. The Fourth General Elections saw the emergence in the country of a multiparty polity, fragmentation of political parties, and rise of regional parties. There was a sea change in the political scene. Coalition ministries were formed in a number of States for the first time. Many of them were unstable, being coalitions based on convenience rather than principle. The General Elections to Lok Sabha, held in March 1977, led to a landslide victory of the Janata Party which thereupon formed the Union Government. The Union Home Minister wrote to the Chief Ministers of the nine Congress Party-ruled States that they should seek a fresh mandate. Some of them approached[5] the Supreme Court for a declaration that the Union Home Minister's letter, asking for dissolution of their Legislative Assemblies, was unconstitutional, illegal and *ultra vires*, but were not successful. President's Rule was imposed immediately after the pronouncement of the Court's verdict; and simultaneously, the Assemblies of these nine States were dissolved. A similar situation arose in 1980 when, in nine Janata-ruled States, on similar grounds, President's Rule was imposed following the victory of the Congress (I) Party in the General Elections to Lok Sabha. The propriety of this whole sale use of Article 356, in 1977 and again in 1980, has been widely questioned, the judgement of the Supreme Court notwithstanding. It is, therefore, apposite to examine the genesis, scope and nature of these emergency powers conferred on the Union under Articles 355 and 356.

2. *HISTORICAL BACKGROUND*

6.2.01— Historically, the proximate origin of these 'emergency' powers can be traced back to the Government of India Act, 1935. Section 93 of the Act provided that if the Governor of a Province was satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation assume to himself all or any of the powers vested in or exercisable by a Provincial body or authority, including the Ministry and the Legislature, and to discharge the functions thus assumed in his discretion. The only exception was that he could not encroach upon the powers of the High Court. Similar powers were conferred on the Governor-General under Section 45, which was a part of the Federal Scheme. However, this Part never came into operation.

6.2.02 The Constitution-framers were deeply concerned with the need for ensuring peace and tranquillity throughout the country. External aggression in Jammu and Kashmir, the emergence of disruptive forces and wide-spread violent disturbances in the wake of partition, demonstrated to them the imperative necessity of making special provisions for effectively and swiftly dealing with grave situations of law and order. The need for conferring special powers on the Union Government was accepted. It was

agreed[6] that the President would be given the powers of superseding the State Legislature and Government. Initially, it was also envisaged that the Governor could issue[7] a proclamation that a state of emergency had arisen in which peace and tranquillity could not be maintained and the Government of the State carried on in accordance with the Constitution.

6.2.03 An important issue for consideration before the framers was, whether the President and the Governor, or either of them, should be vested with special responsibilities to be discharged by them in the exercise of their discretion, for such purposes as maintenance of peace and tranquillity. It was decided[8] at a very early stage of constitution-framing that the President should have no such special powers and that he would exercise all his functions on the advice of his Council of Ministers. However, the question of vesting the Governors with discretionary powers remained under prolonged consideration. We have dealt[9] with this in detail in the Chapter on the Governor. It will be sufficient to say here that at a later stage, the Constituent Assembly decided[10] that the Governor should not be an elected, but be a nominated functionary. Consequent upon this decision, the Constituent Assembly, departing from the provisions of the Government of India Act, 1935, limited the Governor's powers to merely furnishing a report to the President of the circumstances showing that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

6.2.04 Thus, finally, the Constituent Assembly decided[11] that the responsibility of intervention in the administration of a State, when it was faced with a threatened or actual break-down of the Constitutional arrangements, would be exclusively that of the President, in effect, of the Union Government, and the Governor would have no authority in such a situation to assume, in his discretion, the powers of the State Government even for a short period. The provisions so finalised, it was considered, would be broadly in accord with the basic principle of Parliamentary democracy, the Union Government being accountable for all its actions to Parliament.

Rationale and Purpose of Articles 355 and 356

6.2.05 The underlying principle and purpose of introducing Article 355 was explained by the Chairman of the Drafting Committee in the Constituent Assembly. It was stressed[12] that our Constitution, notwithstanding that many of its provisions bestow overriding powers on the Centre, nonetheless gives, on the federal principle, plenary authority to the Provinces to make laws and administer the same in the field assigned to them. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be, by and under some obligation which the Constitution imposes upon the Centre. It was emphasised that the 'invasion' by the Centre of the Provincial field “must not be an invasion which is wanton, arbitrary and unauthorised by law”.

6.2.06 The introduction of a provision casting a duty on the Union to protect the States against 'external aggression' and 'internal disturbance' and 'to ensure that the government of every State is carried on in accordance with the provisions of this Constitution' was therefore, considered essential to prevent such an unprincipled invasion.

Articles 355 and 356 not unprecedented

6.2.07 In reply to the criticism that such provisions were not found in any other Constitution, it was pointed out[13] in the Constituent Assembly that they were based on the principle underlying Article IV, Section 4 of the United States Constitution, which provides:

> “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence”.

The first part of this provision is known as the Guarantee Clause and the second part the Protection Clause.[14] It was explained in the Constituent Assembly that, in principle, the Guarantee Clause conforms to the latter part of the Draft Article 277A (now Article 355) of our Constitution which is designed to maintain in every State the form of responsible Government as contemplated by the Constitution. The Protection Clause of Article IV(4) corresponds to the first part of Article 355, with this difference that, instead of the expressions “invasion” and “domestic violence”, the framers of our Constitution preferred to use the terms “external aggression”, and “internal disturbance”, respectively, which are of relatively wider amplitude.

6.2.08 To understand the full significance of the duty imposed on the Union by the Article referred to above to ensure that the Government of every State is carried on in accordance with the Constitution, it will be useful to examine in some depth the Guarantee Clause in Article IV(4) of the United States Constitution.

6.2.09 A vast potential is rooted in the sweeping and unqualified language of the Guarantee Clause. Indeed, in the course of American history, it has assumed protean forms. President Lincoln in 1861 sought in this clause an authorisation for extraordinary national authority to put down rebellion, to strike down slavery, to assume certain basic civil and potential rights for freed 'blacks' and to effectuate programmes to deal with problems during the Reconstruction (1861-1877).

6.2.10 The guarantee is considered as "a tremendous store-house of power to reshape the American federal system". An American author[15] who has made an exhaustive survey of the past uses of the Guarantee Clause, sums up his views about the nature, the potential uses and dangers of this power, as follow:

> "This Clause is, in Sumner's *simile*, a giant, and should be watched carefully, since its tremendous power can be dangerous as well as protective to republican liberty..... The Guarantee is prophylactic; the federal government is to 'protect as well as restors' republican government in the States. It imposes affirmative obligations on both nation and states; it 'still exists as an independent and untapped source of federal power, by which the Central Government can assume the fuller realisation of our society's democratic goals'..... The characteristics of republicanism must be dictated by contemporary values. Those values will not only include the present spirit of the national government, but also the current expectations of the American peoples, such as access to the ballot and equal access for all to housing, employment, education, transportation and numerous other things, when sufficiently touched with a public interest".

6.2.11 Article IV(4) of the American Constitution does not prescribe the manner in which the guarantee as to the republican form of government may be enforced against a State. It has no provision analogous to Articles 356 and 357, authorising the Union Government or the President to *suspend or supersede* the Constitutional machinery in a State.

6.2.12 The Constitution-framers recognised that the provisions of Articles 355 and 356 were necessary to meet an exceptional situation where break-down of the Constitutional machinery occurs in a State. At the same time, they hoped for the growth of healthy conventions which would help ensure that these extraordinary powers were used most sparingly, in extreme cases, for the legitimate purposes for which they were intended. An important point made[16] during debates in the Assembly, was, that mere mal-administration by a duly constituted Government in a State, was not a good ground for invoking Article 356. It was emphasised that, if responsible government in a State is to be maintained, the electors must be made to feel that the power to apply the proper remedy, when misgovernment occurs, rests with them. It was felt that, in many cases of political break-down, the proper course would be to dissolve the Legislative Assembly and go back to the people to seek through a fresh election, the right answers.

6.2.13 Dr. B.R. Ambedkar, Chairman of the Drafting Committee, explained the purpose and nature of these provisions. Emphasising the need for caution and restraint in their application, he observed:—

> "I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments.....that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article[17]".

6.2.14 In sum, the Constitution-framers conceived these provisions as more than a mere grant of over-riding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme

cases, as a last resort when all alternative correctives fail. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, Article 356 has been brought into action not less than 75 times.

3. *CONSTITUTIONAL PROVISIONS*

6.3.01— The full text of Articles 355, 356 and 357 has been set out in Annexure V I.2.

Article 355—Scope and effect

6.3.02 The obligations of the Union under Article 355 arise with respect to three situations existing in a State, namely:—

(i) external aggression,

(ii) internal disturbance, and

(iii) where the government of the State cannot be carried on in accordance with the Constitution.

The framers of the Constitution have used the word “and” to cannect all the three segments of the Article specifying these situations. The word “and”, as explained[18] by the Chairman of the Drafting Committee in the Constituent Assembly, can be interpreted both conjunctively and disjunctively, as the occasion may require. This implies that, on some occasions, these situations may arise severally, while, on others, in combination with one another. It is not possible to define precisely the expression 'external aggression'. This expression has also been used in Article 352 in the context of 'grave emergency'. Hence it is necessary to distinguish the contextual connotation and scope of this expression in Article 352 from its use in Article 355. 'External aggression' is a valid ground for action under Article 352(1), only if, in a *grave* emergency, it *threatens the security* of India or any part thereof. If the 'external aggression' is not of a gravity calling for action under Article 352 or does not involve a situation of failure of the Constitution, then the Union will be competent to take all appropriate steps, other than action under Articles 352 and 356, that it may consider necessary in fulfilment of its duty under Article 355.

6.3.03 The Forty-fourth Constitutional Amendment substituted “armed rebellion” for “internal disturbance” in Article 352. “Internal disturbance” is, therefore, no longer a ground for taking action under that Article. Further, it cannot, by itself, be a ground for imposing President's rule under Article 356(1), if it is not intertwined with a situation where the government of a State cannot be carried on in accordance with the provisions of the Constitution.

6.3.04 It is difficult to define precisely the concept of 'internal disturbance'. Similar provisions, however, occur in the Constitutions of other countries. Article 16 of the Federal Constitution of Switzerland uses the expression “internal disorder”. The Constitutions of the United States of America and Australia use[19] the expression 'domestic violence'. The framers of the Indian Constitution have, in place of this term, used the expression 'internal disturbance'. Obviously, they have done so as they intended to cover not only domestic violence, but something more. The scope of the term 'internal disturbance' is wider than 'domestic violence'. It conveys the sense of 'domestic chaos', which takes the colour of a security threat from its associate expression, 'external aggression'. Such a chaos could be due to various causes. Large-scale public disorder which throws out of gear the even tempo of administration and endangers the security of the State, is ordinarily, one such cause. Such an internal disturbance is normally man-made. But it can be Nature-made, also. Natural calamities of unprecedented magnitude, such as flood, cyclone, earth-quake, epidemic, etc. may paralyse the government of the State and put its security in jeopardy.

6.3.05 Deployment of the Union armed forces for quelling public disorder, or internal disturbance, or for protecting Central Government property or installations, has generated controversy between some States and the Union. One State Government is of the view that Article 355 does not in any way add to the powers of the Union and may well be omitted, as the President may legitimately take over the administration of a State under Article 356, if, for some reason, the State Government does not make a request or does not give its concurrence to deployment of para-military forces of the Union in aid of civil power. In their view, such an action would clear the way for deployment of Union's forces at the request of or with the concurrence of the Governor's administration. In this context, several questions arise for consideration. Is Article 355 necessary and, if so, what is its scope? Does it—apart from imposing a duty—confer a power on the Union Executive to deploy, *suo motu* its forces, armed or unarmed, to suppress an internal disturbance, in a situation not amounting to break-down of the constitutional machinery in the State? If so, what are the

parameters of that power? What is the inter-relationship of Article 355, Entries 2 and 2A of the Union List, Entries 1 and 2 of the State List and Entries 1 and 2 of the Concurrent List?

6.3.06 Before we attempt to answer these questions, it is necessary to take note of the powers of the Federal Govern-ment to deal with public disorders, under the Constitutions of the older Federations, viz. Australia, Switzerland and the United States of America and under the more recent Constitution of West Germany. In Australia, Section 119 of the Constitution provides that "the Commonwealth shall protect every State against invasion and on the application of the Executive Government of the State, against domestic violence". The implications of the second part of this Section are as follows. In so far as the State Governments, through their police forces, are primarily responsible for law and order, Commonwealth military or police action can only be taken on matters affecting the "peace, order and good Government" of a State at the request of the State Government. However, where the violence is directed against Commonwealth institutions or affects matters falling within Commonwealth power, then the Commonwealth can intervene without a request from the State in which the violence occurs or is imminent[20].

6.3.07 Article 16 of the Constitution of Switzerland (1874) gives unlimited powers to the Federal Council to intervene, on its own initiative, in case of internal disorder where the Government of the threatened Canton is not in a position to summon assistance from the other Cantonal Governments, or if the disorder endangers the safety of Switzerland. The expression "internal disorder" covers not only armed rebellion but also disturbances resulting from, for instance, general strike.

6.3.08 In the Chapter on 'Administrative Relations', we have discussed the power of the Federal Government in the United States of America to employ force if necessary to secure enforcement of Federal laws and of Supreme Court decisions and protection of Federal property. As pointed out there, the United States Supreme Court affirmed in the case of *Re Eugene Debs* (158 US 564), that "the entire strength of the nation may be used to enforce in any part of the land, the full and free exercise of all national powers and security of all rights entrusted by the Constitution to its care". After this judgement, the requirement of an application from the affected State for aid under the Protection Clause in Article IV(4), *vide* para 6.2.07 above, for suppression of domestic violence in the State, has, in practice, lost its importance. The result is that "to-day we have to go further and recognise that the line, which Article IV impliedly draws between the "general peace" and the "domestic peace" of the individual States has become an extremely tenuous one"[21].

6.3.09 In West Germany, in order to avert an imminent danger to the existence or to the very democratic basic order of the Federation or a State, the State Government may ask for the assistance of police forces of other States or of the Federal Border Guard. However, if the State Government is either not willing or not able to combat the danger, the Federal Government may take under its control the police of that State and the police forces of other States also and, in addition, deploy units of the Federal Border Guard. If the danger extends to more than one State, the Federal Government may, to combat the danger, issue instructions to the State Governments (Article 91 of the West German Constitution).

6.3.10 We have discussed in Chapter II : "Legislative Relations", the main aspects of the question posed in para 6.3.05' above. To recapitulates, Article 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are essentially and reasonably necessary for the effective performance of that duty. However, it may be noted that the Constitution does not, under Article 355, permit suspension of fundamental rights or change in the scheme of distribution of mutually exclusive powers with respect to matters in List I and List II. Except to the extent of the use of the forces of the Union in a situation of violent upheaval or disturbance in a State, the other constitutional provisions governing Union-State relationships continue as before. Unless a National Emergency is proclaimed under Article 352 or powers of the State Government are suspended under Article 356, the Union Government cannot assume sole responsibility for quelling such an internal disturbance in a State to the exclusion of the State authorities charged with the maintenance of public order.

6.3.11 Where, in a situation of internal disturbance in a State, action under Article 356(1) is considered unnecessary or inexpedient, the Union Government has the power to deploy its forces, *suo motu*, under its control, to put it down and restore peace. Exclusive control of the Union over its armed forces and their deployment in aid of the civil power in a State, even before the insertion of Entry 2A in List I by the Forty-

second Amendment, was relatable to Entry 2 of List I read with Article 73. Maintenance of public order, by the use of the armed forces of the Union, has always been outside the purview of Entry I of List II.

6.3.12. The phrase “in aid of the civil power” in Entry 2A of List I is of wide import. In the context of public disorder or violent internal disturbances, these words mean “in aid of the instrumentalities of the State charged with the maintenance of public order'. In such a case, the Union may use its armed forces to help the law-enforcing authorities of the State. These words do not *necessarily* imply that the Union can deploy its forces only at the request of the State. It may happen that a State is unwilling or unable to suppress a serious break-down of law and order or refuses to seek the aid of the armed forces of the Union. In such a situation, fast drifting towards anarchy or physical break-down of the State administration, the Union may, of its own motion, deploy its forces under its control and take whatever other steps are considered reasonably necessary for suppressing the disturbance in discharge of its duty under Article 355. This will also be consistent with its power under Entries 2 and 2A of the Union List read with Article 73.

6.3.13 It is important to distinguish 'internal disturbance' from ordinary problems relating to law and order. Maintenance of public order, excepting where it requires the use of the armed forces of the Union, is a responsibility of the States (Entry 1, List II). That being the case, 'internal disturbance' within the contemplation of Article 355 cannot be equated with mere breaches of public peace. In terms of gravity and magnitude, it is intended to connote a far more serious situation. The difference between a situation of public disorder and 'internal disturbance' is not only one of degree but also of kind. While the latter is an aggravated form of public disorder which *endangers the security* of the State, the former involves relatively minor breaches of the peace of purely local significance. When does a situation of public disorder aggravate into an “internal disturbance' justifying Union intervention, is a matter that has been left by the Constitution to the judgement and good sense of the Union Government.

6.3.14 Under Article 355, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing and the gravity of the internal disturbance. In some case, advisory assistance by the Union to the State for the most appropriate deployment of its resources may suffice. In more serious situations, augmentation of the State's own efforts by rendering Union assistance in men, material and finance may be necessary. If it is a violent upheaval or a situation of external aggression (not amounting to a grave emergency under Article 352), deployment of the Union forces in aid of the police and magistracy of the State may be sufficient to deal with the problem.

6.3.15 Normally, a State would actively seek assistance of the Union to meet such a crisis. However, as already noted above, the scope of Article 355 is wide enough to enable the Union to render all assistance including deployment of its armed forces, notwithstanding the fact that the State Government has made specific request. The Union will be entitled to do its own motion, in discharge of its paramount liability under Article 355. Action to be taken may include measures to prevent recurring crisis.

6.3.16 This, in short, in the legal position. Nevertheless, it must be remembered that what is legally permissible may not be politically proper. Situations of internal disturbance can effec-tively be tackled only through concerted and coordinated action of the Union Forces and the State instrumentalities concerned. In practice, before deploying its Forces in a State, the Union should sound the State Government and seek its cooperation. We have dealt with these aspects in detail in Chapter VII.

6.3.17 We are of the view that, when an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential break-down of the constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

6.3.18 The third limb of Article 355 casts a duty on the Union to ensure that the Government of the State is carried on in accordance with the Constitution. The remedy for break-down of constitutional machinery has been provided in Article 356. Out Constitution provides a constitution both for the Union and for the States and demarcates their powers and responsibilities, executive and legislative. An important federal principle underlying this scheme is the right of every State to function undisturbed within its demarcated sphere in accordance with the Constitution. At the same time, States are also under a liability not to carry on the Government in a manner which will bring about a failure of the Constitutional machinery[22].

Article 356—Scope and Effect

6.3.19 Article 356 provides for a Proclamation by the President if he is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. This satisfaction of the President is a condition precedent to the exercise of this power. Such a Proclamation may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. By virtue of Article 357, Parliament may confer that legislative power on the President and authorise him to further delegate it to any other authority. By the Proclamation, the President may assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State. In the result, the executive power of the State which is normally exercisable by the Governor with the aid and advice of his Council of Ministers, becomes exercisable by the Union Government, and the legislative power of the State by or under the authority of *Parliament.* The Proclamation may make consequential provisions including suspension of the operation of Constitutional provisions relating to any body or authority of the State. The administration of the State, for all practical purposes, is taken over by the Union Government.

6.3.20 Clause (3) of the Article requires the Proclamation to be laid before each House of Parliament, and unless approved by them, it ceases to operate at the expiration of two months. If the Proclamation is approved by resolutions of both the Houses, it will remain operative for a period of six months from the date of its issue. This period can be extended for another six months if it is further approved by both the Houses. But, no such approval may be given continuing the operation of a Proclamation beyond one year from the date of its issue, except as provided in clause (5) of the Article. If, however, both the conditions laid down in clause (5) of the Article are satisfied, the Proclamation can be continued for a further period not exceeding three years in all. These conditions are : (i) a Proclamation of Emergency is in operation in the State, and
(ii) the Election Commission has certified that the continuance in force of the Proclamation is necessary on account of difficulties in holding general elections.

6.3.21 There is, however, no provision in Article 356 similar to that in clauses (7) and (8) of Article 352, which enables the House of the People to disapprove by resolution the con-tinuance in force of such a Proclamation.

6.3.22 Imposition of President's Rule thus brings to an end, for the time being, a government in the State responsible to the State Legislature. Indeed, this is a very drastic power. Exercised correctly, it may operate as a safety mechanism for the system. Abused or misused, it can destroy the con-stitutional equilibrium between the Union and the States.

6.3.23 In Article 356, the expression, “the government of the State cannot be carried on in accordance with the provisions of the Constitution”, is couched in wide terms. It is, therefore, necessary to understand its true import and ambit. In the day-to-day administration of the State, its various functionaries in the discharge of their multiparious responsibilities take decisions or actions which may not, in some particular or the other, be strictly in accord with all the provisions of the Constitution. Should every such breach or infraction of a constitutional provision, irrespective of its significance, extent and effect, be taken to constitute a “failure of the constitutional machinery” within the contemplation of Article 356. In our opinion, the answer to the question must be in the negative. We have already noted that by virtue of Article 355 it is the duty of the Union to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. Article 356, on the other hand, provides the remedy when there has been an actual break-down of the constitutional machinery of the State. Any abuse or misuse of this drastic power damages the fabric of the Constitution whereas the object of this Article is to enable the Union to take remedial action consequent upon break-down of the constitutional machinery, so that that governance of the State in accordance with the provisions of the Constitution, is restored. A wide literal construction of Article 356 (1), will reduce the constitutional distribution of the powers between the Union and the States to a licence dependent on the pleasure of the Union Executive[23]. Further, it will enable the Union Executive to cut at the root of the democratic Parliamentary form of government in the State[24]. It must, therefore, be rejected in favour of a construction which will preserve that form of government. Hence, the exercise of the power under Article 356 must be limited to rectifying a 'failure of

the constitutional machinery in the State'. The marginal heading of Article 356 also points to the same construction.

6.3.24 Another point for consideration is, whether 'external aggression' or 'internal disturbance' is to be read as an indispensable element of the situation of failure of the constitutional machinery in a State, the existence of which is a pre-requisite for the exercise of the power under Article 356. We are clear in our mind that the answer to this question should be in the negative. On the one hand, 'external aggression' or 'internal disturbance' may not necessarily create a situation where government of the State cannot be carried on in accordance with the Constitution. On the other, a failure of the constitutional machinery in the State may occur, without there being a situation of 'external aggression' or 'internal disturbance'.

4. *FAILURE OF CONSTITUTIONAL MACHINERY*

6.4.01— A failure of constitutional machinery may occur in a number of ways. Factors which contribute to such a situation are diverse and imponderable. It is, therefore, difficult to give an exhaustive catalogue of all situations which would fall within the sweep of the phase, “the government of the State cannot be carried on in accordance with the provisions of this Constitution”. Even so, some instances of what does and what does not constitute a constitutional failure within the contemplation of this Article, may be grouped and discussed under the following hands:

(a) Political crisis.

(b) Internal subversion.

(c) Physical break-down.

(d) Non-compliance with constitutional directions of the Union Executive.

It is not claimed that this categorisation is comprehensive or perfect. There can be no water-tight compartmentalisation, as many situations of constitutional failure will have elements of more than one type. Nonetheless, it will help determine whether or not, in a given situation it will be proper to invoke this last-resort power under Article 356.

Political Crisis

6.4.02 A constitutional break-down may be the outcome of the political crisis or dead-lock. This may occur where—

(i) after a General Election no party or coalition of parties or groups is able to secure an absolute majority in the Legislative Assembly, and, despite exploration of all possible alternatives by the Governor, a situation emerges in which there is complete demonstrated inability to form a government commanding confidence of the Legislative Assembly;

(ii) a Ministry resigns or is dismissed on loss of its majority support in the Assembly and no alternative government commending the confidence of the Assembly can be formed;

(iii) the party having a majority in the Assembly refuses to form or continue the Ministry and all possible alternatives explored by the Governor to find a coalition Ministry commending a majority in the Assembly, have failed.

6.4.03 In all the above situations, one or more alternatives may be available to the Governor before he recommends Proclamation of President's rule under Article 356. He may dissolve the Assembly so that fresh elections may be held, thereby leaving the political deadlock to be resolved by the electorate. In the situation described at (ii) of para 6.4.02 above, the Governor may, in addition, continue the outgoing Ministry for a short period as a caretaker government until elections are held and a new Ministry takes over. But the legality of these alternative courses is one thing and their propriety or feasibility another.

6.4.04 Normally, the power of dissolution of the Assembly is to be exercised by the Governor on the advice of his Ministry. But such advice ceases to be binding on him as soon as the Ministry loses majority support and the requirement of Article 164(2) that the Ministry shall be collectively responsible to the Legislative Assembly is no longer fulfilled. Some State Governments have suggested that, even when

President's rule is proclaimed on account of a political crisis, fresh elections should invariably be held as early as possible, say, within 3 to 6 months. The question whether the Assembly should be dissolved has to be examined from a number of angles.

6.4.05 If the Assembly has continued for more than, say, half its normal duration, dissolution may be a preferred course of action. The political views of the electorate and their support to the different political parties in the State may have got substantially transformed since the elections were last held. There may be strong reasons to presume that the relative strength of the political parties in the Assembly will very likely undergo a radical alteration if fresh elections are held. Circumstances such as these will clearly indicate that fresh elections should not be postponed.

6.4.06 In any situation other than those described in the preceding paragraph, the question whether fresh elections should be held, will have to be decided by the Governor after carefully weighing all relevant considerations. Frequent elections disturb the continuity of administration and put a brake on the pace of development activities. They also stir up emotions of the people and tend to distract their attention for prolonged periods from their normal business. Also, holding of elections at short intervals is a luxury which the nation's exchequer can ill-afford. At the same time, the People of a State should not be denied the earliest opportunity to elect an Assembly and Government of their choice.

6.4.07 In deciding the question of having fresh elections, the Governor should consult the leaders of the political parties involved and the Chief Election Commissioner. The Governor should also consider whether, in the law and order situation obtaining in the State, free and fair elections can be held, without avoidable delay.

6.4.08 We recommend that, in a situation of potential political break-down, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The continuance, in these circumstances, of the out-going Ministry as a caretaker government would be unexceptionable and indeed proper. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

6.4.09 If the important ingredients described above are absent, it would not proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

Internal Subversion

6.4.10 As a corollary of Article 355, it follows that correlated to the duty of the Union to preserve the democratic Parliamentary' form of government in the States contemplated by the Constitution, the States are also under a liability not to carry on the government in a manner contrary to or subversive of the provisions of the Constitution. In the light of these principles, the following are some instances of a situation of constitutional break-down due to internal subversion :

(i) Where the government of a State, although carried on by a Ministry enjoying majority support in the Assembly, has been deliberately conducted for period of time in disregard of the Constitution and the law;

(ii) Where the Government of the State deliberately creates a dead-lock, or pursues a policy to bring the system of responsible government envisaged by the Constitution, to a stand till;

(iii) Where the State Government, although ostensibly acting within the constitutional forms, designedly flouts principles and conventions of responsible Government to substitute for them some form of dictatorship;

And in each of the situations (i), (ii) and (iii) the alternative steps, including other correctives and warnings, fail to remedy the distortion or bring back the errant State Government to the Constitutional path;

(iv) Where a Ministry, although properly constituted, violates the provisions of the Constitution or seeks to use its constitutional powers for purposes not authorised by the Constitution and other correctives and warnings fail;

(v) Where the State Government is fomenting a violent revolution or revolt with or without the connivance of a foreign power.

Physical break-down

6.4.11 The following are some instances of physical break-down:

(i) Where a Ministry, although properly constituted, either refuses to discharge its responsibilities to deal with a situation of 'internal disturbance', or is unable to deal with such a situation which paralyses the administration, and *endangers the security* of the State.

(ii) Where a natural calamity such as an earthquake, cyclone, epidemic, flood, etc. of unprecedented magnitude and severity, completely paralyses the administration and *endangers the security* of the State and the State Government is unwilling or unable to exercise its governmental power to relieve it.

Non-compliance with constitutional Directions of the Union Government

6.4.12 The following are illustrations of a breakdown due to non-compliance by a State Government with the directions of the Union Government:—

(i) Where a direction issued by the Union in the exercise of its executive power under any provision of the Constitution, such as, Articles 256, 257 and 339(2) or, during an Emergency under Article 353, is not complied with by the State Government inspite of adequate warning and opportunity, and the President thereupon holds under Article 365 that a situation, such as that contemplated in Article 356, has arisen;

(ii) If public disorder of any magnitude endangering the security of the State, takes place, it is the duty of the State Government to keep the Union Government informed of such disorder, and if the State fails to do so, such failure may amount to impeding the exercise of the executive power of the Union Government and justify the latter giving appropriate directions under Article 257(1). If such a direction given to the State by the Union Executive under Article 257(1) is not complied with inspite of adequate warning, the President thereupon may hold that a situation such as contemplated in Article 356, has arisen.

5. *ILLUSTRATIONS OF IMPROPER INVOKING OF ARTICLE* 356

6.5.01— In the preceding paragraphs we have noticed some instances of situations involving failure of the constitutional machinery where the power under Article 356 could be properly invoked. Some examples are given below of situations in which it may be improper, if not illegal, to invoke the provisions of Article 356:

(i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution-framers that this power is not meant to be exercised for the purpose of securing good government.

(ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative government enjoying such support or ordering fresh elections.

(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority support through the 'floor test', recommends its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

(iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.

(v) Where in a situation of 'internal disturbance', not amounting to or verging on abdication of its governmental powers by the State Government, all possible measures to contain the situation by the Union in the discharge of its duly, under Article 355, have not been exhausted.

(vi) The use of the power under Article 356 will be improper if, in the illustrations given in the preceding paragraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, Article 356, will lead to disastrous consequences.

(vii) Where in response to the prior warning or notice or to an informal or formal direction under Articles 256, 257, etc. the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provi-sions of the Constitution". Hence, in such a situation, also Article 356 cannot be properly invoked.

(viii) The use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct.

(ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(x) This power cannot be invoked, merely on the ground that there are serious *allegations* of corruption against the Ministry.

(xi) The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution, would be vitiated by legal *mala fides.*

6. *APPLICATION OF ARTICLE* 356

6.6.01— The main point of the criticism in regard to the use of Article 356 is that, more often than not, it has been interpreted and applied differently in similar situations to suit the political interests of the party in power in the Union. It has been alleged that, motivated by such extraneous consideration.—

(i) Opposition parties or group had not been given a chance to form alternate government.

(ii) Legislative Assemblies were dissolved or kept in a state of suspended animation.

(iii) President's rule was used for partisan purposes like buying time to realign party strengths of sorting out intra-party differences or for resolving leadership crisis, etc.

(iv) President's rule was used to dislodge State Govern-ments run by parties or coalitions other than the party in power at the Union, on plea of corruption, political instability, maladministration, unhappy state of law and order, etc. even though they commended the confidence of their respective Assemblies.

6.6.02 Thus, the principal issue that calls for consideration is, how far there is substance in this criticism? For this purpose, basic information relevant to the numerous cases of imposition of president's rule use collected from various sources. Efforts were also made as far as possible to get the factual information, thus collected, verified from the original sources. Annexure VI, 3 gives a chronological list of all the instances wherein proclamations under Article 356 were made. Annexure VI, 4 contains the gist of circumstances of the situation of each case in which this provision was invoked. Factual information relating to these cases was studied and analysed in the light of the criteria indicated in the forgoing paragraphs 6.4.02 to 6.4.01—2. A synopsis of the study thus made, is given in the following paragraphs.

Wholesale use of article 356 in 1977 and 1980 for political purpose

6.6.03 The cases which are considered under this marginal sub-head are : instances furnished by the proclamation of President's rule by Janta Government on April, 1977, in nine States and simultaneous

dissolution of their Assemblies, and the repetition of the same in nine States in similar grounds by the Congress (I) Government in 1980. The facts of the first group of cases were as follows.

6.6.04 In the 1977 Elections to the Lok Sabha, the ruling Congress (I) lost its majority in nine states, namely, Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Bihar, Orissa, West Bengal, Madhya Pradesh and Rajasthan, securing only 153 seats as against 350 in the 1971 Elections. On March 24,1977, the Janta Party which had obtained an overwhelming majority of seats in the Elections formed the new Government in the Union. On that date, Congress (I) Governments were func-tioning in these nine States enjoying majority support in their respective Assemblies. The Union Home Minister on April 18, 1977 addressed a letter[25] to the Chief Ministers of these States stating that "the most unprecedented political situation arising out of the virtual rejection, in the recent Lok Sabha elections, of candidate's belonging to the ruling party in various States", with "the resultant climate of uncertainty.....causing grave concern to use", "has already given rise to serious threats to law and order". On these premises, he "earnestly commended" for their consideration that they may advise the Governors of their respective States "to dissolve the State Assemblies in exercise of powers under Article 174(2)(b) and seek a fresh mandate from the electorate". Thereafter, on April 22, 1977, in an interview,[26] reported in the Press, the Union Minister of Law said that "a clear case has been made out for the dissolution of the Assemblies in nine Congress ruled States and holding of fresh elections" since a "serious doubt has been cast on their enjoying the people's confidence, their party having been rejected in the recent Lok Sabha elections".

Rajasthan and others Vs Union of India, AIR 1977 SC 1361

6.6.05 Six of these States filed suits[27] under Article 131 of the Constitution in the Supreme Count praying for a declaration that the letter of the Home Minister was illegal, and *ultra vires* of the Constitution and prayed for an interim injunction restraining the Union Government from resorting to Article 356, and for a permanent injuction restraining the Union Government from taking any step to dissolve their Assemblies before the expiry of their term fixed by the Constitution. Three Members of the Legislative Assembly of the Punjab also field a Writ Petition in the Supreme Court impugning the same matter and praying substantially for the same relief.

Preliminary objections of the Union

6.6.06 The Union raised three preliminary objections :

(a) That the suit was not maintainable under Article 131:

(b) that the questions which arise for gauging the existence of a situation calling for action under Article 356 are, by their very nature, non-justiciable and they are also expresely made non-justiciable by Clause (5) of the Article;

(c) that the suit and the writ petition were premature as the process which was being challenged might or might not actually produce the apprehended result or action.

On Preliminary Grounds Court held the question non-Justiciable

6.6.07 Although the learned Judges constituting the Bench gave separate reasons, they were agreed that the suit/petition was liable to dismissal on any one or more of the preliminary grounds. Goswami, Fazal Ali and Untwalia, JJ,were of the view that the plaintiffs had no *locus standi* to maintain the suit. Untwalia J. did not want to rest his judgement on this technical ground alone. Beg CJ. and Fazal Ali J. held that the suit was premature. There was general agreement among all the judges that the matter in question was beyond the range of judicial review either because it was of a political nature, regarding which the President's subjective satisfaction was conclusive, or was otherwise non-justiciable in view of the bar to the Court's jurisdiction in Clause (5) of the Article. The Court, however, made it clear that the President's 'satisfaction' would be open to judicial review only in those exceptional cases where on facts admitted or disclosed, it is manifest that it is *mala fide* or is based on wholly extreneous or irrelevant grounds. After an elaborate discussion, the court held that the case before it did not fall within this exception.

6.6.08 Although all the learned Judges did not refer to clause (5), expressely or in detail, they were very much conscious of this formidable hurdle in their way. Clause (5) as it then stood, was as under:

"Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any Court on any ground".

The Forty-Fourth Amendment has removed this impedi-ment to the Court's jurisdiction.

6.6.09 All said and done, it will not be correct to read the judgement in *Rajasthan case* as settling the question of the constitutional propriety of the use of Article 356, for the purpose of dismissing the Ministry and dissolving the Legislative Assembly of a State on the sole ground that, in Elections to the Lok Sabha, the ruling party in the State has suffered an overwhelming defeat. The court guarded against the possibility of drawing from its judgement any such inference, when, speaking through Bhagwati J., it observed: ".....merely because the ruling party in a State suffers defeat in the elections to the Lok Sabha.....by itself can be no ground for saying that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The Federal Structure under our Constitution clearly postulates that there may be one party in power in the State and another at Centre"[28]. At the state when the case was heard and decided, the matter was premature. No action under Article 356(1) had yet been taken. The court therefore observed. "It would be hazardous in the extreme to proceed on the assumption that this would be the only ground before the Council of Ministers when it considers whether or not to take action under Article 356 clause (1), and that "new grounds may emerge".[29]

6.6.10 An overwhelming majority, including former Governors, Ministers, statesmen, parliamentarians and political scientists, of those who were interviewed by us, were unanimous in expressing the view that the use of Article 356(1) in 1977 by the then Union Government and dissolution of the Assemblies in the 9 States and the repetition of the same experiment on the same grounds by the successor Government in 1980, was clearly improper. In our opinion, these 18 cases are typical instances of wholesale misuse of Article 356 for political purposes, extraneous to the one for which the power has been conferred by the Constitution.

Rajasthan case highlighted in efficacy of constitutional Checks

6.6.11 Be that as it may, *Rajasthan case* is important in as much as it highlighted the inadequacy of the two checks explicitly or implicitly recognised by the Constitution against the capricious use of this extraordinary power. Firstly, it exposed the utter inefficacy of the control of each House of Parliament as a safeguard provided in clause (3) of Article 356. The Court found that, for two months from its issue, a proclamation under clause (1) of the Article remains in full force and effect, irrespective of any approval or no-approval of parliament. If, within these two months, on the basis of that Proclamation an irrevocable order, such as dissolution of the State legislative Assembly, is passed, either House of parliament cannot, when the proclamation is laid before them as enjoined by clause (3), undo the same. In our opinion, it is high time that this loophole is plugged and the control of parliament over the exercise of the drastic power in Article 356(1) made more effective.

6.6.12 One State Government has suggested that Article 356(3) may be amended so that a Proclamation which is not placed before Parliament or is not approved by it becomes inoperative from the time of its issue and all action taken in pursuance of such a proclamation becomes void *ab initio.*

6.6.13 Proclamations have necessarily to be placed before each House of Parliament under Article 356(3). We, therefore, need consider only two situations a Proclamation may not be approved or may be specifically disapproved by Parliament.

6.6.14 As noticed in para 6.6.11 *ante*, a proclamation under Article 356(1), notwithstanding that it has not been approved or has been disapproved by Parliament, remains in full force and effect for a period of two months from the date of its issue, unless revoked earlier under clause (2) of the Article. A law made during this period by the appropriate authority in accordance with Article 357(1)(a) continues—by virtue of clause (2) of this Article—in force even after the proclamation has ceased to operate, till the law is altered or repealed or amended. As executive power is generally co-extensive with legislative power, this principle of continuity applies also to administrative action duly taken by the State and the union Governments in pursuance of proclamation.

6.6.15 The Constitution does not, therefore, contemplate that actions duly taken, the rights acquired or liabilities incurred during the operation of the proclamation, should get affected by reason of the proclamation ceasing to be in force. This is in conformity with the general principle underlying section 6 of the General Clauses Act, 1897.

6.6.16 Another noteworthy feature is that it is for the Union Executive to determine in its subjective judgement whether a situation in a state in such as to warrant its intervention and action under Article 356. Thus, a proclamation under Article 356(1) carries a strong presumption of its validity which cannot be questioned in court except on the limited ground of *mala fides*.

6.6.17 If the sections duly taken by the Union Executive on the strength of a proclamation issued under Article 356(1) are to be deemed void *ab initio* in the event of Parliament not approving the proclamation, it will not only be repugnant to the basic principles underlying these provisions, but also lead to undesirable and anomalous consequences. All actions taken, rights acquired, liabilities incurred, obligations undertaken, and penalties suffered thereunder, will *ipso fecto* stand vacated and become *non est* in law. Such a 'no-government' interregnum or vacuum is anti-thetical to the scheme of the Constitution. In fact, the confusion and chaos resulting from the regression might precipitate a situation necessitating imposition of the President's rule once again. Moreover, it will not be a workable proposition because all actions taken by the union Executive under the proclamation, may not be inherently revocable. Many of them may be of the nature of a *fait accompli*, or a matter settled and closed, and therefore, irreversible.

6.6.18 For the above reasons, we cannot support the suggestion referred to in para 6.6.12 above.

6.6.19 Two divergent suggestions have been received by us in regard to the dissolution of the Legislative Assembly. One suggestion is that the President should not, immediately on, or simultaneously with, the imposition of President's Rule, dissolve the State Assembly till the proclamation is approved by Parliament. This implies that the Legislative Assembly should be kept in a State of suspended animation till the proclamation is laid before Parliament for approval. As against this, it has been argued that, to prevent defection and horse treading during the President's Rule, it is necessary to dissolve the Assembly immediately. We have considered carefully both the points of view. We agree that the Union Executive should not be allowed to make the control of Parliament provided in Clause (3) of the Article wholly ineffective by an irreversible decision before Parliament has had an opportunity to consider the Proclamation. In regard to the other; suggestion that the Assembly should be dissolved immediately to curb the possibility of defection. We note that Parliament has passed the Constitution (Fifty-second Amendment) Act, 1985 to check this evil.

6.6.20 We recommend that the State legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

6.6.21 It has been further suggested by some eminent persons that safeguards analogous to those in clauses (3), (6), (7) and (8) of Article 352 should be drafted on Article 356, also. Article 352, in terms, deals with a situation of grave emergency; while Article 356(1) does not use the word 'emergency' in the context of the situation contemplated by it. The consequences of a proclamation of emergency issued under Article 352 are far more drastic and far-reaching than of the one issued under Article 356. The safeguards provided in clauses (3) and (6) of Article 352 are far more stringent than those contained in its clauses (7) and (8).

6.6.22 We are, therefore, not in favour of suggesting in corporation in article 356 provisions similar to those of clauses (3) and (6) of Article 352.

6.6.23 We recommend that, in principle, safeguards corresponding to clauses (7) and(8) of Article which are less stringent—should be provided through an amendment in Article 356. Such an amendment will make the control of Parliament over the exercise of this extraordinary power under Article 356 more effective. This will also be consistent with an complementary to our recommendations in the preceding paragraphs.

6.6.24 Secondly, the *Rajasthan case* has highlighted the limitations and difficulties of judicial review. Though the bar to the Court's jurisdiction in clause (5) of Article 356 has since been removed by the Forty-fourth Amendment, the judicial remedy of seeking relief, even against a *mala fide* exercise of the power, will remain more or less illusory, if the basic facts on which the President, in effect, the Union Council of Ministers, reaches the satisfaction requisite for taking action under Article 356(1), are not made known. Clause (2) of Article 74 bars the jurisdiction of the Courts to enquire into the question whether any, and if so what, advice was tendered by the Ministers to the President for taking action under Article 356(1). If in a given case, the Union Government taking shelter behind this clause, refuses to disclose all such basic facts

and grounds, it can effectively defeat even this tenuous remedy of judicial review. It is another matter that, by withholding such information, it may run the risk of court censure and public opprobrium.

> 6.6.25 We recommend that to make the remedy of judicial review on the ground of *mala fides* a little more meaningful, it should be provided, through an appropriate amendment, that "notwithstanding anything in clause (2) of Article 74 of the Constitution the material facts and grounds on which Article 356 (1) is invoked should be made an integral part of the proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.

6.6.26 The power under Article 356 can be invoked if the President is satisfied about the existence of a situation "in which the Government of a State can not be carried on in accordance with the provisions of this Constitution". Most often, the President is moved to action on the report of the Governor although he can also act on information received "other-wise". We note that the report of the Governor is being placed before each House of Parliament. We would emphasis that such a report of the Governor should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

6.6.27 Likewise, the information received "other wise" by the President must contain all the important facts to enable the President to form the requisite opinion. If the report or the information is vague or contains facts which are wholly irrelevant or extraneous to the purpose for which the power has been conferred, President's proclamation, based on such a report or information, will be vulnerable to the charge of legal *mala fides.* Statement of all the basic facts in the Governor's report and its publication has become all the more necessary after the Forty-fourth Amendment of the Constitution which has removed the bar to the jurisdiction of the Courts from the Article.

6.6.28 Indeed, we understand, that the Union Government are not averse to the practice of publishing the Governor's report on the basis of which a Proclamation under Article 356(1) is issued. Recently, the Governor's report on which the President's Rule was imposed in Punjab with effect from May 11, 1987, was published promptly and in full, in all the important newspapers in India. This is a very healthy practice. We recommend that its observance with firm consistency should continue in future also.

6.6.29 We further recommend that normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1). This practice will operate not only as a check against arbitrary or hasty exercise of this extraordinary power but also save the Union Government from embarrasement in case of an error. It will also protect them against an unwarranted accusation of malicious dismissal or suspension of the State Government. The Union Government is accountable for its action to Parliament. If the promulgation of the President's Rule is questioned in Parliament on the ground of *mala fides* or otherwise, the Union Government can dispel that charge on the ground that it had acted in good faith on the basis of the Governor's Report.

Use of Article 356

A—When Ministry Commanded Majority

6.6.30 President's Rule was imposed in 13 cases even though the Ministry enjoyed a majority support in the Legislative Assembly. These cover instances where provisions of Article 356 were invoked to deal with intra-party problems or for considerations not relevant for the purpose of that Article. The proclamation of President's Rule in Punjab in June, 1951 and in Andhra Pradesh in January, 1973 are instances of the use of Article 356 for sorting out intra-party disputes. The imposition of President's rule in Tamil Nadu in 1976 and in Manipur in 1979, were on the consideration that there was maladministration in these State.

B—Chance not given to form alternative Government

6.6.31 In as many as 15 cases, where the Ministry resigned, other claimants were not given a chance to form an alternative government and have their majority support tested in the Legislative Assembly. Proclamation of President's rule in Kerala in March, 1965 and in Uttar Pradesh in October, 1970 are examples of denial of an opportunity to other claimants to form a Government.

C—No caretaker Government formed

6.6.32 In 3 cases, where it was found not possible to form a viable government and fresh elections were necessary, no care-taker Ministry was formed.

D—President's rule inevitable

6.6.33 In as many as 26 cases (including 3 arising out of States Reorganisation) it would appear that President's rule was inevitable.

6.6.34 Situations arising out of non-compliance with directions of the type contemplated in Article 365 have not occurred so far.

7. *SUGGESTIONS BEFORE THE COMMISSION*

6.7.01— We have received valuable suggestions from the State Governments and many eminent persons. These cover a wide range dealing with the scope of Article 356 and the safeguards to be built into the system, to prevent misuse of the same. However, at the outset, it is necessary to deal with the drastic suggestion made by some that this Article may be deleted. As noted in Chapter I on "Perspective", there has been a growth in sub-nationalism which has tended to strengthen divisive forces and weaken the unity and integrity of the country. Linguistic chauvinism has also added a new dimension in keeping people apart. Dim memories of the historical past are being actively revived, to whip up animosities. Unity and integrity of the country is of paramount importance. Unless there is a will and commitment to work for a united country, there are real dangers that regionalism, linguistic, chauvinism, communalism, casteism, etc. may foul the atmosphere to a point were secessionist thoughts start pervading the body politic. It is, therefore, necessary to preserve the overriding powers of the Union to enable it to deal with such situations and ensure that the government in the State is carried on in accordance with the provisions of the Constitution. We are firmly of the view that Article 356 should remain as ultimate Constitutional weapon to cope with such extreme situations.

6.7.02 Among the suggestions received, some seek to restrict the scope of Article 356 only to a serious breakdown of law and order paralysing the State administration and where the State Government lacks the will and capability to meet the situation. Some others are of the view that action under Article 356 may also be taken where there is a complete failure to induct a government which can command a majority in the State Legislature. One State Government has stated that the provisions of this Article may also be invoked in a situation "where the State Government undoubtedly engages in connivance at sabotage of national defence in case of actual or impending war".

6.7.03 We have already explained that failure of constitutional machinery may occur in several ways due to various causes, all of which cannot be foreseen or put in the strait jacket of a statute and it is difficult to give an exhaustive catalogue of all situations or combinations of situations, though, for convenience, four broad heads have been mentioned in paragraph 6.4.01—. Government connivance at sabotage is very serious matter. We have already pointed out in para 6.4.10 that States are under a liability not to carry on the government in a manner contrary to, or subversive of, the provisions of the Constitution. It would be a dangerously narrow view of cognizance of a situation of connivance at sabotage should be taken only in the context of national defence and only in the case of actual or impending war. We are, therefore, of the view that it would not be possible to limit the scope of action under Article 356 to specific situations.

6.7.04 Having considered these suggestions carefully we recommend that article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify the break-down of the constitutional machinery. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes, and exigencies of the situation. Since these factors are variable, any enumeration of such alternatives can, at best, be illustrative. Nor can the exhaustion of these alternative courses, before invoking Article 356, be insisted upon as an absolute rule. These can be dispensed with in a case of extreme urgency, where failure on the part of the Union to take immediate action under Article 356 may lead to disastrous consequences.

6.7.05 A number of safeguards have been suggested to prevent possible misuse of the provision of this Article. Some State Governments and others have suggested that the Inter-State Council should be consulted before a proclamation under Article 356 is issued. One State Government has suggested that Article 356 should be amended to provide for prior approval of the Inter-State Council or its Standing

Committees. They have also suggested that, in case elections cannot be held within six months after proclamation of President's rule, the Inter -State Council should be consulted again and its opinion placed before Parliament. It has been noticed earlier that the power under Article 356 is drastic precisely because it is required to deal with an extraordinary situation. Although it is a power of last resort, yet, once it is invoked and the proclamation issued, the consequences follow immediately. The exigencies of a situation of constitutional break-down often require swift and effective action. Prior consultation with any other body or authority will hamper the speedy and efficacious exercise of this power in such urgent situations. Further, this will dilute the responsibility of the Union Executive for the action taken under Article 356, to Parliament.

6.7.06 It has been suggested to us that principles of natural justice should be followed before a State Government is dismissed and President's rule imposed. It is suggested that, before sending his report, the Governor should communicate it to the State Government and obtain its comments. Again, before issue of a proclamation, the President should convey the reasons for the action contemplated and take into consideration the clarifications of the State Government before taking a final decision to impose President's rule. Yet another suggestion is that, in keeping with the principles of fair-play and justice, warning should be given.

6.7.07 We have carefully considered the above suggestions. We have emphasised the need to exhaust all possible alternative courses of action to resolve the crisis before resorting to the provisions of Article 356. It is apparent that the Governor, as the constitutional head of the State, and the President, in fulfilment of the duties cast upon the Union Executive under Article 355, would have exhausted all possible steps including consultation with the State Council of Ministers, where necessary, to prevent a situation of breakdown of the constitutional machinery of the State, before reporting to action under Article 356. Therefore, there is no need for any show-cause notice to be issued by the Governor before sending his report or by the President before issue of proclamation.

6.7.08 However, we fully endorse the suggestion for issue of a warning before taking action under Article 356. The Chairman of the Drafting Committee of the Constituent Assembly had made similar observations at the time of framing the Constitution. The warning to the errant State should be in specific terms to indicate that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356 , the explanation, if any, received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

6.7.09 Article 356 was amended by the Constitution (Forty-fourth Amendment) Act, Clause (5) of Article 356 so amended, provides that a resolution with respect to the continuance in force of a proclamation for any period beyond one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless two conditions are satisfied. Firstly, 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, and secondly, the Election commission certifies that the continuance in force of the proclamation during the extended period is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned. It has been urged before us by some that the new clause (5) has made for rigidity. The case of Punjab has been cited, where in order to continue the President's rule beyond the period of one year, a constitutional amendment became necessary. On the other hand, it has been argued that keeping in view the alleged misuse of the provisions of Article 356 in the past, there is need for severe restrictions in respect of any extension beyond one year. While several State Governments consider that the existing provisions or appropriate, two have suggested that the position as was obtaining prior to the forty-Fourth Amendment should be restored. Two other State Governments have suggested that a little more flexibility could be introduced without detracting from the present limitations by substituting the word 'or' for the word 'and' between Sub-Clauses (a) and (b) of Clause (5) of Article 356.

6.7.10 We have given careful consideration to both points of view. We do appreciate that it may become necessary to extend the period of the Proclamation further if there is an 'Emergency' covering the whole of India or that State or any part of that State. Again, it may be necessary in case general elections cannot be held to the Legislative Assembly of the State. However, it is not clear why the *co-existence* of these two conditions should be a prerequisite to enable the continuance of the President's rule in a State beyond one year as there is no apparent causal relation between the two. We are of the view that it is not desirable to

amend the Constitution from time to time merely for this purpose. We note that, after the Forty-fourth Amendment, while instances of Proclamation of 'Emergency' under article 352 may be rare, situations where it is difficult to hold general elections to the State Assembly may occur from time to time. In such a situation continuance of President's Rule may become necessary. The balance of advantage would seem to lie in delinking the two conditions so that, whenever either condition is satisfied, president's rule could be continued even beyond one year with the approval of Parliament and repeated amendments of the constitution avoided. The crux of the whole issue is that the situation obtaining in the State at the time when the continuance of the President's rule is sought, should be such that the Government of the State cannot yet be carried on in accordance with the provisions of the Constitution.

6.7.11 We recommend that in clause (5) of Article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or' so that, if either condition is satisfied, the proclamation can be continued in force beyond one year.

6.7.12 We note that in certain cases, President's Rule was continued beyond two months by issuing a fresh Proclamation on the expiry of the first one. Approval of Parliament is necessary if the proclamation is to be continued beyond two months (Clause (3), Article 356). The provisions of Clause (3) are circumvented and the control of Parliament diluted if technically a 'fresh' proclamation is issued substantially on the same facts, on the expiry of the first one. This will not be a desirable practice.

6.7.13 We recommend that every Proclamation should be placed before each House of Parliament at the earliest and in any case before the expiry of the period of two months from its issue.

8. RECOMMENDATIONS

6.8.01— Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action Under Article 356 will lead to disastrous consequences.

(Paragraph 6.7.04)

6.8.02 A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

(Paragraph 6.7.08)

6.8.03 When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation.

(Paragraph 6.3.17)

6.8.04 (a) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision. (Para graph 6.4.08)

(b) If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

(Paragraph 6.4.09)

6.8.05 Every Proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two month period contemplated in clause (3) of Article 356.

(Paragraph 6.7.13)

6.8.06 The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

(Paragraph 6.6.20)

6.8.07 Safeguards corresponding, in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a Proclamation.

(Paragraph 6.6.23)

6.8.08 To make the remedy of judicial review on the ground of *mala fides* a little more meaningful, it should be provided, through an appropriate amendment, that notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the Proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union Executive, more effective.

(Paragraph 6.6.25)

6.8.09 Normally, the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be a “speaking document” containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

(Paragraph 6.6.26)

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

(Paragraph 6.6.28)

6.8.11 Normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1).

(Paragraph 6.6.29)

6.8.12 In clause (5) of Article 356, the word and occurring between sub-clauses (a) and (b) should be substituted by 'or'.

(Paragraph 6.7.11)

CHAPTER VIII
ALL INDIA SERVICES

ANNEXURE VI. I

Federal Supremacy in the U.S.A.

1. The American Constitution, in the language of Article VI (2), ordains:

> "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

The import of the Supremacy Clause has been considerably amplified through judicial interpretation. As early as 1819, in *MacCulloch* v. *Maryland*, Chief Justice John Marshall of the United States, enunciated that the acts of the Federal Government done in pursuance of the Constitution are operative as Supreme Law throughout the Union and, as a basic consequence of this supremacy, the States have no power to impede, burden or in any manner control the operation of the laws enacted by the Government of the nation. This is also the principle underlying Articles 256 and 257 of the Constitution of India. Marshall further elaborated the implications of the Supremacy Clause in *Gibbons* v. *Ogden* (1824). These have been neatly summed up by Schwartz, to mean that "federal action (whether in the form of a statute, a treaty, a court decision, or an administrative act), if itself Constitutional, must prevail over State action inconsistent therewith".[30]

2. The legislative facets of this principle are embodied in Articles 246 and 254 of the Indian Constitution.

3. There is another provision of the American Constitution which gives paramount power to the Federal Government to interfere with the functioning of the State Governments. This is contained in Article IV (4), which runs as follows:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence".

The first part of this provision is known as the Guarantee Clause. Its second part is called the Protection Clause. The principles involved in these Clauses are analogous to those which underlie Article 355 of our Constitution.

4. A vast potential is rooted in the sweeping and unqualified language of the Guarantee Clause. Indeed, in the course of American history, it has assumed protean forms. President Lincoln in 1861 sought in this clause an authorisation for extraordinary national action to put down rebellion, to strike down slavery, to assume certain basic civil and potential rights for freed 'blacks' and to effectuate programmes to deal with problems during the Reconstruction (1861-1877).

5. The Guarantee Clause is considered as "a tremendous store-house of power to reshape the American federal system". An American author who has made an exhaustive survey of the past uses of the[31] Guarantee Clause, sums up his views about the nature, the potential uses and dangers of this power, as follows.

> "This Clause is, in Summer's simile, a giant, and should be watched carefully, since its tremendous power can be dangerous as well as protective to republican liberty.....The guarantee is prophylactic; the federal government is to 'protect as well as restore' republican government in the States. It imposes affirmative obligations on both nation and states; it 'still exists as an independent and untapped source of federal power, by which the Central Government can assume the fuller realisation of our society's democratic goals'.....the characteristics of republicanism must be 'dictated by contemporary values. Those values will not only include the present spirit of the national government, but also the current expectations of the American peoples, such as access to the ballot and equal access for all to housing, employment, education, transportation and numerous other things, when sufficiently touched with a public interest".

6. Article IV(4) of the American Constitution does not prescribe the manner in which the guarantee as to the republican form of government may be enforced against a State. It has no provision analogous to Articles 356 and 357, authorising the Union Government or the President to *suspend* or *supersede* the Constitutional machinery in a State.

7. Article 1, Section 8(18) of the American Constitution empowers the Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". Article 1, Section 8(15) of that Constitution authorises the Congress to make laws "to provide for calling forth the Militia to execute 'the Laws of the Union suppress Insurrections and repel Invasions". The consent or request of a State is not a condition precedent to the exercise of this power. By virtue of these provisions, the Congress enacted the Enforcement Act, 1795, delegating this power to the President, The Act was supplemented by a 1807 statute which authorises the President to use the regular armed forces to supplement the federalised Militia, for law enforcement purposes.

8. Article II, Section 3 of the American Constitution, confers on the President the duty and power 'to take care that the Laws of the United States be faithfully executed.'

9. In discharge of their obligations under the Constitution, buttressed by statutes, the Presidents of United States have, on occasions, deployed the Federal Forces in the States for suppressing domestic violence and resistence to the enforcement of the Union and State Laws, even without there being any application from the affected State for such aid.

10. In course of time the President's power to employ the military forces in the enforcement of laws of the United States, has undergone enlargement, due in part to the President's initiative and in part to Congresional legislation.[32] During the great railway strikes of 1877 there was violence in 10 States. President Hayes without waiting for any formal application from those States, sent Federal Forces and ammunition to the scenes of trouble for the purpose of aiding "in the enforcement of the laws of the Union" and "to protect property of the United States".

11. The practice initiated by Hayes was extended by President Cleveland. In the Pullman strike of 1894, the President, acting against the vehement protests of the State's Governor, deployed the military forces in Chicago to protect the property of the United States and "to remove obstructions to United States mails".[32]

12. In *Re Eugene Debs* (158 US 564), the Supreme Court of United States not only justified the course adopted by President Cleveland but further amplified the basis for such action. Delivering the unanimous opinion of the Court, Justice Brewer affirmed that "the entire strength of the nation may be used to enforce in any part of land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care".

13. In April, 1871, the Congress passed an Act, which enlarged the scope of Presidential authority. Its object was to ensure that "the due course of justice" is not obstructed, and no class is denied the equal protection of its Constitutional rights. The Act conferred on the President the right and the duty to take such measures by the employment of the militia or the and of naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of any insurrection, domestic violence or combinations in a State which hinder the execution of the laws, state or national.

14. After *re Debs'* case, the requirement of an application for aid under the Protection Clause in Article IV, from the affected State, for suppressing domestic violence in the State, has, in practice, lost its importance. The result is that "today we have to go further and recognize that the line, which Article IV impliedly draws between the 'general peace' and the domestic peace of the individual states has become an extremely tenuous one".[33]

15. The paramountcy of the duty and power of the Federal Government to put down serious disorders and unconstitutional refusal of a State or States to enforce constitutional guarantees, Federal Laws and decisions of the Federal Courts on racial de-segregation, was again demonstrated on two occasions, recently.

16. The facts giving rise to the first occasion were as follows:

The Supreme Court in *Brown* v. *Board of Education* (1954) and *Bolling* v. *Sharpe* (1954) decided that school segregation, both in the States and in the District of Columbia, violated the Fourteenth Amendment of the Constitution. By the same decision they over-ruled the old doctrine of 'separate but equal', that had been enunciated in *Plessy* v. *Ferquson.* In May, 1955, the Court after reargument in *Brown* v. *Board* (second case) remanded the cases to the lower courts concerned to work out equitable solutions to eliminate 'the variety of obstacles' in the way of admissions "to public schools on a racially non-discriminatory basis with all deliberate speed." The second Brown decision triggered a protracted legal and political battle over school desegre gration throughout the South. There was a calculated move and "massive resistance" in an effort to block implementation of the Brown decision in several Southern States. The National Association For Advancement of Coloured People (NAACP) countered by equally massive program of litigation in courts. The litigation sparked off political maneuvering, rioting and violence necessitating the imposition of martial law. In September 1957, Governor Orval Faubus called out the Arkansas National Guards and by proclaiming the necessity of maintaining law and order, effectively barred prospective Negro students from entering the white High School building at Little Rock. He disregarded a series of court's orders commanding immediate compliance with the integration plan. A conference between Faubus and President Eisenhower failed to produce any result. On the President's instructions, the Attorney General obtained an injunction against the Governor ordering him and the National Guards to cease forthwith from blocking enforcement of the Federal Courts' orders. The Governor thereupon withdrew the National Guards. However, when Negro students again attempted to enter the High-school they were prevented from doing so by a large and unruly mob. Thereupon, President Eisenhower on September 25, 1957 despatched several companies of United States Army to Little Rock, in effect putting the city under martial law. This action was taken by him under the aforesaid Federal Act of 1871 which authorised the President to suppress insurrection and unlawful combination that hinder execution of any State or Federal law. As a result, mob resistance immediately disappeared and several Negro students thereupon entered the school without further interference.[34]

17. On September 12, in a unanimous decision in *Cooper* v. *Aaron* (1958), the Supreme Court formally reiterated the *ratio* of the decision in *Brown* v. *Board of Education* and affirmed the judgement of the Court of Appeals, refusing to suspend the integration plan of the School Board. It was pointed out that the constitutional right not to be discriminated against in schools maintained by or with the aid of a State cannot be nullified openly and directly by state legislators or state executive or judicial officers, nor indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously; and that the ruling of the *Brown Case* was the supreme law of the land and Article VI of the Federal Constitution makes it of binding effect on the States, "anything in the Constitution or laws of any state to the Contrary notwithstanding".

18. This decision "constituted a solemn admonition to the States of Arkansas on the folly and futility of attempting to frustrate the sovereign will of the Supreme Court and the national government".[35]

19. The next occasion on which the President had to call out the Army to enforce the constitutional guarantees, and rights of the United States arose in September, 1962. Following a protracted litigation, the Supreme Court directed the officials of the University of Mississippi to admit one James Meredith, a Negro student. The Governor virtually took charge of the University and using state and local police blocked repeated attempts of Meredith, now escorted by United States marshals, to register. The Court of Appeals thereupon convicted the governor for contempt when attempts to persuade the Governor to recede failed, President Kennedy on September 29, 1962 issued a proclamation addressed to the officials and people of the State of Mississippi, warning them to cease their resistence to federal authority. On the following day, the University officials capitulated and agreed to allow Meredith to register. When Meredith accompanied by several hundred United States marshals, went to the University to get registered, massive riots approaching the proportions of an insurrection broke out in and around the college campus. President Kennedy then sent several

thousand regular U.S. Army troops, as well as several units of the Mississippi Nation 1 Guards, to put down the disorder and resistance to the federal law and the Constitution. Resistance collapsed and Meredith registered and began attending classes.

20. Yet another instance of such intervention by the President in a State, arose early in 1965, when President Lyndon Johnson mobilised the Alabama National Guard to protect persons participating in a massive Civil Rights "March" in Montgomery

ANNEXURE VI.2

Test of Articles 355, 356, and 357 of the Constitution of India, as Originally Enacted, and Modifications made therein by constitution Amendment Acts

Text of the Articles, as Originally enacted, (Portions which have been affected by subsequent amending by acts have been underlined)	Omissions	Additions/substitutions made by amending Acts
1		2
355. Duty of the Union to protect states against external aggression and Internal disturbance. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every States carried on in accordance with the provisions of this Constitution	No Change	
356. Provisions in case of failure of constitutional machinery in states (1) If the President, on receipts of a report from the Governor *or Rajpramukh* of a State or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of this Constitution, the President may be Proclamation— (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor *or Rajpramukh, as the case may be*, 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 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.		*Clause* (1) The words "or Rajpramukh" omitted by C.A. 7, Section 29 and Schedule w.e.f. 1.11.1956. The Words "or Rajpramukh, as the case may be", omitted by C.A. 7, Section 29 and Schedule w.e.f. 1.11.1956.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of *a period of six months from the date of the passing of the second of the resolutions approving the proclamation under Clause* (3):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of *six months* from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of *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.

Clause (4) *and the first and second provisos thereunder:*

(i) The words "one year", substituted for the words, "six months" by C.A. 42, Section 50 w.e.f. 3.1.1977.

(ii) (A) In Clause (4), for the words "one year from the date of passing..... clause (3)", the following words substituted by C.A. 44, Section 38 (a) (i) with effect from 20.6.79. "Six months *from the date of issue of the Proclamation"*.

(B) In the first and the second provisses, the words "six months" (which were earlier replaced by the words "one year" by C.A. 42), re-substituted for "one year" by C.A. 44, Section 38(1)(ii) & (iii) w.e.f. 26.6.1979.

Clause (5) (NEW)

(i) The following new clause (5) inserted by C.A. 38, Section 6 (retrospectively):

"(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground".

(ii) for class (5) inserted earlier by C.A. 38, the following clause was substituted by C.A. 44, Section 38(b) with effect from 20.5.79:

"(5) 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 unless—

(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 certified 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."

(iii) The following proviso was inserted at the end by CA 48, Section 2, w.e.f. 26.8.84.

"Provided that in the case of the Proclamation issued under Clause (1) on the 6th day of October, 1983 with respect to the State of Punjab, the reference in this clause to "any period beyond the expiration of one Year" shall be construed as a reference to "any period beyond the expiration of two Years".

357. Exercise of Legislative powers under Proclamations issued under Article 356.

(1) Where by a proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make, shall, *to the extent of the incompetency, cease to have effect on the expiration of a period of a one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease, to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.*

Clause (2)

The existing clause replaced by new clause (2) by CA 42, Section 51(1), with effect from 3.1.77. The net effect was that the following was substituted for the expression underlined in column (1):..... *after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.*

ANEXURE VI. 3

President's rule in States under Article 356 of the Constitution of India.

Sl. No.	State Assembly dissolved/	Date of Proclamation	Date of revocation	Duration of President's Rule Years	Months	Days	Whether suspended
1	2	3	4	5	6	7	8
1.	Punjab	20.6.1951	17.4.1952	0	9	28	Assembly suspended
2.	Pepsu	4.3.1953	7.3.1954	1	0	3	Assembly dissolved
3.	Andhra	15.11.1954	28.3.1955	0	4	13	-do-
4.	Travancore-Cochin . .	23.3.1956	1.11.1956	0	7	9	-do-
5.	Kerala	1.11.1956	5.4.1957	0	5	4	On reorganisation of States, Kerala came into being.
6.	Kerala	31.7.1959	22.2.1960	0	6	22	Assembly dissolved
7.	Orissa	25.2.1961	23.6.1961	0	3	29	-do-
8.	Kerala	10.9.1964	24.3.1965	0	6	14	-do-
9.	Kerala	24.3.1965	6.3.1967	1	11	10	-do-
10.	Punjab	5.7.1966	1.11.1966	0	3	27	State reorganised
11.	Rajasthan	13.3.1967	26.4.1967	0	1	13	Assembly suspended
12.	Haryana	21.11.1967	21.5.1968	0	6	0	Assembly dissolved.
13.	West Bengal	20.2.1968	25.2.1969	1	0	5	Assembly dissolved.
14.	Uttar Pradesh . . .	25.2.1968	26.2.1969	1	0	1	Assembly suspended and sub-sequently dissolved on 15.4.1968.
15.	Bihar .	29-6-1968	26-2-1969	0	7	28	Assembly dissolved.

ANNEXURE VI. 3-*Contd.*

Sl. No.	State Assembly dissolved/	Date of Proclamation	Date of revocation	Duration of President's Rule Years	Months	Days	Whether suspended
1	2	3	4	5	6	7	8
16.	Punjab	23-8-1968	17-2-1969	0	5	25	Assembly dissolved.
17.	Bihar	4-7-1969	16-2-1970	0	7	12	Assembly suspended.
18.	West Bengal	19-31970	2-4-1971	1	0	14	Assembly suspended and sub-sequently dissolved on 30-7-1970
19.	Kerala	4-8-1970	3-10-1970	0	2	0	Assembly dissolved on 26-6-70 by the Governor.
20.	Uttar Pradesh	1-10-1970	18-10-1970	0	0	17	Assembly suspended.
21.	Orissa	11-1-1971	23-1-1971	0	0	12	Do.
22.	Orissa	23-3-1971	22-2-1971	0	2	0	Assembly dissolved.
23.	Orissa	23-3-1971	3-4-1971	0	0	11	Assembly suspended.
24.	Mysore	27-3-1971	20-3-1972	0	11	22	Assembly suspended but subsequently dissolved on 14-4-1971.
25.	Gujarat	13-5-1971	17-3-1972	0	10	4	Assembly dissolved.
26.	Punjab	15-6-1971	17-3-1972	0	9	2	Assembly dissolved by the Governor on 13-6-1971.
27.	West Bengal	29-6-1971	20-3-1972	0	8	22	Assembly dissolved on 25-6-1971 by the Governor.
28.	Bihar	9-1-1972	8-3-1972	0	1	29	Assembly dissolved on 29-12-71 by the Governor.
29.	Bihar	9-3-1972	19-3-1972	0	0	10	Fresh Proclamation was issued as the earlier one ceased to operate on 8-3-1972.
30.	Manipur	21-1-1972	20-3-1972	0	2	0	New State formed on re-organisation.
31.	Tripura	21-1-1972	20-3-1972	0	2	0	New State formed on re-organisation.
32.	Andhra Pradesh . . .	18-1-1973	10-12-1973	0	10	22	Assembly suspended.
33.	Orissa	3-3-1973	6-3-1974	1	0	3	Assembly dissolved.

34.	Manipur	28-3-1973	4-3-1974	0	11	4	Do.
35.	Uttar Pradesh . . .	13-6-1973	8-11-1973	0	4	26	Assembly suspended.
36.	Gujarat	9-2-1974	18-6-1975	1	4	9	Assembly suspended but sub-sequently dissolved on 15-3-1974.
37.	Nagaland	22-3-1975	25-11-1977	2	8	3	Assembly suspended but sub-sequently dissolved on 20-5-1975.
38.	Uttar Pradesh	30-11-1975	21-1-1976	0	1	22	Assembly suspended.
39.	Tamil Nadu	31-1-1976	30-6-1977	1	4	29	Assembly dissolved.
40.	Gujarat	12-3-1976	24-12-1976	0	9	12	Assembly suspended.
41.	Orissa	16-12-1976	29-12-176	0	0	13	Do.
42.	Punjab	30-4-1977	20-6-1977	0	1	21	Assembly dissolved.
43.	Rajasthan	30-4-1977	22-6-1977	0	1	23	Do.
44.	Orissa	30-4-1977	26-6-1977	0	1	27	Do.
45.	Haryana	30-4-1977	21-6-1977	0	1	22	Do.
46.	Himachal Pradesh . . .	30-4-1977	22-6-1977	0	1	23	Do.
47.	Madhya Pradesh . . .	30-4-1977	23-6-1977	0	1	24	Do.
48.	Uttar Pradesh	30-4-1977	23-6-1977	0	1	24	Do.
49.	West Bengal	30-4-1977	21-6-1977	0	1	22	Do.
50.	Bihar	30-4-1977	24-6-1977	0	1	25	Do.
51.	Manipur	16-5-1977	29-6-977	0	1	13	Assembly suspended.
52.	Tripura	5-11-1977	4-1-1978	0	2	0	Assembly dissolved.
53.	Karnataka	31-12-197727-2-1978	0	1	27		Do.
54.	Sikkim	18-8-1979	17-10-1979	0	2	0	Assembly dissolved by the Governor on 13-8-1979.
55.	Manipur	14-11-1979	13-1-1980	0	1	29	Assembly dissolved.
56.	Kerala	5-12-1979	25-1-1980	0	1	21	Assembly dissolved by the Governor on 30-11-1979.
57.	Assam. ..	12-12-1979	6-12-1980	0	11	24	Assembly suspended.

State No.	Date of Proclamation	Date of revocation	Duration of President's Rule Years	Months	Days	Whether Assembly dissolved/ suspended
1 2 6 7	8			3	4	5
58. Rajasthan	17-2-1980	6-6-1980	0	3	18	Assembly dissolved.
59. Gujarat	17-2-1980	7-6-1980	0	3	19	Do.
60. Punjab	17-2-1980	7-6-1980	0	3	19	Do.
61. Bihar	17-2-1980	8-6-1980	0	3	20	Do.
62. Tamil Nadu	17-2-1980	9-6-1980	0	3	21	Do.
63. Orissa	17-2-1980	9-6-1980	0	3	21	Do.
64. Madhya Pradesh . . .	17-2-1980	9-6-1980	0	3	21	Do.
65. Maharashtra	17-2-1980	9-6-1980	0	3	21	Do.
66. Uttar pradesh . . .	17-2-1980	9-6-1980	0	3	21	Do.
67. Manipur	28-2-1981	19-6-1981	0	3	21	Assembly suspended.
68. Assam	30-6-1981	13-1-1982	0	6	13	Do.
69. Kerala	21-10-1981	28-12-1981	0	2	7	Do.
70. Kerala	17-3-1982	24-5-1982	0	2	7	Assembly dissolved.
71. Assam	19-3-1982	27-2-1983	0	11	9	Do.
72. Punjab	6-10-1983	29-9-1985	1	11	24	Assembly kept in suspended anima-tion and dissolved on 26-6-1985.
73. Sikkim	25-5-1984	8-3-1985	0	9	14	Assembly dissolved.
74. Jammu & Kashmir . .	7-9-1986	6-11-1986	0	2	0	Assembly suspended.
75. Punjab	11-5-1987	President's rule is continuing.				Do.

Cases of President's Rule—Categorywise

ANNEXURE VI. 4

Category (A)-18 *Cases of special category.*

The general elections to the Lok Sabha held in March, 1977 led to land-slide victory of the Janata Party which formed the government at the Centre. The Union Home Minister wrote to the Chief Ministers of the Congress ruled States of Punjab, Rajasthan, Orissa, Haryana, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal and Bihar suggesting that they should seek a fresh mandate from the people as the rout of the Congress party indicated that they had lost the peoples' support. Six of these States (Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa) filed suits against the Union of India under Article 131 of the Constitution seeking a declaration that the letter of the Union Home Minister which was described by them as a "directive" was unconstitutional, illegal and *ultra vires.* The Court held that the letter neither constituted a threat nor was unconstitutional and therefore dismissed the suits. President's rule was thereafter proclaimed in these 9 States on April 30, 1977.

In a similar situation when the Congress gained a thumping majority in the Lok Sabha elections in 1980 and replaced the Janata Government at the Union level, President's rule was imposed on February 17, 1980 in the non-congress ruled States of Punjab, Rajasthan, Orissa, Madhya Pradesh, Uttar Pradesh, Maharashtra, Bihar, Tamil Nadu and Gujarat.

The proclamations issued by the Janata Government and the Congress Government were not based on any report from the Government of the States.

Category (B)—*President's rule when Ministry Commanded 'majority'.*

(i) *Punjab*—(20-6-1951) The congress Parliamentary Board decided that the Chief Minister, Dr. Bhargava, should resign. The Congress enjoyed absolute majority in the State legislature at that time. Alternate leader was not immediately elected by the Congress party. In these circumstances, President's rule was imposed following the Chief Minister's resignation. The Assembly was kept in a state of suspended animation.

(ii) *Kerala.*—(31-7-1959) There was a mass upsurge against the State Government on various issues. The ruling party headed by the Chief Minister, Shri E.M.S. Namboodripad, however, continued to enjoy majority support in the Assembly. President's rule was imposed following the mass upsurge.

(iii) *Punjab.*—(5-7-1966) There was a split in the ruling party—some were for the partition of the State while others were totally opposed to it. As soon as a decision for reorganising Punjab on a linguistic basis was announced, the Chief Minister Shri Ramkishan tendered his resignation. The Governor consulted other Ministers and ex-Ministers of the Congress party to explore the possibility of an alternative Ministry and as none were ready to form a government, President's rule was proclaimed following the Chief Minister's resignation despite the Congress party continuing to enjoy a majority in the Assembly.

(iv) *Haryana.*—(21-11-1967) A week after the formation of a Congress government in Haryana on March 10, 1967, the official Congress nominee for Speakership was defeated by Rao Birendra Singh (Congress) supported by the opposition. 12 other Congressmen who has also voted against the official nominee resigned. This resulted in the resignation of Congress Ministry on March 22, 1967. Rao Birendra Singh who was elected as Leader of the Haryana Samyukt Vidhayak Dal claimed 'majority' and was sworn in as Chief Minister. There were large numbers of defections. About 20 members had defected once, 6 members twice, 2 members thrice and 2 members four times. One member of the opposition who had crossed the floor and was made a Minister, defected back within 4 days. Thereafter, the Ministry managed to continue in power by offering constant lure of office to cope with defections. The Government was thus all the time pre-occupied with the problem of survival which had an adverse effect on the

administration. In this circumstances, when defections had become endemic in Haryana politics, the Governor felt that defections "Had made a mockery of the constitution and had brought democracy to ridicule."

(v) *Andhra Pradesh.*—(18-1-1973) Even though the Ministry enjoyed absolute majority, President's rule was proclaimed in order to deal with the split within the party on the questions of separation of Andhra and Telangana regions of the State.

(vi) *Uttar Pradesh.*—(13-6-1973) Shri Kamalapati Tripathi Chief Minister of Uttar Pradesh, took the unusual step of tendering resignation, even though his Ministry enjoyed an absolute majority in the State Legislature, because the disturbances arising out of indiscipline in the PAC had affected the morale and performance of the State administration. The Chief Minister felt that the efforts of the State Government to meet situations of drought and scarcity conditions, shortage of power and students' unrest would be hindered because of the indiscipline in the Civil Police and PAC. In his view, direct involvement of the Union Government would help in restoring peace and safe-guarding the security of the State. President's rule was therefore proclaimed on the recommendation of the Governor.

(vii) *Gujarat.*—(9-2-1974) The anti-price-rise agitation in Gujarat turned into a mass movement with demands for removal of the Ministry and dissolution of the Assembly. Army had to be called in at some places to deal with violence. Ultimately, the Government had to resign despite having a 'majority'. The Chief Minister also recommended suspension of the Assembly. President's rule was proclaimed consequent to the resignation of the Council of Ministers and the Assembly was kept suspended. The agitators also started requesting or coercing legislators to resign. The Union Government passed the Thirty-third amendment to the Constitution empowering the speaker or Chairman not to accept letters of resignation if he was satisfied that they were not voluntary and genuine. On March 11, 1974 Shri Morarji Desai went on an indefinite fast demanding the dissolution of the Assembly which was conceded on March 15, 1974.

(viii) *Uttar pradesh.*—(30-11-1975) Shri Bahuguna the Chief Minister resigned. The Governor's recommendation for President's rule for a short period to give time to the Congress Legislature Party to elect a new leader was accepted.

(ix) *Tamil Nadu.*—(31-1-1976) President's rule was proclaimed on the basis of allegations of corrupt practices, non-implementation of Union's instructions during 'Emergency' regarding censorship, misuse of powers under DISIR etc. despite the DMK Ministry enjoying a majority in the Assembly.

(x) *Orissa.*—(16-12-1976) President's Rule was proclaimed because the Council of Ministers had lost faith in the leadership of the Chief Minister, despite the Congress party continuing to enjoy a majority in the Assembly.

(xi) *Karnataka.*—(31-12-1977) The Congress Party had an absolute majority in the Assembly. In December, 1977, the President of Karnataka Provincial Congress informed the Governor that Shri Devraj Urs, the Chief Minister, had been suspended from the membership of the Indian National Congress and was therefore no longer the leader of the Congress Legislature Party. The Chief Minister took the stand that he still had a majority and that it should be tested on the floor of the House. The Governor also received memoranda from other political parties to the effect that Shri Urs had forfeited his right to continue. A joint session of both houses had been summoned on 3-1-78. A section of the legislators was of the view that such a session would be illegal and unconstitutional and that an address by the Governor prepared by a cabinet which had lost its majority would be unwholesome. The President of the Karnataka Provincial Congress claimed the right to from a Government with a new leader but no efforts had been made to convene a meeting of the legislature party to elect a new leader. In view of the special features of the situation the Governor recommended President's rule and dissolution of the legislative assembly. President's Rule was proclaimed notwithstanding the fact that the Congress continued to have a majority in the Assembly.

(xii) *Manipur.*—(14-11-1979) President's rule was imposed on grounds of corruption and demoralised administration even though the Ministry continued to enjoy a 'majority' in the Assembly.

(xiii) *Punjab.*—(6-10-1983) The Chief Minister informed the Government in his letter of resignation that the developments in the State (the Akali agitation) had acquired a very large dimension not confined to the State alone but with serious implications for the whole country. He therefore suggested direct intervention of the Union for a temporary period even though he continued to have an absolute majority in the assembly. This recommendation was accepted and President's rule proclaimed.

Category (C)—*Proclamation of President's Rule without giving a chance to claimants.*

(i) *PEPSU.*—(4-3-1953) Shri Gian Singh Rarewala who headed the United Front Ministry was unseated through an election petition. Despite his request for continuing for a period of six months before getting re-elected and a request from the United Front party for continuing the government with another leader, President's rule was proclaimed and the Assembly was dissolved. For a long period, after May 1952, no serious business had been transacted in the House. It met on 19th November and was adjourned on November 25, 1952 amidst disturbances and confusion. It was reconvened on December 22, 1952, but no worthwhile business was transacted. President's Rule was imposed in view of the instability of the Ministry, the fact that the budget session was to commence and the possibility of further unseating of a number of members against whom election petitions were still pending. There were also some law and order problems in the State. Dr. Ambedkar who participated in the Lok Sabha debate on the extension of this President's rule in September, 1953, was highly critical of the Government's action.

(ii) *Andhra.*—(15-11-1954) After the creation of Andhra as a separate State on linguistic basis, a Government headed by Shri T. Prakasam (Congress) was sworn in on October, 6 1953. This Government resigned on November, 6, 1954 as a result of a no-confidence motion. The Governor, on his assessment, concluded that there was no possibility of a stable government and recommended president's rule which was proclaimed on November 15, 1954. The opposition (PSP and Communist parties) was not given a chance to try to form a Government.

(iii) *Travancore-Cochin.*—(23-3-1956) On the fall of the Ministry due to defections, the Praja Socialist Party was not given a chance.

(iv) *Kerala.*—(24-3-1965) While the elections did not result in conclusive majority to any party, the largest majority party was not given a chance to form the Government.

(v) *Rajasthan.*—(13-3-1977) While there was no clear majority after elections, the United Front, which claimed support for a viable majority was not given a chance as some of the legislators who had broken away from Congress and joined Janata Party after the elections, were not recognised as belonging to that Party. This led to an agitation and the leader of the Congress Party refused to form a Government in the situation.

(vi) *Uttar Pradesh.*—(25-2-1968) Upon resignation of the Samyukta Vidhayak Dal Government, the opposition was not given an opportunity to form a Government. In a secret vote in the Assembly, the Congress Party was able to defeat the Samyukta Vidhayak Dal. Notwithstanding this, the opposition was not called upon to form a Government on the plea that they should have a substantial majority for forming a viable government.

(vii) *Bihar.*—(4-7-1969) The ruling Government resigned on July 1, 1969 after 9 days in office. Against a background of 6 ministries and a period of President's rule during June 29, 1968 to February 28, 1969, the Governor did not recognise the claim of the opposition (Congress) as their numerical strength included 'unpredictables'.

(viii) *West Bengal.*—(19-3-1970) Upon resignation of Sri Ajay Kumar Mukherjee, Shri Jyoti Basu CPI (M) asked for time to explore possibility of forming a Ministry. Later, he refused to disclose the names of his supporters on the plea that his party had rejected the Governor's request for revealing of such names. Meanwhile, 10 other parties had represented to the Governor against the formation of a CPI(M) led Ministry. The Congress also declined the Governor's invitation to try a form a Ministry. Taking into account these factors and the deteriorating law and order situation, President's rule was proclaimed. CPI(M)'s claim could have been tested on the floor of the House.

(ix) *Uttar Pradesh.*—(1-10-1970) Congress was the major partner in a Congress-BKD coalition though the Chief Ministry belonged to BKD. Upon failure of the talks of merger of the two parties, serious differences arose and the Chief Minister demanded resignation of 14 Ministers belonging to the Congress. As he belonged to a minority party, the Governor sought the opinion of the Attorney General in the matter. The Attorney General held that the Chief Minister did not have a constitutional right to dismiss the 14 ministers and, as he did not command the confidence of the Legislative Assembly, the Governor could call for his resignation and, if he failed to resign, dismiss the Chief Minister.

The Chief Minister insisted that he may be permitted to face the Assembly on September 30, 1970 or October 1, 1970 as he had the requisite support from others. The Governor however took the view that the Chief Minister "cannot be permitted to construct a new edifice on the debris of the old one." The leader of the Congress Party wrote to the Governor of the State that he would be in a position to form a Government. However, President's rule was proclaimed.

(x) *Orissa.*—(23-3-1971) Following elections, while the State was under President's rule, the leader of the Congress (R) Legislative Party (with 51 members in a House of 139) claimed a majority with support from 20 Utkal Congress and Swatantra members in addition to 2 independents and 1 Congress(O) member. The Utkal Congress had not made any announcement supporting Congress(R) nor had the Governor any final list from Dr. Mahatab till March 22, 1971. President's rule was proclaimed after revoking the earlier proclamation, even though Dr. Mahatab had issued a statement that the Governor should ask him to form a Government.

(xi) *Orissa.*—(3-3-1973) Upon resignation of the Chief Minister on 3-3-73, during the budget session because of defections resulting in loss of majority, the Governor did not give and opportunity to the leader of the Orissa Pragati Legislature Party who claimed the support of 72 out of 139 members. In his view, a combination of differing political ideologies would not be able to form a stable government.

(xii) *Kerala.*—(5-12-1979) In November, 1979 the Kerala Congress (Mani Group) withdrew their support to the Mohammad Koya coalition Ministry. This was followed by the Janata Party withdrawing its support. On November 28, 1979, the Chief Minister suggested dissolution of the State Assembly to the Governor in the interest of a stable Government even though he still had a majority. The opposition claimed a majority to enable formation of a Government and opposed dissolution of the Assembly, even though, earlier, they had suggested such a course of action. After discussions with leaders of various political parties, the Governor concluded that even if the left Democratic Front was allowed to form a Government it was unlikely to be stable. In the circumstances, President's Rule was proclaimed.

(xiii) *Manipur.*—(28-2-1981) Upon resignation of the Ministry due to defections, the Governor did not consider a People's Democratic Front claim with a slender majority, in view of the background of 8 years of political instability in a situation of insurgent activity.

(xiv) *Assam.* (30-6-1981) Upon resignation of the Ministry headed by Smt. Syeda Anwara Taimur, the opposition staked their claim for forming a government with their combined strength and support of other groups. The Communist Party of India and Socialist Unity Centre did not support the formation of any Ministry. Some Political parties appear to have been in favour of President's rule without dissolving the Assembly. The large number of defections amongst the members of the Assembly since 1878 elections reflected the extent of political instability. Considering the changes in party loyalties and the multiplicity of parties when no party had adequate majority to ensure a stable ministry with a coherent policy, the Governor recommended President's rule which was proclaimed on 30-6-1981.

(xv) *Jammu and Kashmir.*—(7-9-1986) As the Congress (I) Legislators of the State withdrew their support, the government of Shri G. M. Shah lost its majority in the Assembly. As no Alternative government was feasible, Governor's rule was proclaimed under Section 92 of the Jammu and Kashmir Constitution on March, 7, 1986. Under Section 92, the proclamation was operative only upto September 6, 1986 and not beyond that date. Early in September 1986, the Governor reported to the President that the security of the State was under threat and that the composition and strength of the political parties and groups in the Legislative Assembly were such that political instability continued. On the basis of this report, President's rule was proclaimed on September 7, 1986.

Category (D)—*Cases where no caretaker Ministry was constituted.*

(i & ii) *Bihar.*—(9-1-1972 & 9-3-1972) The Chief Minister though claiming a majority resigned 3 days before the Assembly session which was to consider a no-confidence motion, because of ill-effects of the Government being formed at short intervals which has an impact on the activities of the States Governments. The State policies could not remain valid for long. This situation during a state of 'Emergency' was considered unsatisfactory. Bihar had remained under President's rule for 529 days during the period 1968-72. No attempt was made to keep a caretaker Government in position pending elections.

(iii) *Sikkim.*—(18-8-1979) The Chief Minister resigned because the life of the Assembly would have expired after 4 years but for the 42nd Amendment which extended its life by one more year. 44th The Amendment restored the original position but the relevant provision was not brought into force in respect of Sikkim. Therefore the Chief Minister could have continued. In any case, perhaps the proper course would have been to continue a caretaker government and have elections.

Category (E)—*President's rule proclaimed in the context of Reorganisation of States.*

(i) *Kerala.*—(1-11-56) When the new State of Kerala was created by uniting parts of Travancore-Cochin and Madras, Travancore-Cochin was already under President's rule. A fresh proclamation was issued on November 1, 1956 to continue the President's rule with reference to the new State, till the legislature was formed.

(ii) *Manipur.*—(21-1-72) It was already under direct administration of the President by virtue of his order dated October 16, 1969 under Section 51 of the Government of Union Territories Act, 1963, when it was made into a full-fledged State on January 21, 1972 by the North Eastern Areas (Re-organisation) Act 1971. A fresh proclamation was issued under Article 356 on that date for continuance of President's rule till a new legislature was formed.

(iii) *Tripura.*—(21-1-72) It was under direct administration of the President by virtue of an order dated November 1, 1971 under Section 51 of the Government of Union Territories Act, 1963, when it was made a full-fledged State with effect from January 21, 1972 by the North Eastern Areas (Re-organisation) Act, 1971. A proclamation under Article 356 was issued on that date pending completion of general elections and formation of a legislature in the State.

Category (F).—*President's rule inevitable.*

In the following cases, it appears that there was no alternative to President's rule:—

(i) *Orissa.*—(25-2-1961) No one came forward to form an alternative ministry upon resignation of the Ministry during budget session.

(ii) *Kerala.*—(10-9-64) On September 8, 1964 a no-confidence motion was passed against the Congress Ministry headed by R. Sankar. Other political parties expressed their inability to form a Ministry either singly or jointly.

(iii) *West Bengal.*—(20-2-68) The Speaker created a deadlock and prevented the Legislative Assembly from functioning. The Strength of the Ministry could not be tested.

(iv) *Bihar.*—(29-6-68) In the background of failure of 3 successive ministries, the Governor did not agree to give 4 days to Mahesh Prasad Sinha (Leader of the Congress which was numerically the largest group) to form a Ministry as the Appropriation Bill had to be passed before June 30, 1968.

(v) *Punjab.*—(23-8-1968) Upon break up of the People's United Front coalition Ministry, Sardar Lachman Singh Gill formed a Ministry on November 25, 1967 with the support of some defections from the Akali Dal and a few independents. The Congress Legislature Party which initially supported the Gill Ministry split into ministerialist and anti-ministerialist factions. In this situation Shri Gill as well as the leaders of the People's United Front and the Congress Legislature Party advised the Governor to recommend President's Rule. As no single party or combination of parties could provide a stable Government, President's rule was proclaimed.

(vi) *Kerala.*—(4-8-1970) On the recommendation of the Chief Minister of the coalition, Government, the Governor dissolved the Legislative Assembly on June, 1970. The Chief Minister Achuta Menon continued as head of a caretaker government till Auguest 1, 1970 when he resigned, President's Rule was, thereofore, proclaimed.

(vii) *Orissa.—(11-1-1971)* On the break up of the Singh Deo coalition Ministry, the Chief Minister declined to continue as head of a caretaker government, unless his conditions for dissolution of the Assembly and a commitment to mid-term poll were accepted. As the Governor was yet to explore possibilities of an alternative government, the conditions could not be accepted and President's Rule was imposed.

(viii) *Orissa.—(23-1-1971)* On January 20, 1971 the Governor reported that no party had come up with any concrete proposal with demonstrable majority. The earlier proclamation was revoked and a fresh proclamation was issued on January 23, 1971 dissolving the Legislative Assembly.

(ix) *Mysore.*—(27-3-71) Upon the resignation of the government, the Governor could not accept the Samyukta Socialist Party's claim to prove the majority in a 'day or two' because the budget had to be passed before April 1, 1971.

(x) *Gujarat*—(13-5-71) The Chief Minister resigned due to defection. The State Legislative Assembly had passed an appropriation Bill for 4 months. In view of the fluid situation and the need for passing the budget before July 31, 1971 and difficulties in holding elections before that date President's rule was imposed.

(xi) *Punjab*—(15-6-71) The withdrawal of support by Jana Sangh to the Badal Minister led to instability. It however, survived a no confidence montion in July 1970, but its strength was adversely aftected by further defections when one of its Ministers resigned and demanded enquiry into charges of corruption against some Ministers. The Chief Minister alleged that the Congress (R) was trying to encourage defections. he recommended dissolution of the assembly which was accepted by the Governor. The Government had obtained a vote on account for only 3 months upto June, 71 and the budget was yet to be passed. This situation necessitated proclamation of President's rule.

(xii) *West Bengal*—(29-6-71) The Chief Minister resigned following the fluid situation due to split in Bangala Congress. The budget had to be passed by the end of June and there was also an abnormal situation due to influx of refugees from Bangaladesh. President's rule was imposed in these circumstances.

(xiii) *Manipur*—(28-3-73) Upon the resignation of the Government on a motion of no-confidence, the Governor did not invite the opposition which had a claim to a tenuous majority because the budget had to be passed before March 31, 1973. Therefore, President's rule was proclaimed.

(xiv) Nagaland—(22-3-75) Upon the fall of the Jasokie Minister (NNO) due to defections, the United Democratic Front claimed a majority. It was contended that this claim was not valied, because 10 members of the Naga National Organisation were held under duress, while actually they were said to be present in the House and had informed the Speaker of their joining the United Democratic Front. The Speaker adjourned the House on March 20, 1975 after heated discussions. The fall of Jaokie Ministry had been preceded by frequent defection. The budget had to be passed. In these circumstances President's rule was imposed which however lasted for more than 2 years.

(xv) *Gujarat—(12-3-76)* Upto the defeat of the Ministry in the vote for grants of one of the departments's President's rule was proclaimed in view of the urgency of passing the budget.

(xvi) *Manipur*—(16-5-77) 26 Congress legislators defected and joined the Janata Party. As a result, the Government, having only a minority support in the legislatutre, resigned on May 13, 1977. No other party was prepared to form a Government. President's rule was imposed but the Legislative Assembly was kept suspended even though the Chief Minister had recommended its dissolution.

(xvii) *Tripura*—(5-11-77) The Janata—CPI(M) Coalition Government broke down when the latter withdraw support on October 26, 1977. Leaders of CPI(M), Congress, CFD and the CPI were opposed to a Janata Caretaker Government. President's rule was, therefore, proclaimed.

(xviii) *Assam*—(12-12-79) The Asom Janata Vidhayani Dal Coalition Government lost support when Congress (U) and the CPI group withdrew their support. The leaders of CPM, the RCPI, the PTCA and the Janata (S) were in favour of a short period of President's rule Shri Hazarijka, the Chief Minister' who was no longer the leader of the Asom Janata Vidhayani Dal, was unwilling to resign. President's rule was therefore, imposed.

(xix) *Kerala*—(21-10-81) The Nayanar Coalition Ministry resigned on October 20, 1981 after two of the constituents—Congress (S) and the Kerala Congres (Mani Group) withdrew their support. As not viable alternative Ministry could be formed, President's rule was imposed.

(xx) *Kerala*—(17-3-82) The UDF Ministry resigned on March 17, 1982 when it lost majority with the withdrawal of support by the Kerala Congress (Mani Group). As there was no possibility of forming an alternate viable Ministry, the Governor dissolved the Assembly and recommended President's rule.

(xxi) *Assam*—(19-3-82) The Gogoi Ministry resigned on March 18, 1982. With a history of large scale defections during the post 4 years when 4 Ministries had changed, the, Governor did not consider stable Ministry feasible. President's rule was, therefore, proclaimed.

(xxii) *Sikkim*—(25-5-84) The majority of the Gurng Ministry felling jeopardy with "frequent shift in loyalties of the legislators due to various tactics including intimidation, kidnapping, blackmail and monetary inducements'. Attempts to form an alternative Government were considered futile, The life of the Assembly was also to expire in a few months. President's rule was therefore, proclaimed.

(xxiii) *Punjab*—(11-5-87) The Akali Dal (L) Ministry was unable to combat the fundamentalist movement and the terrorist and the extremist forces within the State. As a result murders, lootings and other acts of lawlessness had sharply increased leading to total chaos and anarchy, particularly in the rural areas. The Ministry found itself helpless in the matter of restoring even a semblance of order anywhere. According to the Governor's report, the situation was further aggrevated by the fact that some of the Ministers were deeply involved with terrorists and extremists.