
State of Rajasthan and Others Vs Union of India and Others

Original Suits 1 to 6 of 1977 and Writ Petitions 67 to 69 of 1977

Court: Supreme Court of India

Date of Decision: May 6, 1977

Acts Referred:

Constitution of India, 1950 " Article 12, 123, 142(1), 153, 154#General Clauses Act, 1897 " Section 3(58), 3(60)#Government of India Act, 1935 " Section 204, 204(2), 72, 93#Representation of the People Act, 19

Citation: AIR 1977 SC 1361 : (1977) 3 SCC 592 : (1978) 1 SCR 1

Hon'ble Judges: M. Hameedullah Beg, C.J; Y. V. Chandrachud, J; S. Murtaza Fazal Ali, J; P. N. Bhagwati, J; P. K. Goswami, J; N. L. Untwalia, J; A. C. Gupta, J

Bench: Full Bench

Advocate: J.P. Goyal, S. K. Sinha, B.B. Singh and A.K. Shrivastava, for the Appellant; Soli J. Sorabjee, for the Respondent

Final Decision: Dismissed

Judgement

M.H. Beg, C.J.

Original Suits Nos. 1 to 6 of 1977, before us have been filed on behalf of the States of Rajasthan, Madhya Pradesh,

Punjab, Bihar, Himachal Pradesh and Orissa against the India under Article 131 of the Constitution of India. There are (sic) before us three writ

Petitions, Nos. 67 to 69 of 1977, by three members of the Legislative Assembly of the State of Punjab against Union of India and Shri Charan

Singh, the Home Minister in the Government of India and Shri Zail Singh, Chief Minister of Punjab. (sic) six suits and the three Writ Petitions raise

certain common ques(sic) of law and fact. They were, therefore, permitted to be argued (sic). We have already dismissed the suits and petitions

after ring them at length and now; propose to state our reasons for doing as stated in our order of 29th April 1977. Before dealing with questions

of fact and law I will indicate the nature of the reliefs; (sic) by each plaintiff under Article 131 and the grievance of each (sic)tioner under Article 32

of the Constitution.

2. The State of Rajasthan asked for a declaration that what it described a "directive" contained in the letter dated 18th April, 1977, issued Shri

Charan Singh, the Union Home Minister, to the Chief Minister the State, is "unconstitutional, illegal and ultra vires the Constitution and also a

declaration that the plaintiff State is "not Constitution (sic) or legally obliged to comply with or to give effect to the directive (sic)tained in the said

letter.

3. The States of Madhya Pradesh seeks the declaration that "the direc(sic) /order dated 18th April, 1977, of the defendant through its Home

(sic)ster is ultra vires the Constitution".

4. The State of Punjab asks for a declaration of what it describes as (sic)section/order" as "ultra vires" the Constitution.

5. The State of Bihar calls the letter a "directive" and asks for the (sic)aration that it is "unconstitutional and void". It also prays for a declaration

that a refusal by the Chief Minister of Bihar to comply it "cannot be made the basis for the issue of proclamation under Article 356 of the

Constitution". It also seeks a declaration that Article 56 of the Constitution "cannot be invoked for the sole purpose of (sic)lving the State

Legislative Assembly and holding fresh elections he said Assembly after the defeat of the majority party in the said (sic)bly in the elections for the

Lok Sabha".

6. The State of Himachal Pradesh prays for eight declarations: firstly, "the Council of Ministers of the State is not liable to resign and (sic)egislative

Assembly of the plaintiff is not liable to be dissolved on (sic)ound that the Congress Party, which holds a majority in the (sic)ative Assembly, had

lost in the Lok Sabha elections and the Janata has come into power at the center"; secondly, that "the Executive Defendant is not entitled to

encroach upon the sole prerogative Council of Ministers as to the nature of the advice which the thinks fit to render to the Governor"; thirdly, that

the provisions Article 356 of the Constitution are not liable to be invoked by the (sic) merely because the Political party which has been returned

(sic) in the Lok Sabha elections happens to be different from the (sic) which holds majority in the Legislative Assembly of the plaintiff which might

have lost heavily in the said Lok Sabha elections"; (sic), that "the Legislative Assembly of the plaintiff is not liable to be dissolved before the expiry

of the term under the Constitute because the views of the electorate have, undergone a change as state in the letter of the defendant"s Home

Minister dated 18th April, 1977 fifthly, that "the circumstances mentioned in the letter do not Constitution a threat to law and order, and, in any

case, such a threat to law a order cannot form any constitutional basis for dissolution of the Legislative Assembly of the plaintiff"; sixthly, that

reasons and circumtances stated in the letter addressed by the defendant to the plaint(sic) Chief Minister and the resultant threatened action under

Article (sic) of the Constitution are wholly unconstitutional and mala fide and that proclamation issued on the facts and circumstances of the present

c would be utterly void""; seventhly, that the ""condition precedent a prescribed in Article 1 356(1) of the Constitution is non-existe(sic) eighthly, that

the Legislature of the plaintiff cannot be dissolved (sic) and unless any proclamation issued under Article 356(1) of the Constitution is ratified by

both Houses of Parliament as envisaged by A Article 356(3) of the Constitution"".

7. The State of Orissa asked for a declaration that the ""directi(sic) contained in the letter of 18th April, 1977, is ""unconstitutional, ill (sic) and ultra

vires the Constitution"" and, also that the plaintiff State ""not constitutionally or legally obliged to comply with or to give (sic) to the directive

contained in the said letter"".

8. In addition, each of the plaintiffs in the six suits asks for a pen ment as well as an interim injunction in slightly differing terms but object of all these

injunctions sought is abundantly clear and common.

9. The State of Rajasthan has sought a permanent injunction ""restr(sic) ing the defendant from giving effect to the directive contained in said letter in

any manner"". It also asks for permanent injunc(sic) restraining the defendant resorting to Article 356 of the Constitution of India to dissolve the

Legislative Assembly of the State of Rajasthan than and from taking any steps for holding fresh elections to the (sic) Assembly before March,

1978.

10. ""Perpetual"" injunctions are sought by the State! of Madhya Pradesh against the defendant Union of India to restrain its Government ""(sic)

enforcing directions contained in the letter and/or dissolving the (sic) (sic)lature of the State"".

11. The State of Punjab prays for ""a perpetual injunction to (sic) the defendant from enforcing the directions contained in the state dated 18th April

1977 and in the letter dated 18th April 1977 (sic) Chief Minister of the plaintiff State and restraining the defendant dissolving the Legislative

Assembly of the plaintiff State or (sic) Presidential Rule under Article 356 before March 1978"".

12. The State of Bihar asks for an injunction against issue (sic) defendant Union of a Proclamation under Article 356 of the Constitution ""for the

purpose of dissolving the Bihar State Assembly and (sic) ing fresh elections for the State Assembly.

13. The State of Himachal Pradesh seeks a permanent injunction for ""restraining the defendant from issuing any Proclamation under Article

356(11) of the Constitution"" except in a situation contemplated by the provisions and another to restrain the Union Government from dissolving the

legislative assembly of the State ""until and unless any Proclamation issued under Article 356 of the Constitution, is ratified by both the Houses of

Parliament"". In other words, a prohibitory order, in the nature of a Writ of ""Quo Usquo"" (until a condition precedent is fulfilled) is sought.

14. The State of Orissa prays for ""a permanent injunction"" restraining the defendants from giving effect to the ""directive"" contained in the said letter

in any manner"" and, another ""permanent injunction restraining the defendants from taking recourse to Article 356 of the "" Constitution of India to

dissolve the Legislative Assembly of the State of Orissa and from taking any steps for holding fresh elections to the State Assembly before March

1980"". It may be mentioned that the elections to the Legislative Assembly of the State of Orissa took place in 1974.

15. Each of the six States have also asked for; interim injunctions so that the reliefs prayed for in the suits may not become infructuous.

16. The three petitioners in the Writ Petitions from Punjab are Members of the Legislative Assembly of the State of Punjab, they assert that there is

a threat to their fundamental right to property in| the shape of a right to receive their ""salaries"" as Member of the Legislative Assembly as a result of

an impending dissolution. They submit that such an impending threat is enough to enable them to invoke the jurisdiction of this Court under Article

32 of the Constitution.

17. It is obvious that the cause of action set up by the plaintiffs in each suit as well as by the petitioners under Article 32 of the Constitution is said

to be furnished by the letter of Shri Charan Singh, the Home Minister in the Union Government and a statement said to have been made by Shri

Shanti Bhushan, the Law Minister in the Union Government. These, according to the Plaintiffs under Article 131 as well as petitioners under Article

32, provide sufficient grounds for inferring that the Legislative Assembly of each of the States involved will be dissolved, after a Proclamation under

Article 356 if what the letter of Shri Charan Singh describes as ""advice"" is not carried out by the Chief Minister of each of the six states.

18. The principal common submissions on behalf of the plaintiffs as well as the petitioners are:

Firstly, that the letter of Shri Charan Singh dated 18th April, 1977, discloses the sole ground of an impending proclamation under Article 356 of

the Constitution to be followed by a dissolution of the Legislative Assembly of the State concerned and that such a proclamation, resulting

necessarily in the dismissal of the Ministries in the six Steles and the dissolution of their Legislative Assemblies upon the grounds given in the letter,

is prima facie to outside the purview of Article 356 of the Constitution.

Secondly, that, in any case, the condition precedent to the dissolution of the State Legislative Assemblies is a ratification by both Houses of

Parliament of the Presidential action under Article 356 so that on dissolution, at any rate, of a Legislative Assembly can take place without

ascertaining the wishes of both the Houses! of Parliament.

Thirdly, that the grounds given being outside the constitutionally authorised purposes and objectives make the proposed action, on the face of it,

mala fide and unconstitutional. Our attention was also drawn to certain assertions in the complaints and petitions for advancing the pleas of ""malic(c) in

fact"" and ""malice in law"".

19. The replies on behalf of the Union of India are:

Firstly, that on allegations made in the plaints no suit before us would fall within the purview of Article 131 of the Constitution which is meant for

grievances of States, as such, against the Union Government and not those relating to mere composition of the State Governments and Legislatures

without involving constitutional or other legal rights of States as such.

Secondly, the questions which arise for gauging the existence of a "situation", calling for action under Article 356 are, by their very nature,

inherently non-justiciable and they have also been made nonjusticiable expressly by Article 356(5) of the Constitution so that, even if a State could,

as such, be said to be legally and property interested in the dispute between its Government and the Union Government about the desirability or

need for any action by the Union Government under Article 356 of the Constitution, such a dispute is outside the sphere of justiciable matters. If

the final action or its grounds are non-justiciable, they could not be indirectly assailed by challenging a process which may or may not actually

produce the apprehended result or action.

Thirdly, the letter of the Union Home Minister and the speech of the Union Law Minister do not indicate that anything falling outside the wide

spectrum of Article 356 of the Constitution is being or will be taken into account for taking action under Article 356. Hence, on matters stated

there, no cause of action could be said to have arisen.

Fourthly, mere intimation of some facts, fully within the purview of Article 356 of the Constitution, does not justify a prohibition to act in future

when the situation may be serious enough, on the strength of facts indicated and possibly other facts also, for action under Article 356 of the

Constitution. In other words, the submission was that it could not possibly be predicated now whether there were or apt other facts or what other

possible facts, which may affect the situation, may arise in future. It was submitted that the freedom of constitutionally authorised executive action

of the highest executive organs of the Union should not be impeded by judicial interference except on grounds of clearest and gravest possible

character. Just now, there was nothing beyond bare possibilities before the Court so that no anticipatory Injunction or Order could be granted.

20. The first ground of objection on behalf of the Union is confined to the suits. But, the remaining three grounds of objection are common to the

suits as well as the Writ Petitions.

21. On behalf of Union of India notices were accepted and preliminary objections, mentioned above, were taken to the maintainability of the suits

and the petitions on the allegations made therein. We, therefore, proceeded to hear arguments on the preliminary objections without requiring

defendants or respondents to file written statements or replies or framing issues formally. I propose to examine the allegations made in the plaints

and in the petitions so as to determine whether assertions made there, on questions of fact, are sufficient to disclose any cause of action necessary

to maintain the suits or the petitions for reliefs asked for.

22. As indicated above, the letter of Shri Charan Singh the Home Minister in the Union Government, to the Chief Minister of each State provides

the primary source of the grievance of the plaintiffs! and petitioners. One of these identically phrased letters (the one to the Chief Minister of

Rajasthan) may be reproduced here. It runs as follows:

D.O. No. 355/MS/T/77

HOME MINISTER

INDIA

New Delhi,

April 18, 1977.

Dear Shri Joshi,

We have given our earnest and serious consideration to the most unprecedented political situation arising out of the virtual rejection, in the recent

Lok Sabha elections, of candidates belonging to the ruling party in various States. The resultant climate of uncertainty is causing grave concern to

us. We have reasons to believe that this has (sic) of diffidence at different levels of Administration. People at large do not any longer appreciate the

propriety of continuance in power of a party which has been unmistakably rejected by the electorate. The climate of uncertainty, diffidence and

disrespect has already given rise to serious threats to law and order.

2. Eminent constitutional experts have long been of the opinion that when a Legislature no longer reflects the wishes or views of the electorate and

when there are reasons to believe that the Legislature and the electorate are at variance, dissolution, with a view to obtaining a fresh mandate from

the electorate would be most appropriate. In the circumstances prevailing in your State, a fresh appeal to the political sovereign would not only be

permissible but also necessary and obligatory.

3. I would, therefore, earnestly commend for your consideration that you may advise your Governor to dissolve the State Assembly in exercise of

powers under Article 174(2)(b) and seek a fresh mandate from the electorate. This alone would, in our considered view, be consistent with

constitutional precedents and democratic practices.

4. I would be grateful if you would kindly let me know by the 23rd what you propose to do.

With regards,

Yours sincerely,

Sd/-

(Charan Singh)

Shri Harideo Joshi,

Chief Minister of Rajasthan,

Jaipur.

23. To substantiate the allegation that the letter constituted a "threat" of action under Article 356 of the Constitution to dismiss the Government, to

dissolve the Legislative Assembly of each plaintiff State and to impose the President's rule upon it, corroboration was sought) from a report of a

talk of Shri Shanti Bhushan, the Minister for Law, Justice and Company Affairs, on the All India Radio, which appeared in the Statesman of 23rd

April 1977. Although, reports in newspapers do not constitute admissible evidence of their truth, yet, I reproduce the extract which was either

attached to or its substance reproduced in the plaints, only to test whether, even assuming that its contents were to be proved, by admissible

evidence, to be given in due course, all the allegations will, taken together, constitute something actionable. The report said:

Advice to Nine States a Constitutional duty, says Shanti Bhushan.

Mr. Shanti Bhushan, Union Law Minister, said on Friday night that a clear case had been made out for dissolution of the Assemblies in nine

Congress-ruled States and (sic) ing of fresh elections, reports Samachar.

In an interview in the Spot-light programme of All India Radio he said that the most important basic feature of the Constitution was democracy,

which meant that a Government should function with the broad consent of the people and only so long as it enjoyed their confidence. If State

Governments chose to govern the people after having lost the confidence of the people, they would be undemocratic Governments, he said.

Under Article 355, a duty had been cast on the Union Government to ensure that State Governments were carried on in accordance with the

Constitution.

The Home Minister, Mr. Charan Singh, had appealed to the Chief Ministers of the nine States to advise their Governors to recommend to the

President dissolution of the State Assemblies. This was because a serious doubt had been cast on their enjoying the people's confidence, their

party having been rejected in the recent Lok Sabha elections the Law Minister said.

EXERCISE OF POWER

Mr. Shanti Bhushan was asked whether the center (sic) not be failing in its duty if it did not exercise its power at this crucial juncture to test the

legitimacy of a State Government.

He replied that after all whenever the power was conferred by the Constitution, it was not done simply for the sake of conferring it. Obviously the

Constitution contemplated the circumstances under which that power should be exercised. When those circumstances arose it was obligatory on

the, part of the center to exercise that power.

Mr. Shanti Bhushan said! he failed to see why the State Governments objected to going to the people to seek their mandate. "If we recognise the

real sovereignty and supremacy of the people, there cannot be any possible object (sic). If someone claimed a divine right to rule whether the

people wanted him or not, then of course, there could be (an objection to go tot the people.

PREMATURE END

Explaining the Constitutional provisions relating to premature dissolution of State Assemblies, Mr. Shanti Bhushan said two articles deal with this

matter. Article 172 provided for " he normal term which was earlier1 five years. But this had been extended to six years by the Constitution 42nd

Amendment Act. Then Article 174 gave the Governor the power to dissolve the Legislative Assembly from time to (sic) even during the normal

period of five or six years. Normally this power was to be exercised with the aid and advice of the Council of Ministers.

He was asked whether it was permissible for the President to resort to Article 356 if the Council of Ministers failed to aid and advise the Governor

to dissolve the Assembly Under Article 174.

Mr. Shanti Bhushan explained that under Article 355 a duty had been cast on the Union Government to ensure that the Governments in States

were carried on in accordance with he Constitution. The most important provision in the Constitution. ""rather the most important basic feature of

the Constitution"" was democracy which meant that a Government should function with the broad consent of the people and only so long as it

enjoyed the confidence of the people.

CONTINUED CONFIDENCE

Mr. Shanti Bhushan said that the mere fact that at one time the Governments in the States enjoyed the confidence of the people did not give them

the right to govern unless they continued to enjoy that confidence. If a situation arose in which a serious doubt was cast upon the Government

enjoying the continued" confidence of the people, then the provision for premature dissolution! of the Assembly immediately came into operation.

The provision not merely gives the power but it casts, a duty because this power is coupled with duty, namely, the Assembly ""must be dissolved

immediately and the Government must go to the people to see whether it has continued confidence of the people to govern. Even after having lost

the confidence of the people, if the Government chose to govern people, it would be undemocratic. This would not be in accordance with the

provisions of the Constitution.

This was precisely the philosophy behind the wide powers given to the President under Articles 355 and 356. Obviously some authority had to be

given the power to ensure that the functionaries under the Constitution were working in accordance with the Constitution.

As there were a number of States, obviously no single State could be given this power. Therefore," this power was entrusted to the Union

Government to see that the State Governments were acting in accordance with the Constitution, which meant in accordance with democratic

principles and conventions.

NOT WHOLLY IMMORAL

Answering another question, Mr. Shanti Bhushan did not agree that the whole of the Constitution 42nd Amendment Act was immoral. But there

were, serious objections to that Act on the ground of ethics. When this amendment was rushed through Parliament, the five years term of the

members was over. Their term had really expired and they did not have the continued mandate to enact such an important Act as the 42nd

Amendment. The results of the Lok Sabha elections had also shown that the people had not really given them the mandate to enact the

amendment.

The other objection to the 42nd Amendment was that during the Emergency important leaders of the opposition parties were in jail. They could not

express their views.

Mr. Shanti Bhushan said that the 42nd Amendment had been enacted. As the Ministers had taken an oath to abide by the Constitution, they could

not ignore the provisions of the 42nd Amendment so long as it remained. With the result it was not possible to have elections in those States where

the State Governments had not lost the mandate of the people as was reflected in the Lok Sabha elections"".

24. I have set out the two basic sources of complaint in the complaints and the petitions in order to consider whether, assuming such statements had

been made by the two very responsible and important Ministers of the Union Government, they could sustain suits for injunctions under Article 131

of the Constitution or writ petitions by Members, of a Legislative Assembly to be dissolved.

25. So far as the letter of Shri Charan Singh is concerned, it certainly does not contain even a reference to Article 356 of the Constitution.

Nevertheless, the speech of Shri Shanti Bhushan, assuming that it was correctly reported, does mention Articles 355 and 356 of the Constitution

and expounds a view of one of the basic purposes of the Constitution the observance of which could, in the opinion of the Law Minister, be

secured by resort to Article 356 of the Constitution. The speech does express the view of the Law Minister that there was a duty cast upon the

Union Government; by Article 355 of the Constitution to; secure a conformity between the current opinion of the electorate and the composition of

the legislatures in the different States where the Governments in power today reflected the opinions of the majority of electors in each State

prevalent only at a time when the last election to the State Legislative Assembly was held. The question whether these State Governments retain

the confidence of the electorate or not at present could only be answered decisively by the electors themselves. That was the exclusive right and

privilege of the electors under a democratic constitutional scheme and the law. According to the Law Minister, the elected representatives cannot

set up a right to continue in power now, despite an overwhelmingly adverse verdict of the electorate against the party to which members of! these

Government belong. In his opinion, to do so would be contrary to the basic norms of democracy underlying our Constitution.

26. If what was assumed to be proposed to be done, under the "threat" of a constitutionally prescribed mode of executive action, could, in no

circumstances, be done under Article 356, we may be able to check a misuse or excess of constitutional power provided judicial control over all

purported exercise of power of issuing proclamations, under Article 256, is not either impliedly or expressly barred even if a proposed action is

plainly ultra vires. But, if the views of the two Union Ministers state the constitutional position correctly, no question of an "abuse" or "misuse of

powers" for a collateral purpose or a "détournement de Pouvoir" or a fraud upon the Constitution" or "malice in fact" or "malice in law" (terms

denoting different shades of culpability and types of excess of power), can arise on the allegations of threatened action in the cases before us,

which really amount only to this; The Union Government proposes to act under Article 356 of the Constitution to give electors in the various States

a fresh chance of showing whether they continue to have confidence in the State Governments concerned and their policies despite the evidence to

the contrary provided by the very recent Lok Sabha elections.

27. One purpose of our Constitution and laws is certainly to give electors a periodic opportunity of choosing their State's legislature and, thereby,

of determining the character of their State's Government also. It is the object of every democratic Constitution to give such opportunities. Hence,

a policy devised to serve that and could not be contrary to the basic structure or scheme of the Constitution. The question whether they should

have that opportunity now or later may be a question of political expediency or executive policy. Can it be a question of legal rights also unless

there is a prohibition against the dissolution of a legislative assembly before a certain period has expired? If there had been a constitutional

prohibition, so that the proposed action of the Union Government could have contravened that constitutional interdict, we would have been obliged

to interfere, but, can we do so when there is no constitutional provision which gives the legislature of a State the right to continue undissolved

despite certain supervening circumstances which may, according to one view, make its dissolution necessary?

28. It may have been possible for this Court to act if facts and the circumstances mentioned to support proposed action were so completely

outside the purview of Article 356 or so clearly in conflict with a constitutional provision that a question of excess of power could have apparently

arisen. If, for example, an authoritative statement, on behalf of a Union Government, was issued that a dissolution is proposed only because the

Chief Minister or the whole Council of Ministers of a State belongs to a particular caste or creed, it could be urged that the proposed action would

contravene the fundamental rights of Indian citizens of equality before the law and absence of discrimination on such a ground. There is, however,

no such allegation or its particulars in the plaints before us which may be capable of giving rise to the inference that any such constitutionally

prohibited action is intended by the Union Government.

29. The choice between a dissolution and re-election or a retention of the same membership of the legislature or the Government for a certain

period could be matters of political expediency and strategy under a democratic system. Under our system, quest of political power, through

formation of several political parties, with different socio-economic policies and programmes and ideologies, is legal. Hence it cannot be said that a

mere attempt to get more political power for a party, as a means of pursuing the programme of that party, as opposed to that of other parties, is

constitutionally prohibited or per se illegal. There may be moral or even political objections to such courses in certain circumstances. It may be

urged that States should be permitted to function undisturbed by any directions or advice by the Union Government despite their differences with it

on matters of socio-economic or political policy on complexion. Rights were asserted, on behalf of State legislators, as though they were legal

rights to continue as legislators until the expiry of the constitutionally fixed spans of lives of their legislatures, barring cases of earlier dissolution. We

are only concerned here with legal rights to dissolve and legal obstacles to such dissolution.

30. It Could be argued, with considerable force, on political and moral grounds, that electors should be given a fresh opportunity of pronouncing

their verdict upon the policies and programmes of the Governments in the States when very convincing proof of wide divergence between their

views and those of their Governments has become available. The Law Minister's view is that, where there is an overwhelmingly large electoral

verdict in a State against the party to which its Government belongs, the situation not only justifies but makes resort to a fresh (c)lection or an

appeal to the political sovereign imperative. This I think, is largely a political and moral issue. We are only concerned, with its relationship to

constitutional provisions. If its impact on the minds and feelings of electors or those officers who have to carry on the day to day administration is

such that it will frustrate the very objects of a Government under the Constitution or make it impossible for the Government in a State to function as

it ought to under the Constitution, it may come to the conclusion that action under Article 356 of the Constitution is called for. We cannot forget

that Article 356(1) calls for an assessment of a ""situation"". We cannot anticipate decisions or interdict possible actions in situations which may or

may not arise due to all kinds of factors-economic, social, moral and political.

31. If the Union Government thinks that the circumstances of the situation demand that the State Governments must seek a fresh mandate to justify

their moral rights in the eyes of the people to continue to exercise power in the interests of their electors, or else the discontent of the masses may

have its repercussion not only on the law and order situation but will also affect legal responsibilities or duties which the Union Government has

towards a particular State or towards Indian citizens in general, all of whom live in some State or other, can we say that resort to Article 356 of the

Constitution is not called for ? I think that it is impossible to substitute our judgment for that of the Union Government on such a matter.

32. Even if it is possible to see a federal structure behind the setting up of separate executive, legislative and judicial organs in the State and to urge,

as it has been urged before us, that so long as the State Governments and their legislatures are not shown to have committed a dereliction of their

constitutional duties or violations of any constitutional provisions, they ought not to be interfered with by the Union Government, it is also apparent,

both from the mechanism provided by Article 356 of our Constitution, as well as the manner in which it has been used on numerous occasions in

the past, since the inception of our Constitution, that the Union Government is capable of enforcing its own views on such matters against those of

the State Government as to how the State Governments should function and who should hold the reins of power in the States so as to enable the

Constitution to work in the manner the Union Government wants it to do in a situation such as the one now before us. Article 131 of the

Constitution was certainly not meant to enable us to sit as a Court of appeal on such a dispute between the Union Government and a State

Government. And, our Constitution is not an inflexible instrument incapable of meeting the needs of such a situation.

33. It may be that, under our Constitution, there is too great a scope for struggle merely for seats of power so that the grand purposes enshrined in

the Preamble to our Constitution and the correct governmental policies needed by the mass of our people to give reality to their dreams tend to be

neglected in scrambles for political power. The issue before us, however, is not whether one party or another has failed in the very objectives and

purposes for which people give unto themselves Constitutions such as ours. It is not for us to decide whether; a party which has had its

opportunities in the past has adequately met the objects of lodging political and legal power in its hands, or, whether those who now wield power

at the center will do so more wisely, more honestly, or more effectively, from the point of view of the interests of the masses of our people or

public good. These are questions for the people themselves to answer.

34. I think that the two Union Ministers have stated certain Wounds for inferring that the time has come to give the people the political sovereign-a

chance to pronounce its verdict on the fates of State Governments and legislatures in the nine States also in a manner which is constitutionally not

open to objection. In so far as Article 356(1) may embrace matters of political and executive policy and expediency courts cannot interfere with

these unless and until it is shown what constitutional provision the President is going to contravene or has contravened on admitted grounds of

action under Article 356(1) for, while Article 74(2) disables Courts from inquiring into the very existence or nature or contents of ministerial advice

to the President, Article 356(5) makes it impossible for Courts to question the President's satisfaction ""on any ground"". Hence, Courts can only

determine the validity of the action on whatever may remain for them to consider on what are admitted, on behalf of the President, to be grounds of

Presidential satisfaction. Learned counsel for the plaintiffs and petitioners, when confronted with Article 356(5), said they would challenge its

validity as a provision violating the basic structure of the Constitution. We, however, heard objections to the maintainability of suits and petitions

even apart from the specific bar in Article 356(5). And, I propose to deal principally with those other objections.

35. This Court has never abandoned its constitutional function as the final judge of constitutionality of all acts purported to be done under the

authority of the Constitution, It has not refused to determine questions either of fact or of law so long as it has found itself possessed of power to

do it and the cause of justice to be capable of being vindicated by its actions. But, it cannot assume unto itself powers the Constitution lodges

elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them. The

scrupulously discharged duties of all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally

circumscribed powers by trespassing into what is properly the domain of other constitutional organs. Questions of political wisdom or executive

policy only could not be subjected to judicial control. No doubt executive policy must also be subordinated to constitutionally sanctioned

purposes. It has its sphere and limitations. But, so long as it operates within that sphere, its operations are immune from judicial interference. This is

also a part of the doctrine of a rough separation of powers under the Supremacy of the Constitution repeatedly propounded by this Court and to

which the Court unswervingly adheres even when its views differ or change on the correct interpretation of a particular constitutional provision.

36. Assuming, therefore, that the letter of Shri Charan Singh in the context of the reported speech of the Law Minister formed the basis of an

absolutely correct inference that action under Article 356 of the Constitution would be taken by the President if the ""advice"" to the Chief Ministers

of States contained in it is not accepted, the only question we need determine here is whether such a use of Article 356 of the Constitution was, in

any way, unconstitutional or legally mala fide. Another way of putting the same issue would be to ask whether the purposes stated by the Union

Law Minister for the proposed action under Article 356 of the Constitution, assuming that such a proposal or threat could be found there, could be

said to be extraneous to the purposes of Article 356 of the Constitution.

37. Mr. R. K. Garg arguing for the petitioners from Punjab, has put forward what appears to us to be, according to the very authority cited by the

learned Counsel, on the mode of construing our Constitution, a very good justification for the view said to have been propounded by the Union

Law Minister. Mr. Garg relied on a passage from the judgment of Sikri, C.J., in 272997

I must interpret Article 368 in the setting of our Constitution, in the background of our history and in the light of our aspirations and hopes and

other relevant circumstances. No other Constitution combines under its wings such diverse people, numbering now more than 550 millions, with

different languages and religions and in different stages of economic development, into one nation and no other nation is faced with such vast socio-

economic problems".

38. It was also said there (at p. 69):

I need hardly observe that I am not interpreting an ordinary statute, but a Constitution which apart from setting up a machinery for government, has

a noble and grand vision. The vision was put in words in the Preamble and carried out in part by conferring fundamental rights on the people. The

vision was directed to be further carried out by the application of directive principles".

39. It seems to me that if "aspirations and hopes of the people", "the noble and grand vision found in the preamble" and the chapter on "Directive

Principles of State Policy" are to be taken into account in deciding whether the provisions of the Constitution are being carried out by a particular

Government or not, the scope of interference under Article 356 of the Constitution, so that the provisions of the Constitution may be observed,

becomes quite wide and sweeping. So long as we are bound by the majority view in Kesavananda Bharati's case (supra), the purposes and the

doctrines lying behind its provisions also become, if one may so put it, more or less, parts of the Constitution. Whether a particular view or

proposed action, in a particular situation, amounts to enforcing or subverting the Constitution thus becomes a highly controversial political issue on

which the letter of the Constitution tends to be relegated to the background.

40. As I am, strictly speaking, only concerned with the law, as I find it in the Constitution, I will now proceed to interpret Article 356 as I find it. It

reads:

356(1). If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the

government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the

Governor 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 provision 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 that 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.

(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 of 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 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.

(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".

41. It is true that Article 356 occurs in part XVIII, dealing with "emergency provisions". But there are emergencies and emergencies. An

emergency covered by Article 352 can only be declared if the President is satisfied that a grave emergency exists whereby the security of India or

of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance", Article 352(3) shows that what is

known as "the present and imminent danger rule" is applicable to such emergencies. It is not necessary that the grave emergency contemplated by

Article 352 must be preceded by actual occurrence of war or internal disturbance. The imminence of its danger is enough. But, Article 356, in

contrast, does not contain such restrictions. The effects of a "proclamation of emergency" under Article 352 are given in Article 353 and 354 of

the Constitution.

42. After the first three articles of Chap. XVIII follows Article 355 which enacts:

355. 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 State is carried on in accordance with the provisions of this Constitution.

43. Now, the provisions dealing with the proclamation of emergency under Article 352, which has to be grave and imminent, seem to be covered

by the first part of the duty of the Union towards a State mentioned in Article 355, but the second part of that duty, mentioned in Article 355,

seems to be of a somewhat different and broader character. The second part seems to cover all steps which are enough "to ensure" that the Govt.

of every State is carried on in accordance with the provisions of Constitution. Its sweep seems quite wide. It is evident that it is this part of the duty

of the union towards each State which is sought to be covered by a proclamation under Article 356. That proclamation is not of a grave

emergency. In fact the word emergency is not used there. It is a proclamation intended either to safeguard against the failure of the constitutional

machinery in a state or to repair the effects of a breakdown. It may be either a preventive or a curative action. It is enough if "the President" which,

in view of the amended Article 73(1) really means the union council of Ministers, concludes that "the Government of the State cannot be carried on

in accordance with the provisions of the Constitution." On the other hand, action under Article 352 is, more properly, only defensive and protective

action to be taken to avert or meet a grave and imminent danger.

44. What is the Constitutional machinery whose failure or imminent failure the President can deal with under Article 356 ? Is it enough if a situation

has arisen in which one or more provisions of the Constitution cannot be observed ? Now what provisions of the Constitution, which are not being

observed in a State, or to what extent they cannot be observed are matters on which great differences of opinion are possible. If a broad purpose,

such as that of a democratic Government, contained in the Preamble to our Constitution which was used by this Court, as was done in H.H.

Kesavananda Bharti's case (supra), to infer what has been called the "basic structure", was meant also to be served by Article 356, the scope of

a "situation" in which proclamation under it can be made would seem wide. If the "basic structure" embraces basic democratic norms, the

Constitutional Machinery of Article 356 could conceivably be used by the Union Government for securing compliance with its view of such norms,

when, in its opinion, the State Government has failed to observe them. The Union Government could say: "If, what we think is basic to a

democratic system is not done by you, we will conclude that the Government of your State cannot be carried on by you in accordance with the

provisions of the Constitution. In that case we will take over your power, under Article 356 and do that for the people of your State which you

should yourself have done." Article 356(1) of the Constitution, at any rate, does not seem to us to stand in the way of such a view.

45. Again, if the directive principles of State Policy, which embrace a vast field of legislation for the welfare of the masses of our people, are also

parts of the basic structure, which has to be ensured or maintained by the use of the constitutional machinery, the failure of a State Government or

its legislature to carry out any of the Constitution's mandates or directives, by appropriate legislation, may, according to a possible view, be

construed as a failure of its duties to carry out what the Constitution requires. Our difficulty is that the language of Article 356 is so wide and loose

that to crib and confine it within a straight jacket will not be just interpreting or construing it but will be Constitution making legislation which, again,

does not, strictly speaking, lie in our domain.

46. The abovementioned possibilities seem to follow, quite conceivably from the fairly broad language used in. Article 356(1) and the rather loose

meaning of the basic structure of the Constitution which this Court seems to have adopted in Kesavananda Bharti's case (supra). This view of the

basic structure" seems, so to speak, to annex doctrines to provisions. If that be so, it becomes impossible for us to say that the Union

Government, even if it resorts to Article 356 of the Constitution to enforce a political doctrine or theory, acts unconstitutionally, so long as that

doctrine or theory is covered by the underlying purposes of the Constitution found in the Preamble which has been held to be a part of the

Constitution.

47. We have not sat here to determine whether the concept of a basic structure, found in Kesavananda Bharti's case (supra), requires any

clarification or a more precise definition. I may mention here that I gave the following exposition of what I understood to be "the basic structure" of

our Constitution of which, according to Kesavananda Bharati's case (supra), the doctrine of the supremacy of the Constitution was a part:

Neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the

boundaries of its own constitutionally assigned sphere or orbit of authority into that of the other. This is the logical and natural meaning of the

principle of Supremacy of the Constitution". (See: 285294

48. Even if we were to narrow down the concept of a basic structure to bring it in accordance with the concept found in the passage cited above,

we could only strike down that executive policy which could fairly appear to be a clear deviation from what the basic structure requires. What

would be, as the report of the speech of the Law Minister shows, fairly and reasonably viewed as a policy intended to strengthen or secure what is

included in that basic structure could not be struck down or controlled at all by this Court as that would be an attempt to control executive policy

within a sphere which is its own and where its supremacy must be and has been consistently upheld by this Court.

49. The basic assumption underlying the views expressed above is that each of the three organs of the State-The Executive, the Legislature and the

Judiciary has its own orbit of authority and operation. It must be left free by the other organs to operate within that sphere even if it commits errors

there. It is not for one of the three organs of State either to correct or to point an accusing finger at the other merely because it thinks that some

error has been committed by the other when acting within the limits of its own powers. But, if either the Executive or the Legislature exceeds the

scope of its powers, it places itself in the region where the effects of that excess should be capable of removal by the Judiciary which ought to

redress the wrong done when properly brought up before it. A scrupulous adherence to this scheme is necessary for the smooth operations of our

Constitutional mechanisms of checks and balances. It implies due respect for and confidence in each organ of our Republic by the other two.

50. In 104700 the Allahabad High Court, quite rightly observed:

It is not possible for the Court to assess the political forces and compulsions which necessitated any political party to act.....The Executive and

the Judiciary are independent of each other within their respective spheres. Each is conversant with the peculiar circumstances within its own

sphere and has special knowledge of complicated questions which is denied to the other. Each must have the fullest discretion in the discharge of

its duties. The acts of the Executive are not open to review by the Judiciary as long as there is no violation of the law or the Constitution. It follows

that the Court could not ordinarily comment on any act of the Executive unless the act is such that it is likely to promote disrespect for the law. This

Court must extend the same courtesy to the other branches of government, which it receives from them and refrain from making uncalled for

comments on the wisdom of the acts of the ministers of government.

51. It has, however, been vehemently contended before us that just as it is a part of the Constitutional scheme that neither the executive nor the

legislature should attempt to interfere with the functions of the judiciary operating within its own sphere, and, just as the judiciary does not interfere

with executive or legislative function so long as there is no excess of power, which may be questioned before Courts, similarly, the Union

Government cannot interfere with the normal functions of the Government in a State on the plea that there is a lack of conformity between the legal

rights of the State Government and the opinions of the electorate which could affect only the moral rights of a State Government to continue in

power. It was submitted that such an allegedly moral ground does not give the Union Government the legal right of action under Article 256 of the

Constitution. This, it is urged by Mr. Niren De, raises a constitutional issue of grave import.

52. In some of the complaints, it is asserted that the moral plea sought to be given the colour of a legal right of action under Article 356(1), on behalf of

the people of the State, is an attempt to give a legal and constitutional garb to what is only a matter of political strategy. It is suggested that the

Union Government wants to take an undue advantage of the temporary gust of feeling which is believed to be sweeping the country as a result of

the recent overwhelming victory of the Janata party and its political allies. In other words, both the question of the extent of State autonomy in a

federal structure and an alleged misuse of constitutional power under Article 356 of the Constitution, on grounds said to be extraneous to it, have

been raised on behalf of the States. These considerations are placed before us as aids to a proper construction of Article 356(1) as well as matters

which deserve careful scrutiny and adjudication after ascertainment of correct facts.

53. We are reluctant to embark on a discussion of the abstract principles of federalism in the face of express provisions of our Constitution.

Nevertheless, as the principles have been mentioned as aids to the construction of the Constitution whose basic structure may, no doubt, have to

be explored even when interpreting the language of a particular provision of the document which governs the destiny of the nation, we cannot avoid

saying something on this aspect too.

54. A conspectus of the provisions of our Constitution will indicate that, whatever appearances of a federal structure our Constitution may have, its

operations are certainly, judged both by the contents of power which a number of its provisions carry with them and the use that has been made of

them, more unitary than federal. I mention the use that has been made of the constitutional provisions because constitutional practice and

convention become so interlinked with or attached to constitutional provisions and are often so important and vital for grasping the real purpose

and function of Constitutional provisions that the two cannot often be viewed apart. And where the content of powers appears so vague and loose

from the language of a provision, as it seems to us to be in Article 356(1), for the reasons given above, practice and convention may so crystallise

as to become more significant than the letter of the law. At any rate, they cannot be divorced from constitutional law. They seem to us to be

relevant even in understanding the purpose, the import and the meaning of the words used in Article 356(1). This will be apparent also from a

perusal of the judgment of this Court in 279979

55. The two conditions Dicey postulated for the existence of federalism were: firstly, ""a body of countries such as the Cantons of Switzerland, the

Colonies of America, or the Provinces of Canada, so closely connected by locality, by history, by race, or the like, as be capable of bearing, in the

eyes of their inhabitants, an impress of common nationality""; and, secondly, absolutely essential to the founding of a federal system is the ""existence

of a very peculiar, state of sentiment among the inhabitants of the countries"". He pointed out that, without the desire to unite there could be no basis

for federalism. But, if the desire to unite goes to the extent of forming an integrated whole in all substantial matters of Government, it produces a

unitary rather than a federal constitution. Hence, he said, a federal State ""Is a political contrivance intended to reconcile national unity with the

maintenance of State rights."" The degree to which the State rights are separately preserved and safeguarded gives the extent to which expression is

given to one of the two contradictory urges so that there is a union without a unity in matters of government. In a sense, therefore, the Indian union

is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be

nationally integrated, politically and economically coordinated and socially, intellectually and spiritually up-lifted. In such a system, the States cannot

stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government. The

question of legitimacy of particular actions of the Central Government taking us in particular directions can often be tested and determined only by

the verdicts of the people at appropriate times rather than by decisions of Courts. For this reasons, they become, properly speaking, matters for

political debates rather than for legal discussion. If the special needs of our country, to have political coherence, national integration and planned

economic development of all parts of the country, so as to build a welfare State where ""justice, social, economic and political"" are to prevail and

rapid strides are to be taken towards fulfilling the other noble aspirations, set out in the Preamble, strong central directions seems inevitable. It is

the country's need. That, at any rate, seems to be the basic assumption behind a number of our Constitutional provisions.

56. Mr. Granville Austin, in ""The Indian Constitution Cornerstone of a Nation"" (see p. 186) in the course of an account of our Constitution making,

points out that the members of our Constituent assembly believed that India had unique problems which had not "confronted other federations in

history". Terms such as "quasi-federal" and "statutory decentralization" were not found by the learned author to be illuminating. The concepts and

aspirations of our Constitution makers were different from those in American or Australia. Our Constitution could not certainly be said to embody

Dr. K.C. Wheare's notion of "Federalism" where "The general and regional governments of a country shall be independent each of the other within

its sphere." Mr. Austin thought that our system, if it could be called federal, could be described as "cooperative federalism." This term was used by

another author, Mr. A.H. Birch (see: Federalism, Finance and Social Legislation in Canada, Australia and the United States p. 305), to describe a

system in which:

... the practice of administrative cooperation between general and regional governments, the partial dependence of the regional governments upon

payments from the general governments and the fact that the general governments, by the use of conditional grants, frequently promote

developments in matters which are constitutionally assigned to the regions".

57. In our country national planning involves disbursements of vast amounts of money collected as taxes from citizens residing in all the States and

placed at the disposal of the Central Government for the benefits of the States without even the "conditional grants" mentioned above. Hence, the

manner in which State Governments function and deal with sums placed at their disposal by the Union Government or how they carry on the

general administration may also be matters of considerable concern to the Union Government.

58. Although Dr. Ambedkar thought that our Constitution is federal "inasmuch as it establishes what may be called a Dual Polity," he also said, in

the Constituent Assembly, that our Constitution makers had avoided the "tight mould of federalism" in which the American Constitution was

forged. Dr. Ambedkar, one of the principal architects of our Constitution, considered our Constitution to be both unitary as well as federal

according to the requirements of time and circumstances".

59. If then our Constitution creates a Central Government which is "amphibian", in the sense that it can move either on the federal or unitary plane,

according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of

the "situation" in which the Union Government should move either on the federal or unitary plane are matters for the Union Government itself or for

this Court to consider and determine. Each organ of the Republic is expected to know the limits of its own powers. The judiciary comes in

generally only when any question of ultra vires action is involved, because questions relating to vires appertain to its domain.

60. I may point out that there are various aspects of relations between the Union and the States governed by different provisions of the

Constitution. I may here refer to those which relate to giving of "direction" by the Union Government to the State Governments because Article

365 provides:

365. Where any State has failed to comply with or to give effect to, any directions given in the exercise of the executive power of the union under

any of the provisions of this Constitution, it shall be lawful 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 provisions of this Constitution.

61. Articles 256 and 257 mention a wide range of subjects on which the Union Government may give executive directions to State Governments.

Article 73(1)(a) of the Constitution tells us that the Executive power of the Union extends to all matters on which "parliament has power to make

laws." Article 248 of the Constitution vests exclusively in the Parliament residuary powers of making laws on any matter not enumerated in the

Concurrent or State Lists. Article 256 of the Constitution covers cases where the President may want to give directions in exercise of the executive

power of the Union to a State Government in relation to a matter covered by an existing law made by Parliament which applies to that State. But,

Article 257(1) imposes a wider obligation upon a State to exercise its powers in such a way as not to impede the exercise of executive power of

the Union which, as would appear from Article 73 of the Constitution, read with Article 248 may cover even a subject on which there is no existing

law but on which some legislation by Parliament is possible. It could, therefore, be argued that, although, the Constitution itself does not lay down

specifically when the power of dissolution should be exercised by the Governor on the advice of a Council of Ministers in the State, yet if a

direction on that matter was properly given by the Union Government to a State Government, there is a duty to carry it out. The time for the

dissolution of a State Assembly is not covered by any specific provision of the Constitution or any law made on the subject. It is possible,

however, for the Union Government, in exercise of its residuary executive power to consider it a fit subject for the issue of an appropriate direction

when it considers that the political situation in the country is such that a fresh election is necessary in the interest of political stability or to establish

the confidence of the people in the Govt. of a State.

62. Undoubtedly, the subject is one on which appropriate and healthy conventions should develop so that the power under Article 356(1) is

neither exercised capriciously or arbitrarily nor fails to be exercised when a political situation really calls for it. If the views of the Union

Government and the State Government differ on the subject, there is no reason why the Union Government should not aid the development of

what it considers to be a healthy practice or convention by appropriate advice or direction, and, even to exercise its powers under Article 356(1)

for this purpose when it considers the observance of such a directive to be so essential that the Constitutional machinery cannot function as it was

meant to do unless it interferes. This Court cannot, at any rate, interdict such use of powers under Article 356(1) unless and until resort to the

provision, in a particular situation, is shown to be so grossly perverse and unreasonable as to constitute patent misuse of this provision an excess of

power on admitted facts. On the allegations before us we cannot reach such a conclusion. And, it is not for Courts to formulate, and, much less, to

enforce a convention however, necessary or just and proper a convention to regulate the exercise of such an executive power may be. That is a

matter entirely within the Executive field, of operations.

63. It is futile to urge that Article 172(1) of the Constitution, as amended, lays down an unalterable duration of six years for a legislative assembly

from its first meeting because this article clearly contains the exception ""unless sooner dissolved."" As observed above, it is no where laid down

either in the Constitution or any law dealing with holding of elections to a legislative assembly what circumstances will justify its dissolution sooner

than the duration it would otherwise enjoy.

64. It was argued that the only authority empowered to dissolve a legislature assembly under Article 174(2)(b) of the Constitution was the

Governor of a State who had to act on the advice of the Council of Ministers in the State. It was submitted that the Union Government could not

either advise, or in the form of advice, direct the State Government to ask the Governor to dissolve the State Assembly under any circumstances.

Apparently, the principle of construction relied upon was a much used and easily misused principle; ""expressio unius est exclusio alterius."" We do

not think that such a principle could help the plaintiffs before us at all in as much as Article 356 of the Constitution very clearly provides for the

assumption by the President "to "him-self 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."" Article 174(2)(b) of the Constitution expressly vests the power of dissolving the legislative assembly in the Governor

even if that had to be on the advice of the Council of Ministers in the State, but the power to give such advice would automatically, be taken over

by the Union Government for the purposes of dissolution of the State Assembly when the President assumes governmental powers by a

proclamation under Article 356(1) of the Constitution. A dissolution by the President after the proclamation would be as good as a dissolution by

the Governor of a State whose powers are taken over.

65. The position of the Governor as the Constitutional head of State as a unit of the Indian Union as well as the formal channel of communication

between the Union and the State Government, who is appointed under Article 155 of the Constitution ""by the President by Warrant under his hand

and seal,"" was also touched in the course of arguments before us. On the one hand, as the Constitutional head of the State, he is ordinarily bound,

by reason of a constitutional convention, by the advice of his Council of Ministers conveyed to him through the Chief Minister barring very

exceptional circumstances among which may be as pointed out by my learned brothers Bhagwati and Iyer, JJ., in Shamsheer Singh's case, *supra* (p.

875) a situation in which an appeal to the electorate by a dissolution is called for. On the other hand, as the defender of "the Constitution and the

law" and the watch-dog of the interests of the whole country and well-being of the people of his State in particular, the Governor is vested with

certain discretionary powers in the exercise of which he can act independently. One of his independent functions is the making of the report to the

Union Government on the strength of which Presidential power under Article 356(1) of the Constitution could be exercised. In so far as he acts in

the larger interests of the people, appointed by the President" to defend the Constitution and the Law" he acts as an observer on behalf of the

Union and has to keep a watch on how the administrative machinery and each organ of constitutional Government is working in the State. Unless

he keeps such a watch over all governmental activities and the State of public feelings about them he cannot satisfactorily discharge his function of

making the report which may form the basis of the Presidential satisfaction under Article 356(1) of the Constitution. Indeed, the usual practice is

that the President acts under Article 356(1) of the Constitution only on the Governor's report. But, the use of the words "or otherwise" (in Article

356) show that Presidential satisfaction could be based on other material as well. This feature of our Constitution indicates most strikingly the

extent to which inroads have been made by it on the federal principles of Government.

66. Mr. Setalvad in his Tagore Law Lectures, 1974, on "UNION AND STATE RELATIONS" has observed, while dealing with Governor's role

(at p. 164-165):

The powers of the President under Article 356 have been frequently exercised since the commencement of the Constitution. The occasions for its

exercise emphasise not only the importance of the power in maintaining stable governments in the State, but also the vital role which the Governor

has to play in enabling the Union Executive to exercise the powers vested in it under Article 356. The Constitutional machinery in a State may fail

to function in numerous ways. There may be a political deadlock; for example, where a Ministry having resigned, the Governor finds it impossible

to form an alternative government; or, where for some reason, the party having a majority in the Assembly declines to form a Ministry and the

Governor's attempts to find a coalition Ministry able to command a majority have failed. The Government of a State can also be regarded as not

being carried on in accordance with the Constitution in cases where a Ministry, although properly constituted, acts contrary to the provisions of the

Constitution or seeks to use its powers for purposes not authorised by the Constitution and the Governor's attempts to call the Ministry to order

have failed. There could also be a failure of the constitutional machinery where the Ministry fails to carry out the directives issued to it validly by the

Union Executive in the exercise of its powers under the Constitution. The very statement of some of the situations, which may bring about the use

of the machinery provided by Article 356 shows the pivotal position which the Governor occupies in respect of these situations and the grave

responsibility of his duties in the matter of reporting to the President under Articles 355 and 356 of the Constitution.

67. The question was then mooted whether that, was being done under Article 356 of the Constitution did not amount to taking over by the

President, acting on the advice of the Union Council of Ministers, of powers for dissolving the State Assemblies upon facts and circumstances

which, in the judgment of the Union Council of Ministers, constituted sufficient grounds for a dissolution of the State Assembly, whereas the

Constitution provides that this had to be done by the State Government on the advice of the Council of Ministers in a State. Such an argument is

really an argument in a circle. It assumes that the taking over by the President, advised by the Union Council of Ministers, of the functions of the

Governor, advised by the State Council of Ministers, on this matter, was outside the purview of Article 356(1). A situation in which, according to

the view of the Union Government, the State Council of Ministers had wrongly failed to advise the State Governor to dissolve the State Legislative

Assembly, so that action under Article 356(1) has to be taken, would be exceptional in which articles governing the exercise of functions normally

are suspended and do not operate at all. If Article 356(1) of the Constitution or any other article contained any provision which amounted to a

prohibition against assumption of powers of dissolution of State Assemblies by the President of India, it would be a different matter, but that, as we

have repeatedly pointed out, is not the position here. Indeed, such a provision, had it been there, would have completely nullified Article 356(1).

Obviously, a proclamation under Article 356(1) to be effective must suspend the operation of Article 174. It is evident that one of the reasons,

perhaps the main reason for bringing about this exceptional situation in the cases now before us, is the refusal of the State Chief Ministers to

comply with the advice sent to them which they equate with a "direction" given in exercise of the executive powers of the Union Government.

68. If constitutionally correct practises could also be pointed out and enforced by the Union Government so that provisions of our Constitution

may operate in the manner in which they were intended to do and none of their objects is frustrated, it may be useful to glance at the convention

which governs exercise of the Crown's "prerogative" power of dissolution of Parliament in England. Dicey in his law of the Constitution 10th Edn.,

(at p. 432) observed:

The prerogative, in short, of dissolution may constitutionally be so employed as to override the will of the representative body, or as it is popularly

called. "The People's House of Parliament." This looks at first sight like saying that in certain cases the prerogative can be so used as to set at

nought the will of the nation. But in reality it is far otherwise. The discretionary power of the Crown occasionally may be and according to

constitutional precedents sometimes ought to be, used to strip an existing House of Commons of its authority. But the reason why the House can in

accordance with the Constitution be deprived of power and of existence is that an occasion has arisen on which there is fair reason to suppose that

the opinion of the House is not the opinion of the electors. A dissolution is in its essence an appeal from the legal to the political sovereign. A

dissolution is allowable, or necessary, whenever the wishes of the legislature are, or may fairly be presumed to be different from the wishes of the

nation".

69. It was pointed out by Dicey that the conventional use of the "prerogative" of the Crown to dissolve Parliament in an exceptional situation, even

when the Government in power had the support of a majority behind it, was established. He gave two instances; one of a dissolution of Parliament

in 1784 and another in 1834.

70. Presumably, two instances, with a gap of fifty years between them, were considered enough by Dicey to establish a convention governing

exceptional situations. A perusal of other authorities, such as Anson on "The Law & Custom of the Constitution" or Erskine May's "Parliamentary

Practice", leads us to no different result. Dicey's statement reveals: firstly, there is, according to British convention, a "right" of a Government,

which no longer commands the support of a majority in the House of Commons, to demand a dissolution or to force an appeal to the electorate or

the "political sovereign"; and, secondly, there is an "overriding" discretion in the Crown even to disregard the advice of the Prime Minister, the

spokesman of the whole body of Ministers, with a majority in the Lower House behind him and to force a dissolution in an exceptional situation.

71. A recent study of "The Theory and Practice of Dissolution of Parliament", with particular reference to the experiences of United Kingdom and

Greece, by Dr. B.S. Markesinis, in the Cambridge "International and Comparative Law" series (1972), contains a detailed discussion of views of

various authors and accounts of political situations which had arisen in more recent times with regard to dissolutions. This study brings out the grave

responsibility of the Crown when assessing what Prof. Laski called the "Critical circumstances in which the Crown may exercise its discretion to

force a general election" which may result in "a direct confrontation between the monarch and his people" if the King acts contrary to the advice

of the Government supported by a majority in the House of Commons. After an illuminating discussion of the views of Constitutional lawyers and

experts, such as Keith, Jennings, Laski, Hubert and Morgan, Dr. Markesinis refers to an impressive letter of the British Prime Minister Mr.

Asquith to the King written on 31st July, 1914. That letter contained the following passage:

Sovereign undoubtedly has the power of changing his advisers but it is relevant to point out that there has been during the last 130 years, one

occasion only on which the King has dismissed the Ministry which still possessed the confidence of the House of Commons, (he continues:)

Nothing can be more important, in the best interest of the Crown and the Country, than that a practice, so long established and so well justified by

experience, should remain unimpaired. It frees the occupant of the throne from all personal responsibility for the acts of the executive and the

legislature.

The King expressed his gratitude to the Prime Minister for advising him against being ""dragged into arena of party politics"" whether the King

wished it or not"" and acted on the Prime Minister's advice.

72. In so far as growth of healthy conventions on such a subject are essential for the satisfactory operations of the machinery of democratic

Government, this is a matter on which there could and should be a broad agreement or consensus between all parties interested in a satisfactory"

working of the democratic system in this country. It is not a matter on which the Court can give its opinion as to what the proper precedent or view

to follow or course of action to pursue in a particular situation is. All that this Court can do is to consider whether an action proposed on such a

matter on certain grounds, would fall under Article 356(1) of the Constitution if the Union Government and the state Governments differ on the

question whether, in a particular situation, the dissolution of the State Assembly should take place or not. The most that one could say is that a

dissolution against the wishes of the majority in a State Assembly is a grave and serious matter. Perhaps it could be observed by us that it should

be resorted to under Article 356(1) of the Constitution only when ""a critical situation"" has arisen. As the study of Dr. Markesinis shows it is not

always necessary that, under a multiple party system, the mere defeat of a State Government in a State Assembly must necessarily create a

situation in which a dissolution of the State Assembly is obligatory. If an alternate Government is capable of being formed which commands the

support of a majority in the State Assembly, it may not be ordered even when a Government in power is defeated in the State Assembly. The

position may, however, be very different when a -State Government has a majority in the State Assembly behind it but the question is whether the

State Assembly and the State Government for the time being have been so totally and emphatically rejected by "he people that a ""critical situation

has arisen or is bound to arise unless the ""political sovereign"" is given an opportunity of giving a fresh verdict. A decision on such a question

undoubtedly lies in the Executive realm.

73. It may be that, if the need to an appeal to the electorate is put forward only as a thin disguise for punching a State Government by repeated

dissolutions within short periods, the use of Article 356(1) for such a purpose may appear to be plainly outrageous and extraneous. In such

hypothetical and very exceptional circumstances the action of the Union Government may appear to be mala fide and in excess of the power under

Article 356(1) of the Constitution. But, nothing like that alleged in any of the complaints or petitions. On the other hand, it seems that the advice given

to the Chief Ministers of different States is based on a matter of a uniform general policy resulting from an estimate of what, in the opinion of the

Union Government, is a critical juncture in the history of the whole nation so that the people in the States must be given an opportunity of showing

whether the party in power in the States should or should not pursue policies which may be at variance with those of the Union Government. No

fact is alleged showing any personal animus of any member of the Union Government against a State Government or a State Assembly. As the

question of the proper time for a dissolution of the State Assembly is not a matter extraneous to Article 356(1) of the Constitution, the most that

can be said is that questions raised do not go beyond sufficiency of grounds for resorting to Article 356(1) of the Constitution.

74. In our country, the power of dissolving the State Legislature has been exercised by the Union Government or by the Governor carrying out the

directions of the Union Government after a proclamation under Article 356(1) of the Constitution on more than two dozen occasions since the

commencement of the Constitution. On several of these occasions, Presidential Proclamations under Article 356(1) were assailed on various

grounds before High Courts. On each occasion the attack failed. The cases cited before us were: 544986 944555 and 426738

75. In no case brought to our notice was the power of the President to dissolve a State Assembly, either by means of a Proclamation under Article

356(1) itself or after it, challenged on the ground that it falls outside Article 356(1). It was urged before us that the sole purpose of the intended

Proclamations being procurement of dissolutions of the State Legislatures with the object of gaining political victories was both extraneous and

mala fide. It seems to us that the assertions that the exercise of power was mala fide in fact and in law were made on the assumption that the whole

object of the exercise of the power is only to gain a political victory.

76. As we have tried to indicate above, attempts to secure political victories, by appeals to the electorate, are parts of the recognised rules of a

democratic system of government permitting contests between rival parties so as to achieve certain other objectives. If such a contest with the

desire for achieving a political victory in order to enforce certain programmes, believed by the members of a party to be beneficial for the people in

a State, as a method of achieving the objects set out in the Preamble, are not only legal and permissible under the Constitution, but, obviously,

constitute the only possible legitimate and legal means of attaining the power to enforce policies believed to be correct by various parties,

according to their own lights, it could not possibly be asserted that procuring the dissolution of a State Legislative Assembly, with the object of

gaining a political victory, is, in itself, an extraneous object which could not fall at all under Article 356 of the Constitution. In order to apply the

doctrine that something cannot be done indirectly because it could not be done directly, it must first be established either that the object or the

means are legally prohibited. In the cases before us, it does not appear to us that the object of gaining a political victory, set out in the complaints is, by

itself, legally prohibited. Nor is there anything in law to prohibit a recourse to the means adopted. There is no assertion in the complaints or the petitions

that anything is being done or attempted by legally prohibited means for a legally prohibited purpose. All that is suggested is that it is morally

reprensible to try to obtain an electoral victory in the States by dissolving the Assemblies so as to get rid of the Congress Governments in power

there. On such a question of moral worth of either the ends or the means adopted, this Court cannot possibly sit in judgment. It is enough for our

purposes that the complaints and the petitions do not disclose anything extraneous to the purpose of Article 356(1) of the Constitution in the eyes of

law. The sufficiency or adequacy of the grounds for action under Article 356(1) of the Constitution is quite another matter. We do not think that

we can go into that at all here.

77. We find that in the complaint of the State of Himachal Pradesh the term "prerogative" has been used for the power of the State Governor to

dissolve a Legislative Assembly, under Article 174, as though there was a violation of that "prerogative" by some paramount "prerogative" asserted

by the Union Government. I do not think that the term "prerogative" can be correctly used, in its technical sense, with reference to any power

exercised under our Constitution. In English few the term prerogative" is used for "the residue of discretionary power left at any moment in the

hands of the Crown whether such power be in fact exercised by the King himself or by his Ministers". (See: Keir and Lawson's cases in

Constitution Law, 5th Edn. p. 151). Dicey said: "Every act which the executive Government can lawfully do without the authority of the Act of

Parliament is done in virtue of this prerogative". (Dicey: Law of the Constitution, 10th Edn., p. 425). It is, however, an established principle of

British Constitutional law that no claim to prerogative could survive the passing of a statute covering that very subject because the so-called

prerogative merges in the statute (Attorney General v. Dr. Keyser's Royal Hotel [1920] A.C. 508. It cannot conflict with statute. Under our

Constitution there is no "prerogative" in that technical sense. All constitutional powers are regulated by our written Constitution. There may be

room for the development of conventions on a matter not fully covered as to the mode of exercise of a discretion or power. But, that is a matter

distinct from "prerogative". Under our Constitution, the residue of that power, which is neither legislative nor judicial, is covered by the caption:

Executive"". Thus, the equivalent of most ""prerogative"" powers would fall, under our law, under the heading of ""executive"" powers. Inasmuch as

the term ""prerogative"" is sometimes used in a wider non-technical sense, as something which gives pre-eminence or an overriding attribute to a

power, it may be said that such a power is lodged in the Union Government under Article 356(1) of the Constitution on all matters covered by that

provision. The only question in such cases is whether the matter in relation to which the Union Government is proceeding or has acted is or is not

within the purview of Article 356(1) of the Constitution. If it lies within that sphere, the Courts cannot interfere on the ground, at any rate, that it is

extraneous.

78. Whenever the exercise of power to issue a proclamation under Article 356(1) of the Constitution has been challenged in a High Court it has

been held that sufficiency of grounds ""on which the order is based could not be questioned. Some of the dicta found there seem to lay down that

the exercise of power to issue proclamations is not justiciable at all under any circumstances. This Court has not gone so far as that. If it is actually

stated on behalf of the Union Government that an action was taken on a particular ground which really falls completely outside the purview of

Article 356(1), the proclamation will be vitiated, not because the satisfaction was challenged or called in question on any ground but because it was

admitted to be on matters outside Article 356(1).

79. A challenge to the exercise of power to issue a proclamation under Article 352 of the Constitution would be even more difficult to entertain

than to one under Article 356(1) as all these considerations would then arise which Courts take into account when the Executive, which alone can

have all the necessary information and means to judge such an issue, tells Courts that the nation is faced with a grave national Emergency during

which its very existence or stability may be at stake. That was the principle which governed the decision of the House of Lords in *Liversidge v.*

Anderson [1942] AC 206.. The principle is summed up in the salutary maxim: *Salus Populi Supreme Lex*. And, it was that principle which this

Court, deprived-of the power to examine or question any materials on which such declarations may be based, acted in *Additional District*

Magistrate, Jabalpur v. Shivakant Shukla [1976] Suppl. S.C.R. 172.. We need not go so far as that when we have before us only a proclamation

under Article 356(1).

80. A reference was made by both sides to *Bhagat Singh and Ors. v. The King-Emperor*, 50 I.A. 169, where the Privy Council interpreted the

pro-visions of Section 72 of the Government of India Act, which authorised the Governor-General in cases of Emergency to promulgate

ordinances ""for the peace and good Government of British India or any part thereof ""which was not to last beyond six months"". In that case, an

attempt was made to question the existence of a State of Emergency. Viscount Dunedin, observed (at p. 172):

A state of emergency is something that does not permit of any exact definition: It connotes a state of matters calling for drastic action, which is to

be judged as such by some one. It is more than obvious that someone must be the Governor-General and he alone. Any other view would render

utterly inapt the whole provision. Emergency demands immediate action and that action is prescribed to be taken by the Governor-General.

81. The power of the Governor-General was described as ""an absolute power"" in Bhagat Singh's case (supra), but learned Counsel for the

plaintiffs relied on the observation there that ""it is only to be used in extreme cases of necessity where the good Government of India demands it"".

We do not think that much assistance can be derived from a provision of the Government of India Act, 1935, which was really the precursor of

Article 123 of our Constitution and meant for use in a different context in an Imperialistic era. Nevertheless, it shows that, even without a provision

ousting the jurisdiction of the Courts, the subjective satisfaction of the Governor-General was held to be unquestionable. Considerations which

have arisen before us while considering the use and the ambit of Article 356(1) of our Constitution were not before the Privy Council at all in that

case.

82. King Emperor v. Benorilal Sarma and Ors.⁷² I.A. 57, also relating to the ordinance making powers of the Governor-General u/s 72 of the

Government of India Act, 1935, was cited. In that case, Bhagat Singh's case (supra) was commented upon. It was observed (at p. 62):

The definition of emergency in Bhagat Singh's case does not purport to be exhaustive, but it does say that it connotes a state of matters calling for

drastic action and that it demands immediate action. Emergency does not mean emergency at large. u/s 72 of the Government of India Act the

emergency with which the Governor-General is dealing should be an existing emergency and should call for the particular kind of immediate action

which he proposes to take. If the particular kind of emergency which in the Governor-General's opinion justifies a particular kind of action, is in

itself wholly in prospect and not present, then although there may be present an emergency of some other kind, that would not justify, u/s 72, the

ordinance being made. The existence of the emergency requiring immediate action is, under that section, the basis to a condition precedent which

must be fulfilled by himself alone.

83. This shows that the Court could inquire into the existence of a condition precedent to the use of emergency powers.

84. A reference was also made to the following passage from Padfield and Ors. v. Minister of Agriculture, Fisheries and Food and Ors.^[1968]

A.C. 99 :

It is said that the decision of the Minister is administrative and not judicial. But that does not mean that he can do as he likes, regardless of right or

wrong. Nor does it mean that the courts are powerless to correct him. ""Good administration requires that complaints should be investigated and

that grievances should be remedied. When Parliament has set up machinery for that very purpose, it is not for the Minister to brush it on one

side. He should not refuse to have a complaint investigated without good reason.

85. Cases before us are not those of a grave national emergency of the kind, covered by- Article 352 of the Constitution. Nevertheless, analogous

principles seem to govern the exercise of extraordinary powers conferred by Article 356(1) on the highest executive authorities of the Indian Union

who are expected to act with the utmost sense of responsibility. Such a consideration, combined with the existence of Parliamentary control on the

exercise of such powers by ministers responsible directly to Parliament, was taken into account, in *Liver-sidge's* case (*supra*), to abstain from

judicial interference.

86. Courts have consistently held issues raising questions of mere sufficiency of grounds of executive action, such as the one under Article 356(1)

no doubt is to be non-justiciable. The amended Article 356(5) of the Constitution indicates that the Constitution makers did not want such an issue

raising a mere question of sufficiency of grounds to be justiciable. To the same effect are the provisions contained in Article 352(5), 360(5).

Similarly, Articles 123(4), 213(4), 239B(4) bar the jurisdiction of Courts to examine matters which, lie within the executive discretion. Such

discretion is governed by a large element of policy which is not amenable to the jurisdiction of courts except in cases of patent or indubitable mala

fides or excess of power. Its exercise rests on materials which are not examinable by Courts. Indeed, it is difficult to imagine how the grounds of

action under Article 356(1) could be examined when Article 74(2) lays down that "the question whether any and if so, what advice was tendered

by the Ministers to the President, shall not be inquired into in any Court.

87. It is true that, as indicated above, the advice tendered by the Ministers to the President cannot be inquired into. It is also clear beyond doubt

that the amended Article 74(1) of the Constitution, whose validity has not been challenged before us by any party, makes it obligatory on the

President to act in accordance with the advice tendered by the Union Council of Ministers, to him through the Prime Minister. Nevertheless, if all

the grounds of action taken under Article 356(1) of the Constitution are disclosed to the public by the Union Government and its own disclosure of

grounds reveals that a constitutionally or legally prohibited or extraneous or collateral purpose is sought to be achieved by a proclamation under

Article 356 of the Constitution, this Court will not shirk its duty to act in the manner in which the law may then oblige it to act. But, when we find

that allegations made in the complaints and in the petitions before us relate, in substance, only to the sufficiency of the grounds of action under Article

356(1) of the Constitution and go no further, we cannot proceed further with the consideration of the complaints under Article 131 or the petitions

under Article 32 of the Constitution.

88. I would not like to leave certain other matters also argued before us untouched in this fairly comprehensive expression of our views. It was

urged that the power of dissolution of a State Legislative Assembly, even if it could be assumed by the President under Article 356(1) of the

Constitution, after a failure of the State Government to carry out a direction of the Union Government on the subject, could not be exercised unless

and until the matter had been placed before both the Houses of Parliament so that it had been subjected to such control as either of the two

Houses of Parliament may chose to exercise over it. Proclamations under Article 356(1) are bound to be placed under Article 356(3) of the

Constitution before each House of Parliament. Unfortunately, however, for this line of argument, there is not only nothing in Article 356 to make a

consideration by either House of Parliament a condition precedent to the exercise of the power of dissolution of a State Legislative Assembly by

the President under Article 356(1), but, on the other hand, Article 356(3) makes it clear that the only effect of even a failure or refusal by either

House of Parliament to approve the proclamation is that it ceases to operate after two months. Obviously, this means that it operates for at least

two months. Hence, whatever is done in these two months cannot be held to be illegal for that reason alone. The interpretation placed before us for

acceptance is directly opposed to the language of the provisions of the Constitution. It has, therefore, to be rejected by us outright as quite

unreasonable and unacceptable. It is true that the exercise of power under Article 356 of the Constitution is subject to Parliamentary control. This

means that it is subject to such control as the two Houses, out of which the Council of States really represents the State Assemblies, may be able

to exercise during the period for which the proclamation lasts. But, the existence of such Parliamentary control, as a safeguard, cannot possibly

nullify the legality of what is done in the period during which the Proclamation lasts.

89. It was also contended by Mr. R. K. Garg that, unless the Parliament acts legislatively for the State Legislature, the incurring of any expenditure,

by the Governor or anybody else after a Presidential Proclamation under Article 356, would not be permissible in view of Article 357(1)(c) of the

Constitution. After making such an assumption, we were asked to import an implied prohibition against a dissolution of a State Legislative

Assembly unless and until both Houses of Parliament had discussed and approved of it.

90. Article 357 is headed ""Exercise of legislative powers under Proclamation issued under Article 356"". It lays down:

357(1). Whereby 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 issued 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 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

provision which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

91. I think that Article 357 has very little to do with the incurring of any expenditure by the President after powers of Governments of States have

been assumed by the President under Article 356(1)(a) of the Constitution. It really governs the position when the legislative powers of a State

legislature have been transferred to Parliament by a Presidential Proclamation under Article 356(1) of the Constitution. By means of such a

Proclamation the President may assume to himself under Article 356(1)(a) all or any of the functions of the Government of the State and all or any

of the powers of any authority, or body in the State other than the State Legislature. The Proclamation may or may not contain also a declaration

contemplated by Article 356(1)(b) of the Constitution enabling the exercise of the powers of the. State Legislature by or under the authority of

Parliament. It is only when the Proclamation contains a declaration under Article 356(1)(b) also that the question of incurring expenditure under the

authority of the President from the Consolidated Fund of the State ""pending sanction of such expenditure by Parliament"" can arise. The power of

the President to authorise expenditure from the Consolidated Fund awaiting a sanction by Parliament is provided for only for those cases where the

State Legislature's power has been transferred by the Presidential proclamation to Parliament under Article 356(1)(b) of the Constitution and the

Parliament is not in session. That is a contingency which could only arise when there is a prolonged presidential rule requiring the vesting of the

functions of the State legislature in, Parliament so that the President may be able to authorise expense in anticipation of Parliamentary sanction

when the House of the People is not in session. When the Presidential proclamation does not contain any declaration under Article 356(1)(b) of

the Constitution at all because the Presidential rule is of short duration and for a specific purpose, there is nothing which will disable the President

from incurring expenditure under some law already made by the Legislature of the State. Incurring of expenditure in accordance with that law will

be covered by the provisions of Article 356(1)(a) of the Constitution.

92. In other words, although Article 356(1)(a) of the Constitution imposes a bar against the assumption by the President of the legislative powers

of the State Legislature, which could only be transferred to Parliament, yet, its provisions, read with Article 357 of the Constitution, do not operate

as an absolute bar on any expenditure which could be legally incurred by the President or under the Presidential authority in accordance with pre-

existing State laws authorising expenditure by other authorities or bodies whose powers can be taken over by the President under Article 356(1)

(a). In any case, the provisions of Article, 357 could not possibly be used as a bar against a dissolution of the State Assembly by a Presidential

Proclamation. Nor can they be used to import and read, as a condition precedent to the Presidential proclamation under Article 356(1)(a)

involving, as it usually does, the dissolution of the State Assembly, an approval of both or either of the two, Houses of Parliament. To spell out

some conditions precedent or bars from the provisions of Art 357 of the Constitution against the exercise of powers of the President to issue

Proclamations under Article 356(1) of the Constitution would be utterly unsound. Constitutional provisions meant for different purposes cannot be

mingled and confused with each other when each is meant to regulate different sets of powers meant to be exercised by different authorities or

bodies under different circumstances.

93. Objections were also put forward to the maintainability of the suits before us under Article 131 of the Constitution on the ground that this

provision covers only disputes between the Government of India and one or more ""States"" or between two or more ""States"". This provision which

may be set out in full here reads as follows:

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any

dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other;

(c) between two or more States;

if and in so far as the dispute involves any question (whether of law or fact) on, which the existence or extent of a legal right depends;

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement sanad or other similar

instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such

commencement, or which provides that the said jurisdiction shall not extend to such, a dispute.

94. It was argued that there is a distinction between a State and a State Government. It was urged that the jurisdiction under Article 131 is a

peculiar one meant for special kinds of disputes in which States, as such, ought to be interested and not merely Governments of States which may

come and go. It was pointed out that, if the Union Government sought to deprive a State of any constitutional right it would be a different matter

which could be taken up by a State Government on behalf of the State or its people. But, it was , submitted, there is no right given to any State by

the Constitution that its Government or Legislative Assembly would continue undissolved for any period. The dispute before us relates to the time

at which and the authority by which the power of dissolution could be exercised in the situation which confronted the people in the nine States

concerned.

95. Reference was made to passages from 283250 and the United Provinces v. The Governor-General in Council. [1939] F.C.R. 124. It seems

to me that the decision of this Court in State of Bihar and Union of India and Anr. (supra) was largely based upon the assumption that Article 131

was meant to cover the same area as s. 204 of the Government of India Act. Moreover, the learned Additional Solicitor General, appearing on

behalf of the Union, did not press the argument that Article 131 is confined to declaratory decrees in view of the fact that (as Mr. Seervai pointed

out in the Constitutional Law of India, 2nd Edn. Vol. II at p. 1385) Article 142(1) of the Constitution provides for enforcement of decrees this this

Court. The view expressed in the Bihar case (supra) seemed to have been affected considerably by the fact that there was no pro-vision in the

Government of India Act of 1935 for the enforcement of the decrees of the Federal Court, but Article 142(1) seems to have been overlooked in

that case.

96. Article 300 of the Constitution provides, inter alia, that ""the Government of a State may sue or be sued by the name of the State"". From this,

Mr. Niren De wanted us to infer that there was no distinction between a State and the State Government as juristic entities. Even if there be some

grounds for making a distinction between a State"s interests and rights and those of its Government or its members, I do not think that we need

take a too restrictive or a hyper-technical view of the State"s rights to sue for any rights, actual or fancied, which the State Government chooses to

take up on behalf of the State concerned in a suit under Article 131. Moreover as we have decided not to grant any reliefs after having heard

detailed arguments and fully considered the merits of contentions advanced by both sides, I do not think that we need determine, on this occasion,

the precise scope of a suit under Article 131. I prefer to base my judgment on other grounds.

97. Having considered the cases set out in the complaints and the petition before us, from every conceivable angle, I am unable to find a cause of

action for the grant of any injunction or a writ or order in the nature of a Mandamus against any of the Defendants Opposite parties.

98. In my opinion, perhaps the technically more correct order, in the situation before us would have been, on the findings reached by me, one

rejecting the complaints under Order XXIII, Rule 6 of the Rules of this Court and rejecting the Writ Petitions in limine. Afterall, we had not proceeded

beyond the stage of hearing certain preliminary objections put forward by Mr. Soli Sorabji, Additional Solicitor General, to the maintainability of

the suits and petitions before us. Although, we heard very full arguments on these preliminary objections, we did not even frame any issues which is

done, under the provisions of Part III of the Rules of this Court, applicable to the exercise of the Original Jurisdiction of this Court, before we

generally formally dismiss a suit. However, as the form in which we have already passed our orders, dismissing the suit and petitions, which was

approved by us on 29th April, 1977, has substantially the same effect as the rejection of complaints for failure to disclose a triable cause of action, I

concur in the orders already recorded. The parties will bear their own costs.

Chandrachud, J.

99. The Lok Sabha in which the Congress (R) had an overwhelming majority was dissolved on January 18, 1977 though under the Constitution

(42nd Amendment) Act, it had another year to run out its extended term. Fresh elections were held to the Lok Sabha in March 1977 in which the

ruling party lost its majority and went out of power which it had exercised since Independence. On March 24, 1977 the Janata party which

secured the verdict of the electorate formed the new government at the center. This is an unprecedented event since, for the first time in the history

of this country, the ruling party at the center is not in power in any of the federating States. On the date that the Janata party took office, the

Congress (R) was in power in various States including Bihar, Haryana, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar

Pradesh and West Bengal.

100. On April 18, 1977 Shri Charan Singh, Union Home Minister, addressed a letter to the Chief Ministers of these States ""earnestly

commending"" for their consideration that they may advise the Governors of their respective States ""to dissolve the State Assembly in exercise of

the power under Article 174(2)(b) and seek a fresh mandate from the electorate."" ""This alone"", according to the Home Minister's letter, would be

consistent with constitutional precedents and democratic practices.

101. In an interview on April 22nd in the ""Spot-light programme"" of All India Radio, Shri Shanti Bhushan, Minister for Law, Justice and Company

Affairs said that ""a clear case had been made out for the dissolution of the Assemblies in the nine Congress-ruled States and holding of fresh

elections"", since ""a serious doubt had been cast on their enjoying the peoples" confidence, their party having been rejected in the recent Lok Sabha

elections"". A report of this interview appeared in various newspapers including the "Statesman" of the 23rd. The correctness of the report is not

disputed.

102. On the 25th/26th April, six out of nine States filed suits in this Court under Article 131 of the Constitution. On the 25th, three members of the

Punjab Legislative Assembly filed Writ Petitions in this Court under Article 32. By a unanimous order dated April 29, we dismissed the suits and

writ petitions as also motions for interim relief. Reasons for the order remained to be given.

103. With respect, I agree with the conclusion of my Lord the Chief Justice but considering that the matter is of a singular nature, I would like to

express my view on some of the issues debated before us.

104. In substance, the suits and writ petitions have been filed to obtain a declaration that the directive contained in the Home Minister's letter to

the Chief Minister's is unconstitutional, that the State Governments are not legally or constitutionally obliged to comply with it, that the refusal of the

Chief Ministers to give effect to the directive cannot be made a basis for the issuance of a proclamation under Article 356 and that the said article

cannot be invoked for the sole purpose of dissolving the State Assemblies and holding fresh elections. The Writ Petitioners complain of the

deprivation of their right of property since, if the Legislative Assemblies are dissolved, they will be denied the right to receive salary as members of

these Assemblies. An injunction is sought by the plaintiffs and the petitioners to restrain the Union of India, amongst others, from giving effect to the

Home Minister's directive.

105. The learned Additional Solicitor-General has raised a preliminary objection to the maintainability of the suits which may first be disposed of.

Article 131(a) of the Constitution confers on the Supreme Court, subject to the other provisions of the Constitution, exclusive original jurisdiction in

any dispute between the Government of India and one or more States, if and in so far as the dispute involves any question (whether of law or fact)

on which the existence or extent of a legal right depends. It is urged by the Additional Solicitor-General that the dispute involved in the suits filed by

the State Governments is outside the scope of Article 131 since the dispute is not between the Government of India and State as such, but the

dispute is between the Government of India on the one hand and each of the nine State Governments on the other. The dispute relates to the

question whether the State Assemblies should be dissolved and that, according to the counsel, does not involve any question on which the

existence or extent of a legal right depends. Whether the State Assemblies should be dissolved or not is a matter of political expediency and though

the Government for the time being in power in a State may be interested in the continuance of the Legislative Assembly for the full term, the State

has no legal right to ensure such continuance. Indeed, it is urged, the State, apart from the State Government, is not even interested in the question

whether a particular Legislative Assembly should or should not be dissolved because the State as a constitutional entity is never interested in the

complexion of the Government The argument, in other words, is that Legislative Assemblies may come and go but the State lives for ever and

therefore the dispute is outside the purview of Article 131.

106. The preliminary objection is based on an unpragmatic view of the functioning of the Constitution and has therefore to be rejected. Article 367

of the Constitution applies the General Clauses Act, 1897 for the interpretation of the Constitution but nothing contained in Section 3(58) of that

Act, which defines ""State"" or in Section 3(60) which defines ""State Government"" helps determine the question whether suits of the present nature

are foreign to the scope of Article 131. The work-a-day definitions of ""State"" and ""State Government"" contained in the General Clauses Act

neither touch upon the problem of alleged dichotomy between a State and its government nor do they, even if applied literally, throw any useful

light on the question whether a dispute regarding the dissolution of a State Assembly can legitimately be propounded or defended by the State as a

perpetual political entity; Truly, the definitions say no more than this: ""State"" means a State specified in the 1st Schedule of the Constitution and

State Government"" means ""The Governor"". All of the six States who have filed the suits in this Court are included in the 1st Schedule. And though

there is a point that turns on the non-use of the expression ""State Government"" in Article 131, a point which I will consider presently, the fact

remains that there is no occasion for applying the dictionary of the General Clauses Act, Section 3(60), to the interpretation of Article 131.

107. The absence of the expression ""State Government"" and the use in its place of the expression ""State"" in Article 131, is said to furnish intrinsic

evidence that for a suit to fall under that Article, the dispute must arise between the Government of India and a State, not between the Government

of India and the Government of a State. The intrinsic evidence, it is argued, assumes greater credibility in the context that the article does employ

the expression ""Government of India"" when what was meant was the government, as contradistinguished from the State. The presence of the

particular expressions in Article 131 does not, in my opinion support the inference, suggested on behalf of the Union of India. The use of the

phrase ""Government of India"" in Article 131(a) and (b) does not mean that one party to the dispute has to be the Government of the day at the

center. ""Government of India"" means ""Union of India"" because if there be merit in the logic that Article 131 does not comprehend disputes in which

the Government of a state as contrasted with the State itself is interested, it must follow that correspondingly, the ""Government of India"" too cannot

mean the Government for the time being in power at the center. The true construction of Article 131(a), true in substance and true pragmatically, is

that dispute must arise between the Union of India and a State.

108. This may sound paradoxical because if the preliminary objection is unsustainable, it would be easier to say that the expression ""Government

of India"" means ""Government in office"" and the expression ""State"" means the State as a polity and not ""the Government in Office"". But convenient

interpretations are apt to blur the significance of issues; involved for interpretations. Therefore, the effort has to be to accept what the words truly

mean and to work out the Constitutional scheme as it may reasonably be assumed to have been conceived.

109. The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in

office at the center and the Government in office in the State. "In office" means "in power" but the use of the latter expression may prudently be

avoided with the realization of what goes with power. But there is a further prerequisite which narrows down the ambit of the class of disputes

which fall within Article 131." That requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent

of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within

Article 131. Mere wrangles between governments have no place in the scheme of that article. They have to be resolved elsewhere and by means

less solemn and sacrosanct than a court proceeding. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend

for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or

extent of a legal right that Article 131 is attracted.

110. It seems to me impossible to hold that the suits filed by the six. States do not raise a dispute involving a question depending upon the

existence or extent of a legal right. The plaintiffs, by their suits, directly and specifically question the constitutional right and authority of the Union

Government to issue a directive to the State Government commending that the Chief Ministers should tender a certain advice to their GovernOrs.

The plaintiffs also question the constitutional right of the Union Government to dissolve the State Assemblies on the grounds mentioned in the

Home Minister's letter to the Chief Ministers. Thus a legal, not a political, issue arising out of the existence and extent of a legal right squarely

arises and the suits cannot be thrown out as falling outside the purview of Article 131.

111. The error of the preliminary objection lies in the assumption that it is necessary for attracting Article 131 that the plaintiff must assert a legal

right in itself. That article contains no such restriction and it is sufficient in order that its provisions may apply that the plaintiff questions the legal or

constitutional right asserted by the defendant, be it the Government of India or any other State. Such a challenge brings the suit within the terms of

Article 131 for, the question for the decision of the Court is not whether this or that particular legislative Assembly is entitled to continue in office

but whether the Government of India, which asserts the constitutional right to dissolve the Assembly on the grounds alleged, possesses any such

right.

112. I find it difficult to accept that the State as a polity is not entitled to raise a dispute of this nature. In a federation, whether classical or quasi-

classical, the States are vitally interested in the definition of the powers of the Federal Government on one hand and their own on the other. A

dispute bearing upon the delineation of those powers is precisely the one in which the federating States, no less than the Federal Government itself,

are interested. The States, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the Union

Government. The bond of constitutional obligation between the Government of India and the States sustains that locus.

113. The expression ""legal right"" which occurs in Article 131 has to be understood in its proper perspective. In a strict sense, legal rights are

correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense,

the word ""right"" is used to mean an immunity from the legal "power of another immunity is exemption from the power of another in the same way as

liberty is exemption from the right of another. Immunity, in short, is no-subjection.""(1) R.W.M. Dias says in his ""Jurisprudence"" 1976 Ed. 33 that

the word ""right"" has undergone successive shifts in meaning and connotes four different ideas concerning the activity, or potential activity, of one

person with reference to another. One of these four jural relationships, according to the learned author, is the ""you cannot"" relationship, which is the

same thing as the right of immunity which ""denotes freedom from the power of another"" (p. 58). Paton's book on Jurisprudence (3rd Ed. p. 256)

contains a similar exposition of legal rights. The legal right of the States consists in their immunity, in the sense of freedom from the power of the

Union Government. They are entitled, under Article 131, to assert that right either by contending in the absolute that the center has no power to

dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated.

114. It is true that the State, like the British Monarch, never dies. A legislative Assembly may be dissolved, a Council of Ministers may go out of

power, the President's rule may be introduced or imposed, or an emergency may be declared which can conceivably affect the States' power in

matters legislative and executive. The State survives these upheavals. But it is constitutionally unsound to say that the State, as a political entity, has

no legal interest in such cataclysmic events and no legal rights to assert in relation thereto. Were it so, which then are the legal rights which the

State, as distinguished from its Government, can agitate under Article 131 ? Whatever be the nature of the claim, the argument can always be put

forward that the Government, not the State, is interested in making that, claim. Such a rigid interpretation of the scope of Article 131 will virtually

reduce it to a dead-letter and destroy a precious safeguard against the use of arbitrary power. The interpretation canvassed by the learned

Additional Solicitor-General must therefore, be avoided, in so far as the language of the article permits it, which in my opinion it does.

115. The debates of the Constituent Assembly (Vol. 8, pp. 588-590) do not throw any light on the question in issue.

116. The judgment of this Court in 283250 affords no real assistance on the question arising before us. In that case, the Court raised three issues in

the suits filed under Article 131. The first issue which related to the question whether the suits were within the scope of Article 131 was not

answered by the Court because it held on the second issue that the suits were not maintainable, since a private party was impleaded thereto. The

only assistance which may be derived from the judgment in that case is that it said that the disputes under Article 131 should be ""in respect of legal

rights and not disputes of a political character"" and that though it was unnecessary to define the scope of Article 131, ""this much is certain that the

legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up"" (p. 529). These observations

do not affect the Constitution which I have placed on Article 131. I have endeavoured to show that it is competent to the State Governments to

bring suits of the present nature under that article and that by these suits, the State Governments are raising a legal, not a political issue. Their

assertion is that the Government of India does not possess the constitutional power claimed by it and therefore, this Court should declare that they

are immune from the exercise of that power. The States assert their legal right of immunity which, as explained above, denotes freedom from the

power of another.

117. The preliminary objection raised by the learned Additional Solicitor-General to the maintainability of the suits must therefore be rejected.

118. The writ petitions have, however, no cause of action such as can sustain their petitions for the enforcement of fundamental rights under Article

32 of the Constitution. They contend that the threatened dissolution of the Legislative Assembly of which they are members will inevitably deprive

them of their right to draw the salary to which they are entitled as such members. That, according to them, is an infringement of Article 19(1)(f) of

the Constitution which guarantees to all citizens the right to acquire, hold and dispose of property.

119. The grievance made by the petitioners is contingent on the issuance of a proclamation dissolving the Assembly, which was not issued till the

conclusion of arguments in these matters. Petitions complaining of the invasion of fundamental rights on hypothetical considerations are not

entertained by this Court under Article 32. But the proclamation having since been issued, it would be hypertechnical to dismiss the writ petitions

on the ground that there was no invasion of the petitioners rights on the date when the petitions were tiled in this Court.

120. But the violation of the fundamental right to property complained of by the petitioners is indirect and remote, not direct or proximate. By the

proclamation issued by the President under Article 356(1) of the Constitution, the Legislative Assemblies of nine States were dissolved and what is

commonly known as the President's rule was imposed on those States. As a result, the writ petitioners ceased to be members of the Legislative

Assemblies. And as a result of their ceasing to be such members, their right to draw salary, which they could only draw if they were members of

the Assemblies, came to an end. Though the petitioners cannot be denied relief on the ground that it was not intended by issuing the proclamation

to deprive them of their salary yet the writ petitions are liable to be dismissed on the ground that the injury to the alleged fundamental right of the

petitioners is too indirect and remote.

121. Nevertheless, I would like to deal with the contention raised by Mr. R. K. Garg on behalf of the writ petitioners that the proclamation issued

by the President under Article 356(1) of the Constitution cannot have any force and cannot be acted upon without the approval of both Houses of

the Parliament. This contention is wholly misconceived. Article 356(1) empowers the President to issue a proclamation if, on receipt of a report

from the Governor of a State or otherwise, 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. Article 356(3) enjoins that every such proclamation 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. It is impossible to hold in view of this

express provision that the proclamation can have neither force nor validity until it is approved by the Parliament. The scheme of Article 356 is that

the proclamation issued under it will remain in operation for a period of two months in any event. If it is approved by resolutions of both the

Houses of Parliament before the expiration of two months, its operation is extended for the period mentioned in Clause (4) of Article 356. But

whether or not it is so approved, the proclamation has an assured life for a period of two months and its validity during that period cannot be

whittled down by reading into Article 356 a condition precedent in the nature of parliamentary approval which, plainly, is not to be found therein.

The proviso to Clause (3) of Article 356 makes this position clearer still. If the proclamation is issued at a time when the Lok Sabha is dissolved or

its dissolution takes place during the period of two months and the Rajya Sabha, but not the Lok Sabha approves of the proclamation within two

months, it ceases to operate at the expiration of thirty days from the date on which the reconstituted Lok Sabha first sits. If before the expiry of the

aforesaid period of thirty days, the Lok Sabha too approves it, its life will be extended for the period mentioned in Clause (4). In other words, the

prior approval of the Parliament or any of its two Houses is not necessary to give validity to the proclamation. What would happen if the

proclamation is disapproved by either or both Houses of Parliament within two months does not arise for decision in these proceedings and

though, it would appear as a matter of constitutionality that the proclamation can nevertheless remain in operation for a period of two months, it is,

reasonable to suppose that faced with such disapproval, a mature political judgment would lean in favour of the revocation: of the proclamation.

Such constitutional crises cannot furnish a safe clue to the interpretation of the Constitution.

122. The contrast between the provisions of Articles 356 and 123 is illuminating. Article 123 which empowers the President to promulgate

ordinances provides by clause (2) that every such ordinance shall cease to operate at the expiration of six weeks from the reassembly of

Parliament; if, however, before the expiry of the six week's period resolutions disapproving the proclamation are passed by both Houses, it ceases

to operate upon the passing of the second of those resolutions. Thus, whereas a proclamation issued by the President under Article 356 continues

in operation for a period of two months in any event, an ordinance issued by the same dignitary ceases to operate no sooner than the second of the

two resolutions disapproving it is passed by a House of Parliament.

123. The reason for this distinction is evident from the language and context of the respective provisions. Article 356 which occurs in the Chapter

called "Emergency Provisions" is intended to be resorted to in that exceptional class of situations, which though have been occurring too often,

where the government of the State cannot be carried on in accordance with the provisions of the Constitution. The breakdown of the Constitution

in the affairs and administration of the State is the occasion for the exercise of the emergency provision contained in Article 356. The framers of the

Constitution perhaps intended that such a serious situation can be dealt with effectively, only if the President is empowered to issue a proclamation

and that proclamation is given a minimum life of two months, whether the Parliament approves it or not. On the other hand, the power to issue an

ordinance is limited to occasions when neither of the two Houses of Parliament is in session. Since that power is co-related partly to both Houses

of Parliament being in recess, it was provided that the ordinance shall lapse on the expiry of six weeks from the reassembly of Parliament and if it is

disapproved by both the Houses within that period, upon the passing of the second of the two resolutions.

124. Mr. Garg expressed a grave concern for the future of democracy, if this be the true interpretation of Article 356. That argument does not

appeal to me because the same Constitution under which the people of this country resolved to constitute India into a Sovereign "Democratic

Republic, gave to it a law of laws containing empowerment to detain its citizens, to pass ordinances and to declare emergencies. A declaration of

emergency brings in its trail a host of consequences calculated to impair both the democratic foundation and the federal structure of our

Constitution. The executive power of the Union then extends to giving of directions to any State as to the manner in which the executive power

thereof is to be exercised; the power of Parliament to make laws extends to matters not enumerated in the Union list; the restraints of Article 19 on

the power of the State to make any law or to take any executive action are removed; and it is a well-known fact of recent history that the right to

move any Court for the enforcement of fundamental rights can be suspended. If the power to apply such drastic remedies and to pass such

draconian laws is a part of the democratic functioning of the Constitution, it is small wonder that not only does the Presidential proclamation under

Article 356 not require the prior approval of the Parliament but it has full force and effect for a minimum period of two months, approvals or no

approval. The reason of this rule is that there may be situations in which it is imperative to act expeditiously and recourse to the parliamentary

process may, by reason of the delay involved, impair rather than strengthen the functioning of democracy. The Constitution has therefore provided

safety-valves to meet extra-ordinary situations. They have an imperious garb and a repressive content but they are designed to save, not destroy,

democracy. The fault, if any is not in the making of the Constitution but in the working of it.

125. It is undoubtedly true that within this impregnable duration of two months, the President, acting of course on the advice of the Council of

Ministers, may take various steps under Clauses (a) to (c) of Article 356(1) which, though taken without the approval of the Parliament, may be

irrevocable and cannot be retraced. One such step can be the dissolution of a State Assembly and the holding of fresh elections thereto. But here

too, as on the last point which I have just discussed, the answer is that the Constitution expressly confers vast and varied powers on the President

if he arrives at a certain satisfaction. The declaration of a financial emergency under Article 360(1) carries with it the power to issue directions for

reducing the salaries of persons serving in connection with the affairs of the Union, including the Judges of the Supreme Court and the High Court.

Clause (2) of Article 360 makes Clause (2) of Article 352 applicable to proclamations of financial emergencies with the result, that anything done

or any action taken during the period of two months after the issuance of the proclamation, remains inviolable for that period. That in fact, is the

common thread which runs through Articles 352, 356 and 360. The suspension of the right to move any Court for the enforcement of fundamental

rights, the lifting of the prohibition of Article 19 as against the making of laws and taking executive action, the assumption of powers under Clauses

(a), (b) and (c) of Article 356 have full effect while the proclamations are in operation during the minimum period of two months. Action taken

during those two months, if irrevocable, remains un-remedied.

126. There is also no substance in the contention that by issuing a proclamation under Article 356, the President cannot assume the power to

dissolve a State Assembly. By Clause (a) of Article 356(1), the President may by Proclamation 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." Article 174(2)(b) empowers the Governor to

dissolve the Legislative Assembly" from time to time. It seems to me incapable of any serious controversy." that by reason of the provisions

contained in Article 356(1)(a), the President can exercise the power vested in and exercisable by the Governor under Article 174(2)(b) to dissolve

the Legislative Assembly of the State.

127. That leaves for consideration an argument advanced on behalf of the State Governments by Shri Niren De, Shri Gokhale and the learned

Advocate of Himachal Pradesh. Shri Ram Panjwani, supporting Shri Gokhale, cited texts to support that argument. The core of the argument is

that the Constitutional power to dissolve a legislative assembly is being utilised by the President for an indirect and oblique purpose, that there is no

justification whatsoever for dissolving the nine State Assemblies and that the reasons contained in the Home Minister's letter to the Chief Ministers

are wholly inadequate and irrelevant for taking the proposed action. Several other alternatives, it is urged, are open to the Government of India to

adopt for meeting the situation complained of by the Home Minister but instead of doing so, they have decided to act drastically by threatening the

dissolution of the nine Legislative Assemblies in which the Congress (R) has a majority. Such naked abuse of power, which is being exercised for

liquidating the Congress (R) governments which are in power in the nine states must, it is stressed, be struck down as unconstitutional. Mr.

Gokhale even argued that Clause (5) of Article 356 which was introduced by the 38th Amendment, giving finality to the satisfaction of the

President and putting it beyond the reach of Courts, is no bar to striking down a mala fide exercise of power. An order which lacks bona fides has

no existence in the eye of law, says the counsel and courts ought not to perpetuate injustice by refusing to interfere with such orders. These

arguments have a familiar, though strange, echo but that is beside the point. There is no gain saying that the various points of view presented by the

learned Counsel require a close attention.

128. I would like to begin with the assumption, though that is controverted by the Additional Solicitor-General, that the proposed proclamation is

likely to be founded solely on the reasons contained in the Home Minister's letter. Even then, I find it hard to conclude that those reasons are

wholly extraneous to or irrelevant for the exercise of the power to issue a proclamation under Article 356 of the Constitution. The sine qua non of

the exercise of that power is the satisfaction of the President that a situation has arisen in which the government of the State cannot be carried on in

accordance with the provisions of the Constitution. The reasons contained in the Home Minister's letter may not be such as to necessarily lead to

the conclusion that there is a break-down of constitutional machinery in the nine States. But the test of proof by preponderance of probabilities,

leave alone the test of circumstances being consistent with a sole hypothesis, is entirely out of place in considering the constitutional validity of a

Presidential proclamation. It is for the President to judge whether a situation of the particular description has arisen necessitating the issuance of a

proclamation for assumption of all or any of the powers mentioned in Clause (a), (b) and (c) of Article 356(1). He is expected and ought to judge

fairly but we cannot sit in judgment over his satisfaction for determining whether any other view of the situation is not reasonably possible. So long

as the reasons, if any are disclosed, given for the action proposed or taken, bear a reasonable nexus with the exercise of the particular power, the

satisfaction of the President must be treated as conclusive. It will then not be open to judicial scrutiny. If, however, the reasons given are wholly

extraneous to the formation of the satisfaction, the proclamation would be open to the attack that it is vitiated by legal mala fides.

129. Such is not the case here. The Home Minister's letter shows that (i) an unprecedented political situation had arisen by the virtual rejection, in

the recent Lok Sabha elections, of candidates belonging to the ruling party in various, stages; (ii) the resultant climate of uncertainty was such as to

cause grave concern; (iii) the situation had created a sense of diffidence at different levels of administration; (iv) people at large did not appreciate

the propriety of continuance in power of a party which was unmistakably rejected by the electorate; and (v) the climate of uncertainty, diffidence

and disrespect had given rise to serious threats to law and order. It is on the basis of these reasons that the Home Minister concluded that a fresh

appeal to the political sovereign was not only permissible but had become obligatory. These grounds, cannot with any show of reason, be dismissed

as bearing no rational nexus with the necessity for issuing a proclamation with a view to dissolving the Legislative Assemblies of the nine States.

130. Probing at any greater depth into the reasons given by the Home Minister is to enter a field from which Judges must scrupulously keep away.

That field is reserved for the Politician and the courts must avoid trespassing into it. That is not always an easy task because the line of demarcation

that separates the functions of this Court from those of the Government tend to become blurred, when constitutional problems raise issues

concerning the high policies of the executive in the United States, De Toqueville noted as early as in 1832 that sooner or later every political

question becomes a judicial question. Leo Pfeffer therefore thought that though when the Supreme Court decided constitutional questions it had the

trappings of a Court of Law, "it is supreme, but it is not really a Court". This is a warning well worth remembering but it must not deter the courts

from discharging their functions if they find that a constitutional power meant to be exercised for preserving democracy is being used for destroying

it. The Home Minister's letter is clearly and indubitably on the safe side of the line and I see no justification either for questioning the bona fides of

the case made out by him in the letter or for doubting the authenticity of the facts stated therein. As said by Justice Harlan F. Stone in his oft-

quoted dissenting opinion: ""Courts are not the only agency of Government that must be assumed to have capacity to govern"" United States v.

Butler-297 U.S. 187.

131. I need not therefore enter into the question whether the Government of India has reasons apart from those stated in the Home Minister's

letter for advising the President to issue the proclamation, if they have, so far so good. They may not choose to disclose them but if they do, as they

have done now, they cannot prevent a judicial scrutiny thereof for the limited purpose of seeing whether the reasons bear any rational nexus with

the action proposed. I am inclined to the opinion that the Government cannot claim the credit at the people's bar for fairness in disclosing the

reasons for the proposed action and at the same time deny to this Court the limited power of finding whether the reasons bear the necessary nexus

or are wholly extraneous to the proposed action. The argument that ""if the Minister need not give reasons, what does it matter if he gives bad ones

over-looks that bad reasons can destroy a possible nexus and may vitiate the order on the ground of mala fides. The argument, be it stated, was

not made by the learned Additional Solicitor-General but it is interesting to know how it was repelled by Lord Denning M.R. in 279979

132. It is also unnecessary to consider the implications of Clause (5) of Article 356 which was introduced by the 38th Amendment, making the

satisfaction of the President final and conclusive, not open to be questioned in any court, on any ground. I have upheld the validity of the

proclamation on the view that the reasons that are cited in its support bear a nexus with it.

133. A large number of decisions were cited on either side on the question whether the President's satisfaction on such issues is justiciable. The

learned Additional Solicitor-General relied upon the decisions of this Court, the Federal Court, the Privy Council and of various High Courts to

show that apart from Clause (5) of Article 356, the President's satisfaction is conclusive and the Courts have no power to go behind it. These

decisions have been discussed fully in his judgment by my Lord the Chief Justice. In the view I have taken, I prefer to express no opinion on this

question except to state that though the question is treated as ""well-settled"", the Privy Council in *Stephen Kalong Ningkan v. Government of*

Malaysia L.R. [1970] A.C. 379 said:

Whether a proclamation under statutory powers by the Supreme Head of the Federation can be challenged before the courts on some or any

grounds is a constitutional question of far-reaching importance which, on the present state of the authorities, remains unsettled and debatable.

134. It would appear that in this branch of constitutional law, which cannot be entirely divorced from considerations of political policies, only one

proposition may be said to be well-settled: No question in this branch of law is well-settled"". The "political question" is an open sesame expression

that can become a password for gaining or preventing admission into forbidden fields. And it is an accepted fact of constitutional interpretation that

the content of justiciability changes according to how the judge's value preferences respond to the multi-dimensional problems of the day. An

awareness of history is an integral part of those preferences. In the last analysis, the people for whom the Constitution is meant, should not turn

their faces away from it in disillusionment for fear that justice is a will-o'-the-wisp.

135. These then are my reasons in support of the unanimous order which the Court passed on April, 29, 1977.

Bhagwati, J.

136. Two main questions arise for consideration in these suits and writ petitions. One is whether the suits are maintainable under Article 131 and

the writ petitions under Article 32 of the Constitution and the other is as to what is the scope and ambit of the power of the President under Article

356, Clause (1) and whether and if so, in what circumstances, can the Court interfere with the exercise of this power by the President. The facts

giving rise to these suits and writ petitions have been set out in detail in the judgment prepared by the learned Chief Justice and it would be futile

exercise on our part to reiterate them. Hence we proceed straight to consider the questions that arise for determination. These questions are of

great constitutional significance.

137. We will first examine the question of maintainability of the suits and the writ petitions. The writ petitions have been filed by three legislators

from the State of Punjab seeking enforcement of the fundamental right to property guaranteed to them under Articles 19(1)(f) and 31. They

complain that if the Legislative Assembly of the State of Punjab is dissolved by the President acting under Article 356, Clause (1), as threatened by

the Government of India, they would be deprived of their right to receive salary as members of the Legislative Assembly and the right to receive

salary being property, there would be unconstitutional infraction of their right to property under Articles 19(1)(f) and 31 and hence they are entitled

to move this Court under Article 32 for preventing such threatened infraction. This contention is clearly unsustainable. Of course, there can be no

doubt and indeed it must be said in fairness to the learned Additional Solicitor General who argued the case with great ability, that he did not

contend to the contrary, that if there is a threatened violation of a fundamental right, the person concerned is entitled to approach this Court under

Article 32 and claim relief by way of injunction as in a quia timet action. But the difficulty here in the way of the petitioners is that it is not possible

to say that by the threatened dissolution of the Legislative Assembly, any fundamental right of the petitioners would be infringed. It is only where

there is direct invasion of a fundamental right or imminent danger of such invasion that a petitioner can seek relief under Article 32. The impact on

the fundamental right must be direct and immediate and not indirect or remote. Merely because, by the dissolution of the Legislative Assembly, the

petitioners would cease to be members and that would incidentally result in their losing their salary, it cannot be said that the dissolution would

infringe their right to property. That would be the indirect effect of the dissolution but that is not sufficient to constitute infraction of the fundamental

right to property. If the argument of the petitioners were correct, even a civil servant dismissed in violation of a legal or constitutional provision, by

the Government of India or a State Government or even an authority falling within the definition of "State in Article 12 would be;entitled to

complain that by reason of the dismissal, he has been deprived of his right to salary and hence it is competent to him to approach this Court under

Article 32 challenging his dismissal as far valid on ground of violation of Articles 19(1)(f) and 31. This surety could never have been intended by

the Constitution makers. The direct impact of the dissolution of the Legislative Assembly would be that the petitioners would cease to be members

and obviously no one has & fundamental right to continue as a member, of a legislative assembly. It is true that if the petitioners cease to be the

members of the Legislative Assembly, they would lose their right to receive salary, but that would be the result of their ceasing to be the members

of the Legislative Assembly and not the direct consequences of the dissolution of the Legislative Assembly. We are therefore, of the view that the

threatened dissolution of the Legislative Assembly does not involve any infraction of the fundamental right guaranteed to the petitioners under

Articles 19(1)(f) and 31 sad since no other fundamental right has been relied upon by the petitioners, it must be held that they are not entitled to

maintain the writ petitions under Article 32.

138. That takes us to the question of maintainability of the suits. There are six suits before us filed by the States of Rajasthan, Madhya Pradesh,

Punjab, Bihar, Himachal Pradesh and Orissa. Each of these suits has been filed under Article 131 of the Constitution. This Article confers original

jurisdiction on the Supreme Court, to the exclusion of all other courts, in respect of certain categories of Suits and is in the following terms:

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any

dispute--

(a) between the Government of India and or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the Other, or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Provided that the Said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or Other similar

instrument which, having been entered into or executed before the commencement of the Constitution, continues in operation after such

Commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

139. There are two limitations in regard to the nature of the suit which can be entertained by the Supreme Court under, this Article. One is in

regard to parties and the other is in regard to the subject matter. The Article provides in so many terms in Clauses (a), (b) and (c) that the dispute

must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side

and one or more other States on the other or between two or more States. It does not contemplate any private party being arrayed as a disputant

on one side or the other. The parties to the dispute must fall within one or the other category specified: in Clauses (a), (b) and (c). That was

established by a decision of this Court in 283250 where; this Court pointed out: ""----- a dispute which falls within the ambit of Article 131 can

only be determined in the forum mentioned therein, 283250 namely, the Supreme Court of India, provided there has not been impleaded in any

said dispute any private party, be it a citizen or a firm Or a corporation along with a State either jointly or in the alternative. A dispute in which such

a private party is involved must be brought before a court, other than this Court, having jurisdiction over the matter."" This is the limitation as to

parties. The other limitation as to subject-matter flows from the words ""if and in so far as the dispute involves any question (whether of law or fact)

on which the existence or extent of a legal right depends."" These words clearly indicate that the dispute must be one relating to a legal right and not

a dispute on the political plans not based on a legal right, for instance, to take an example given by Mr. Seervai in his well known work on

"Constitutional Law of India" at page 138S: ""a claim that a State project should be included in the Five-Year Plan."" The dispute must, therefore,

involve assertion or vindication of a legal right of the Government of India or a State. It is not necessary that the right must be a constitutional right.

All that is necessary is that it must be a legal right. It is true that in the State of Bihar v. Union of India and Anr. (supra) this Court, while discussing

the scope of the dispute which may be determined by the Supreme Court under Article 131, happened to make an observation that ""this much is

certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the federalism it sets up."" But this

observation, in so far as it suggests that the legal right must be One which arises under the Constitution, goes much further than what the language

of Article 131 warrants, the Article speaks only of "legal right" and does not qualify it by any other words. It may be noted that the provision in the

corresponding Section 204 of the Government of India Act, 1935 was significantly different. It contained a proviso that the dispute must inter alia

concern the interpretation of the Government of India Act, 1935 ""or of an Order in Council made thereunder or the extent of the legislative or

executive authority vested in the Federation by virtue of the Instrument of Accession of that State." This provision has been deliberately and

designedly omitted in Article 131 and flow any legal right can be enforced by a suit in the Supreme Court provided the parties fill the character

specified in Clauses (a), (b) and (c)". The question which therefore requires to be considered in determining the maintainability of the suits is

whether any legal right of the States is sought to be vindicated in the suits. We shall presently consider this question, but before we do so, we must

point out one other error in which, with the greatest respect, the learned Judges who decided the case of *State of Bihar v. Union of India and Anr.*

(supra) seem to have fallen. They held that in a suit under Article 131 one only order which the Supreme Court could make was a declaration

adjudicating on the legal right claimed in the suit and once such a declaration was given, the function of the Supreme Court under Article 131 was

at an end. If this conclusion were correct, then obviously the present suits seeking permanent injunction restraining the Government of India from

issuing a proclamation under Article 356, Clause (1) could not lie and equally no interim injunction could be granted by this Court, but the learned

Additional Solicitor General, with his usual candour and fairness, conceded that he was not in a position to support this view. This view seems to

be erroneous and for two very good reasons.

140. In the first place, it overlooks the fact that whereas Sub-section (2) of Section 204 of the Government of India Act, 1935 provided that the

Federal Court, in exercise of its original jurisdiction, shall not pronounce any judgment, other than a declaratory judgment; no such provision

limiting the power of the Supreme Court in regard to the relief to be granted is to be found in Article 131. The power of the Supreme Court to

grant relief in a suit under Article 131 is not restricted only to "declaratory judgment". Secondly, as pointed out by Mr. Seervai in his book at page

1385, "when a court is given exclusive jurisdiction in respect of a dispute between the parties, it is reasonable to hold that the court has power to

resolve the whole dispute", unless its power is limited by express words or by necessary implication. There is no such limitation in Article 131 and

hence it is not correct to say that the Supreme Court can only give a declaratory judgment in a suit under Article 131. The Supreme Court would

have, power to give whatever reliefs are necessary for enforcement of the legal right claimed in the suit if such legal right is established:

141. Turning now to the question whether the present suits seek to enforce any legal right of the State, it is necessary to have a look at a few

provisions of the Constitution. Save for the purpose of Part TO "State" is not defined in the Constitution, but by reason of Article 367, Clause (1),

it must be given the same meaning which it has under the General Clauses Act, 1897. Section 3, Clause (56) of the General Clauses Act, 1897

defines "State", inter alia, to mean "a State specified in the first Schedule to the Constitution". The States of Rajasthan, Madhya Pradesh, Punjab,

Bihar, Himachal Pradesh and Orissa are States specified in the First Schedule and hence they are States within the meaning of the Constitution.

Article 1, Clause (1) declares that India, that is Bharat, shall be a Union of States and a State is consequently a constituent part of the Union of

India. Part VI of the Constitution contains provisions regarding the States.. Article 153 says that there shall be a Governor for each State and under

Article 154 the executive power of the State is vested in the Governor and has to be exercised by him either directly or through officers

subordinate, to him in accordance with the Constitution. Article 163 provides for a- Council of Ministers with a Chief Minister at the head to aid

and advise the Governor in the exercise of his functions except in respect of a limited area where he is by or under the Constitution required to

exercise his functions or any of them in his discretion. There is no express provision in the Constitution requiring the Governor to act in accordance

with the advice of the Council of Ministers as there is in the newly amended Article 74, Clause (1) in regard to the President, but it is now well

settled as a result of the decision of this Court in 279979 that except in the narrow minimal area covered by Articles 163(2), 371A(1)(b) and (d),

371A(2)(b) and (f) and sixth Schedule, Para 9(2), the Governor-also is bound to act according to the advice of the Council of Ministers. This is

broadly the scheme of the provisions in regard to the exercise of the executive power of the States. The legislative power of the State is exercisable

by the Legislature under Article 168 and according to that Article, the Legislature of the State is to consist of the Governor and the Legislative

Assembly, together with the Legislative Council in some of the States. Article 172 provides that every Legislative Assembly of a State, unless

sooner dissolved, shall continue for six years from the date appointed for its first meeting. Originally , the term was five years, but it was extended

to six years by the Forty Second Constitution Amendment Act. Article 213 deals with a situation where the Legislature is not in session and

provides that in such a case the Governor may legislate by promulgating ordinances when he is satisfied that circumstances exist which render it

necessary for him to take immediate action. It will thus be seen that under the provisions of the Constitution the executive power of the State is

exercisable by the Governor aided and advised by a Council of Ministers and the Legislative power, by the Legislature of the State and in an

emergent situation when the Legislature is not in session, by the Governor.

142. Now, in order to determine whose legal right would be violated by the threatened action under Article 356, Clause (1), we must proceed on

the assumption that such action, when taken, would be constitutionally invalid, because if it were valid, there would be no cause for complaint. The

question is: who would have cause of action if unconstitutional action were taken under Article 356, Clause (1) ? If the executive power of the

State vested in the Governor were taken away by the President or the legislative power of the State were exercisable not by the Legislature of the

State or the Governor, but by or under the authority of Parliament or the Legislature of the State were dissolved-all these being actions which can

be taken under Article 356, Clause (1)-who would be aggrieved? Can the State say that its legal right is infringed ? We believe it can. Is it not the

right of the State under the Constitution that its executive power shall be exercisable by the Governor except when any functions of the State

Government or any powers of the Governor are assumed by the President by valid exercise of power under Article 356, Clause (1) ? Is it not

competent to the State to insist that it shall continue to have its legislature for making its laws, until its term expires or it is validly dissolved? Is it not

a constitutional right of the State that its laws shall be made by its legislature, unless the President declares, in exercise of the power under Article

356, Clause (1), that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament ?; These rights of the

State under the Constitution would certainly be affected by invalid exercise of power under Article 356, Clause (1).

143. The learned Additional Solicitor General on behalf of the Government of India contended that the expression "State" in Article 131 is not

synonymous with "State Government" and there is intrinsic evidence in the Article that the two are distinct. When the functions of the State

Government are unconstitutionally assumed by the President, it is the State Government which would be aggrieved and not the State.

144. There is no legal right in a State to be governed by a particular Council of Ministers. So also when a Legislative Assembly is dissolved, it is

the individual right of the members which may be affected and not the right of the State. Discussion of a Legislative Assembly is not tantamount to

dissolution of the State, so as to give rise to a cause of action in the State. The learned Additional Solicitor General fairly conceded that if the office

of the Governor or the Legislative Assembly of the State were to be abolished altogether, it might affect a legal right of the State, because the State

is entitled to have a Governor and a Legislative Assembly under the Constitution, but his argument was that mere assumption of the powers of the

State Government or taking away the power to make laws for the State from the Legislature and making it exercisable by or under the authority of

Parliament or dissolution of the Legislative Assembly would not affect any legal right of the State. This contention is not well founded and cannot be

sustained.

145. It is true that there is a distinction between "State" and "State Government" and this distinction is also evident from the language of Article

131 and, therefore, what has to be seen for the purpose of determining the applicability of that Article is whether any legal right of the State, as

distinct from the State Government, is infringed. Now, undoubtedly, a State has no legal right to insist that it shall have a particular Council of

Ministers or particular persons as members of the Legislative Assembly. But a State has certainly a right under the Constitution to say that its

executive and legislative powers shall be exercisable in the manner provided in the Constitution. If a legal right of a State can be said to have been

infringed when its Legislative Assembly is abolished, it is difficult to see how any other conclusion can follow when the Legislative Assembly is not

abolished but suspended Or dissolved. In the former case, the State is unconstitutionally deprived of its legislative organ and its legislative power is

given over to another authority: in the latter, the constitutionally appointed organ remains but it is made ineffectual for a period during which the

legislative power is unconstitutionally vested in another authority. We fail to see any difference in the two situations so far as the State is concerned.

The position is the same Whether the constitutionally appointed organ for exercise of legislative power is amputated or paralysed. If one affects the

legal right of the State, equally the other does. It may be that if a Legislative Assembly is suspended or dissolved and the legislative power of the

State becomes exercisable by or under the authority of Parliament by reason of Presidential action under Article 356, Clause (1), the individual

rights of the members of the Legislative Assembly may be affected, but that does not mean that the legal right of the State would also not thereby

be infringed. Unconstitutional exercise of power by the President Under Article 356, Clause (1) may injuriously affect rights of several persons. It

may infringe not only the individual rights of the members of the Legislative Assembly, but also the constitutional right of the State to insist that the

federal basis of the political structure set up by the Constitution shall not be violated by an unconstitutional assault under Article 356, Clause (1),

we are, therefore, of the view that the present suits seek to enforce a legal right of the States arising under the Constitution and the suits cannot be

thrown out in limine as being outside the scope and ambit of Article 131. We must proceed to consider the suits on merits.

146. The important and serious question which arises for consideration on merits is as to what is the scope and ambit of the power under Article

356, Clause (1). Can the President in exercise of this power dissolve a State Legislature and if so, are there any limitations on this power ? To

answer this question, it is necessary to examine the scheme and language of different Clauses of Article 356 and the object and purpose for which

it has been enacted. Article 356 occurs in Part XVIII which contains a fasciculus of articles from Article 352 to 360 dealing with emergency

provisions. One of us (Bhagwati, J.) has occasion to point out in *Additional District Magistrate, Jabalpur v. S. S. Shukla* [1976] Suop. S.C.R. 172

that there are three types of emergency which may cause crisis in the life of a nation. The first is where the security of the country is threatened by

war or external aggression: the second arises on account of threat or presence of internal disturbance calculated to disrupt the life of the country

and jeopardize the existence of constitutional Government and the third is occasioned when there is break down or potential break down of the

economy threatening the financial stability or credit of the country. The first two types of emergency are dealt with in Article 352, while the third

type is dealt with in Article, 360. Article 352, Clause (1) provides that if the President is satisfied that a grave emergency exists whereby the

security of India or of any part of its territory is threatened whether by war or external aggression or internal disturbance, he may, by proclamation,

make a declaration to that effect and Clause (2) of that Article requires that such Proclamation shall be laid before each House of Parliament and

it shall 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". The constitutional implications of a declaration of emergency under Article 352. Clause (1) are vast and they are provided

in Articles 250, 353, 354, 358 and 359. The emergency being an exceptional situation, arising out of a national crisis, certain wide and sweeping

powers have been conferred on the Central Government and Parliament with a view to combat the situation and restore normal conditions. One

such power is that given by Article 250 which provides that while a Proclamation of Emergency is in operation, Parliament shall have the power to

make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List. The effect of this

provision is that the federal structure based on separation of powers is put out of action for the time being. Another power of a similar kind is that

conferred by Article 353 which says that during the time that Proclamation of Emergency is in force, the executive power of the Union shall extend

to the giving of direction to any State as to the manner in which the executive power thereof is to be exercised. This provision also derogates from

the federal principle which forms the basis of the Constitution. This departure from the constitutional principle of federalism is permitted by the

Constitution because of the extraordinary situation arising Out of threat to the continued existence of constitutional democratic Government. Then

we come to Article 355 which enjoins a duty on the Union to protect every State against external aggression and internal disturbance and to ensure

that the government of every State is carried on in accordance with;the provisions of the Constitution. Article 356 contains provisions for dealing

with, another kind of emergent situation arising from failure of constitutional machinery in the States and, so far as material, reads as follows: i,

356. (1) If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the

government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the

Governor 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:

(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. Since some reliance was placed on behalf of the petitioners in the writ petitions on Article 357, Clause

(1), we shall reproduce the relevant part of that clause in these terms:

357. (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-

* * * * *

(c) for the President to authorise 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.

147. Now it is obvious on a plain natural construction of the language of Article 356, Clause (1) that the President can take action under this clause

only if, on receipt of a report made by the Governor of a State or otherwise 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. The satisfaction of the President that "a situation has arisen in

which the government of a State cannot be carried on in accordance with the provision of the Constitution is a condition precedent which must be

fulfilled before the President can take action under Article 356, Clause (1). When this condition precedent is satisfied, the President may take

action under Article 356, Clause (1) and exercise all or any of the powers specified in Sub-clauses (a), (b) and (c) of that clause. The exercise of

these powers plainly and unmistakably strikes at the root of the federal principle because it vests the executive power of the state which, in the

federal structure set up by the Constitution, is exercisable by the Governor with the aid and advice of his Council of Ministers, in the President and

takes away the powers of the Legislature of the State and they become exercisable by or under the authority of Parliament. The administration of

the State is for all purposes taken over by the President which means in effect and substance the Central Government since by reason of Article

74, Clause (1) and even otherwise, the President is bound by the advice of his Council of Ministers and the legislative power of the State is also

transferred to the Parliament. The President can also dissolve the Legislative Assembly of the State, because when he assumes to himself all the

powers of the Governor under Article 356, Clause (1) Sub-clause (a) one of the powers assumed by him would be the power to dissolve the

Legislative Assembly under Article 174(2)(b). It will thus be seen that Article 356, Clause (1) authorises serious inroad into the principle of

federalism enacted in the Constitution and that is permitted because, in the subjective satisfaction of the President, a situation has arisen in which

the government of the State cannot be carried on in accordance with the provisions of the Constitution. It is the duty of the Union under Article

355 to ensure that the government of the State is carried on in accordance with the provisions of the Constitution, and, therefore, when the

President finds that a situation has arisen in which the Government of the State cannot be carried on, he can act under Article 356 Clause (1) indeed

it would be his constitutional obligation to do so and put the federal mechanism out of action so far as that State is concerned. This is indeed a very

drastic power which, if misused or abused, can destroy the Constitutional equilibrium between the Union and the States and its potential for harm

was recognised even by the Constitution makers. Dr. Ambedkar pointed out in his speech while winding up the debate on this Article:

I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But the objection

applies to every part of the Constitution which gives power to the center to override the Provinces. In fact I share the sentiments expressed by my

honourable friend Mr. Gupta yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that

they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper

precautions before actually suspending the administration of the provinces.

148. But despite the lurking danger in this article, the Constitution makers thought that there was no alternative in case of break down of

constitutional machinery in the States and hence they adopted this article, even though it was analogous to the hated Section 93 which disfigured

the Government of India Act, 1935 symbolising British dominance over nationalist aspirations. The Constitution makers, conscious as they were of

the serious consequences flowing from the exercise of this power, limited it by hedging its exercise with the condition that the President should be

satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution

149. Now, when on the satisfaction of the condition limiting the exercise of the power, a proclamation is issued by the President under Article 356,

Clause (1), it can be revoked or varied at any time by a subsequent proclamation under Clause (2) of Article 356. Clause (3) of Article 356, like

Clause (2) of Article 352, requires that every proclamation issued under Article 356, Clause (1) shall be laid before each House of Parliament and

it shall cease to operate at the expiration of two months unless before the expiration of that period, it has been approved by resolution of both

Houses of Parliament. The learned Counsel appearing on behalf of the petitioners in the writ petitions contended that it is clear from the provision

enacted in Article 356, Clause (3) that the exercise of power by the President under clause (1) is subject to the control of both Houses of

Parliament. The Proclamation issued by the President under Article 356, Clause (1) would cease to be in force at the expiration of two months

unless it is approved by both Houses of Parliament, and, therefore, no irretrievable action such as dissolution of the legislative Assembly of the

State can be taken by the President before the approval of both the Houses of Parliament is given to the Proclamation. Otherwise the

parliamentary control would be defeated and it would be possible for the Central Government to present a fait accompli to the two Houses of

Parliament and neither House would be able to remedy the mischief done, even if it disapproved the Proclamation. Moreover, either House of

Parliament may disapprove the Proclamation even before the expiry of two months and where that happens, the President would be bound to

revoke the Proclamation immediately, because the proclamation cannot continue in defiance of the will of either House of Parliament ""without

destroying the collective responsibility of the Council of Ministers to the House. "" It was also urged that during the period of two months, no

power can be exercised in virtue of the Proclamation which would bring about a final and irrevocable consequence, if the President has reason to

believe that either House of Parliament may not approve it, or also the control of both Houses of Parliament would be completely set at naught and

the executive would be able to take irreversible action like dissolution of the Legislative Assembly by passing both Houses of Parliament and

ignoring their wishes altogether. That would be plainly contrary to the basic principles of democratic Government. Reliance was also placed on

Article 357, Clause (1), Sub-clause (c) and it was pointed out that whereby a Proclamation issued under Clause (1) it has been declared that the

powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, no expenditure out of the Consolidated Fund of

the State can be incurred without appropriation made by Parliament, but when the House of the People is not in session, the President can incur

such expenditure pending sanction by Parliament. This means that if the House of the People is in session at the time of issue of the Proclamation or

as soon as it assembles after the issue of the Proclamation, the President would immediately have to go to Parliament for sanction of expenditure

and if Parliament does not sanction, the expenditure would be unauthorised and the President would not be able to exercise his functions. There is

thus effective Parliamentary control over the President, that is, the Central Government, through the purse and hence during the period of two

months, the President cannot take any action involving expenditure out of the Consolidated Fund of the State unless he is assured that such

expenditure would be sanctioned by Parliament. The suggestion was that since the ruling party at the center has no majority in the Rajya Sabha, the

President cannot issue a Proclamation authorising him to discharge functions involving expenditure out of the Consolidated Fund of the State.

These arguments urged on behalf of the petitioners raise a question of construction of Clause (1) to (3) of Article 356.

150. Now, if we look at the language of Clauses (1) to (3) of Article 356 it is clear that once a Proclamation is validly issued by the President

under Clause (1), it has immediate force and effect and its efficiency is not made dependent on the approval of both Houses of Parliament. There is

no provision in any clause of Article 356 or in any other Article of the Constitution that the President shall have no power to issue a Proclamation

under Clause (1) when either or both Houses of Parliament are in session. The only limitation on the exercise of the power of the President to issue

a proclamation is that he should be satisfied that the Government of the State cannot be carried on in accordance with the provisions of the

Constitution. Where the President is so satisfied, and, as pointed out above, the President means the Central Government, he can issue a

proclamation even when either or both Houses of Parliament are in session. The President is given this power because immediate action may have

to be taken when an exceptional situation has arisen on account of break down of constitutional machinery in the State. It is an emergency power

and it has necessarily to be vested in the Central Government because quick and immediate action may be necessary to avert or combat

constitutional break down in the State and moreover a constitutional obligation is laid on the Union to ensure that the Government of every State is

carried on in accordance with the provisions of the Constitution. Any delay in taking action may in conceivable cases frustrate the very object and

purpose of conferment of this power on the President. Promptness may be the essence of effectiveness in such cases and public interest may suffer

on account of tardiness in action. Hence the power conferred on the President under Article 356, Clause (1) is not limited by the condition that it

cannot be exercised when either or both Houses of Parliament are in session. Then again, Clause (3) of Article 356 provides that a proclamation

issued under Clause (1) shall 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. This means that it shall continue to operate for a period of two months, unless sooner revoked. It is only

for the purpose of its extension beyond two months that the approval of both Houses of Parliament is required by Clause (3) of Article 356. If no

such approval is forthcoming, the proclamation cannot continue after the expiration of two months, but until then it certainly continues and has full

force and effect. It may be noted that Clause (3) of Article 356 does not say that the proclamation shall be operative only on approval by both

Houses of Parliament, nor does it provide that it shall cease to operate even before the expiry of two months, if disapproved by either House of

Parliament, it is interesting to compare the language of Clause (3) of Article 356 with that of Article 123, Clause (2) in this connection, Article 123,

Clause (1) confers power on the President to promulgate an ordinance during recess of Parliament when he is satisfied that circumstances exist

which render it necessary for him to take immediate action and Clause (2) of that Article provides that such ordinance ""shall cease to operate at the

expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both

Houses, upon the passing of the second of those resolutions"". The ordinance would continue to operate until the expiration of six weeks from the

reassembly of Parliament unless before that date is disapproved by both Houses of Parliament. But when we come to Clause (3) of Article 356,

we find that a different scheme in regard to the life of a proclamation issued under Clause (1) is adopted in that Clause. Clause (3) of Article 356

does not confer power on the two Houses of Parliament to put an end to the proclamation by disapproval before the expiration of the period of

two months and it is only if the life of the proclamation is to be extended beyond the period of two months that is required to be approved by both

Houses of Parliament, it is, therefore, clear that disapproval by the either House of the Parliament before the expiration of two months has no

constitutional relevance to the life of the Proclamation and the proclamation would continue in force for a period of two months despite such

disapproval.

151. It would be clear from this discussion that when a proclamation is validly issued by the President under Article 356, Clause (1), it has

immediate force and effect, the moment it is issued and where, by the proclamation, the President has assumed to himself the powers of the

Governor under Sub-clause (a), he is entitled to exercise those powers as fully and effectually as the Governor, during the period of two months

when the Proclamation is in operation. There is no limitation imposed by any Article of the Constitution that these powers of the Governor can be

exercised by the President only when they have no irreversible consequence and where they have such consequence, they cannot be exercised

until the proclamation is approved by both Houses of Parliament. Whilst the proclamation is in force during the period of two months, the President

can exercise all the powers of the Governor assumed by him and the Court cannot read any limitation which would have the effect of cutting down

the with and amplitude of such powers by confining their exercise only to those cases where no irretrievable consequence would ensue which

would be beyond repair. When any power of the Governor is assumed by the President under the Proclamation, the President can, during the two

months when the proclamation is in force, do whatever the Governor could in exercise of such power and it would be immaterial whether the

consequence of exercise of such power is final and irrevocable or not." To hold otherwise would be to refuse to give full effect to the proclamation

which as pointed out above, continues to operate with full force and vigour during the period of two months. It would be rewriting Article 356 and

making approval of both Houses of Parliament a condition precedent to the coming into force of the proclamation so far as the particular power is

concerned. Now one of the powers of the Governor which can be assumed by the President under the proclamation is the power to dissolve the

Legislative Assembly of the State under Article 174(2)(b) and, therefore, the President also can dissolve the Legislative Assembly during the time

that the proclamation is in force. It is difficult to see how the exercise of this power by the President can be made conditional on the approval of the

proclamation by the two Houses of Parliament. If- the proclamation has full force and effect during the period of two months even without

approval by the two Houses of Parliament, the President certainly can exercise the power of the Governor to dissolve the Legislative Assembly of

the State without waiting for the approval of the proclamation by both Houses of Parliament. It is true that once the Legislative Assembly is

dissolved by the President in exercise of the power assumed by him under the proclamation, it would be impossible to restore the status quo ante if

the proclamation is not approved by both Houses of Parliament, but that is the inevitable consequence flowing from the exercise of the power

which the President undoubtedly possesses during the time that the proclamation is in force. This is clearly a necessary power because there may

conceivably be cases where the exercise of the power of dissolution of the Legislative Assembly may become imperative in order to remedy the

situation arising on account of break down of the constitutional machinery in the State and failure to exercise this power promptly may frustrate the

basic object and purpose of a proclamation..... under Article 356, Clause (1). It is, therefore, not possible to accede to the argument of the

petitioners, in the writ petitions that during the period of two months before approval of the proclamation by the two Houses of Parliament, no

irreversible action, such as dissolution of the Legislative assembly of the State, can be taken by the President. The power to dissolve the Legislative

Assembly of the State cannot also be denied to the President on the ground that the proclamation may not be approved by one or the other House

of Parliament. In the first place, the existence of a constitutional power or the validity of its exercise cannot be determined by reference to a

possible contingency. The Court cannot enter the realm of conjecture and surmise and speculate as to what would be the position at the expiration

of two months-whether the proclamation will be approved by both Houses of Parliament or not. Secondly, it is entirely immaterial whether or not

the proclamation is approved by both Houses of Parliament, because even if it is not so approved, it would continue to be in full force and effect

for a period of two months, unless sooner revoked. It is also difficult to appreciate how Article 357, Clause (1), Sub-clause (c) can possibly assist

the argument of the petitioners. That Sub-clause provides that when the House of the People is not in session, the President can authorise

expenditure out of the Consolidated Fund of the State pending receipt of sanction of such expenditure by the Parliament and consequently, it is

possible that if Parliament does not sanction such expenditure, serious difficulty might arise. But that is merely a theoretical possibility which in

practical reality of politics would hardly arise and it need not deflect us from placing on the language of Article 356 the only correct interpretation

which its language bears. When the President issues a proclamation on the advice of the Central Government, it stands to reason that the House of

the People in which the Central Government enjoys majority would sanction expenditure out of the Consolidated Fund of the State. We are,

therefore, of the view that even during the period of two months, without the approval of the proclamation by both Houses of Parliament, the

President can dissolve the Legislative Assembly of the State in exercise of the power of the Governor under Article 174(2)(b) assumed by him

under the proclamation.

152. This is the correct constitutional interpretation of Clause (1) and (3) of Article 356 guided by the language of these clauses and the context

and setting in which they occur. It might appear at first blush that this constitutional interpretation would completely eliminate the Parliamentary

central over the issue of proclamation and exercise of powers under it and the Central Government would be free to take over the administration of

the State and paralyse or even dissolve the Legislative Assembly, even if it should appear that one or the other House of Parliament might not

approve it. But this apprehension need not cause any undue anxiety, for it is based primarily on the possibility of abuse of the power conferred

under Article 356, Clause (1). It must be remembered that merely because power may sometime be abused, it is no ground for denying the

existence of the power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate

needs and at the same time incapable of mischief. In the last analysis, a great deal must depend on the wisdom and honesty, integrity and character

of those who are in charge of administration and the existence of enlightened and alert public opinion. Moreover, it is apparent that a piquant

situation of considerable complexity and extra-ordinary consequences may arise if either House of Parliament disapproves of the proclamation and,

therefore, political and pragmatic wisdom of the highest order and circumspection of utmost anxiety would necessarily inform the Central

Government before exercising the weighty power conferred by Article 356, Clause (i). Further more, it must be remembered that the principle of

cabinet responsibility to Parliament lies at the core of our democratic structure of Government and the Central Government is accountable for all its

actions to Parliament which consists of elected representatives of the people and if any action is taken by the Central Government which is

improper or unjustified by moral, ethical or political norms, Parliament would certainly be there to bring them to book. The Political control

exercised by Parliament would always be a salutary check against improper exercise of power or its misuse or abuse by the executive. And lastly,

the powers conferred on the President, that is, the Central Government, being a limited power, its exercise would, within the narrow minimal area,

which we shall indicate later, be subject to judicial review ability. These are the safeguards which must allay the apprehension that the Central

Government may act wantonly or capriciously in issuing a proclamation under Article 356, Clause (1) by passing and ignoring the two Houses of

Parliament.

153. That takes us to the next question whether any injunction can be granted against the Union of India restraining it from issuing a proclamation

and dissolving the Legislative Assemblies of the States under Article 356, Clause (i), for that is the primary relief claimed by the States in the suits.

This question has been argued on a demurrer as if the averments made in the plaints were correct. We shall presently consider this question, but

before that, we may dispose of a short point in regard to what has been described as a "directive" by Shri Charan Singh, Home Minister to the

Central Government, to the Chief Ministers of the States concerned in the suits (hereinafter referred to as the Plaintiff States). Each of the plaintiff

states has sought a declaration that the "directive" of Shri Charan Singh is "Unconstitutional, illegal and ultra vires the Constitution" and an

injunction restraining the Union of India from giving effect to this "directive". We fail to see how such declaration or injunction can be granted by

the Court. The "directive" of Shri Charan Singh is nothing but an advice or suggestion to the Chief Minister of each plaintiff State to recommend to

the Governor dissolution of the Legislative Assembly of the concerned State. It has been wrongly described as a "directive". It has no constitutional

authority behind it. It is always open to the Home Minister of the Central Government to give advice or suggestion to the Chief Minister of a State

and the Chief Minister may accept or reject such advice or suggestion according as he thinks fit. The advice or suggestion has no binding effect on

the Chief Minister and no legal consequence flows from it. Hence it is not possible to say that the "directive" issued by Shri Charan Singh was

unconstitutional, illegal or ultra vires. There is also no question of giving effect to the "directive" and no injunction can, therefore, be granted

restraining its implementation. The "directive", if not accepted and carried out would certainly be a precursor to action under Article 356, Clause

(1) and, therefore, may be regarded as indicative of a threat, but standing by itself, it does not give rise to any cause of action in the State for

declaration or injunction. Turning to the relief sought against the threatened exercise of power under Article 356, Clause (1) we find that what is

prayed for in this relief is "permanent injunction restraining the defendant from taking recourse under Article 356 of the Constitution of India to

dissolve the Legislative Assembly of the State-----and from taking any steps from holding fresh elections to the State Assembly before

March, 1978." It is indeed difficult to appreciate, how such a wide and sweeping injunction can be granted by this Court restraining the Union of

India from exercising altogether its powers under Article 356, Clause (1). How can the Union of India be prevented by this Court from discharging

its constitutional obligations to the State. We have already pointed out that there is a constitutional duty enjoined on the Union of India to ensure

that the Government of every State is carried on in accordance with the provisions of the Constitution and there is equally a constitutional obligation

on the President that is, the Central Government, to take action under Article 356, Clause (i), if he finds that a situation has arisen where the

Government of the State cannot be carried on in accordance with the provisions of the Constitution. Can this Court issue a blanket order against

the Union of India that whatever be the situation which may develop in the State and how-so-ever necessary it may become to exercise the power

under Article 356 Clause (1), the Union of India shall not take recourse for that power to dissolve the Legislative Assembly of the State and hold

fresh elections, to the State Legislative Assembly before March, 1978. That would clearly obstruct its discharge of the constitutional obligations by

the Central Government and no such injunction can be issued by this Court. Realising this difficulty in their way, the plaintiff-States sought to limit

the relief of injunction by confining it only to the ground set out in the "directive" of Shri Charan Singh and in the statement made by Shri Shanti

Bhushan, Law Minister, at a talk on the All India Radio given by him. That ground, according to the plaintiff-States, was that since the Congress

which was the ruling party in these States suffered a massive defeat at the General Elections to the Lok Sabha held in March 1977, the Legislative

Assemblies of these States no longer reflected the wishes or views of the electorate and hence a fresh appeal to the political sovereign had become

necessary and obligatory and the Legislative Assemblies of these States should, therefore, be dissolved with a view to obtaining a fresh mandate

from the electorate. It was contended on behalf of the Plaintiff-States that this was the only ground on which Central Government proposed to take

action under Article 356, Clause (1) and since this ground was wholly extraneous and irrelevant to the basic condition for taking action under

Article 356, Clause (1), the Central Government was constitutionally not entitled to take action under this clause and if any such action were taken

by the Central Government, it would be outside the limits of its constitutional authority. The learned Additional Solicitor General combated this

contention by giving a two-fold answer. First, he contended that it was not correct to say that the points of view expressed by Shri Charan Singh

and Shri Shanti Bhushan constituted the only material or ground for the possible action under Article 356, Clause (1). He urged that the points of

view of these two ministers could not be equated with the advice which the Council of Ministers might give to the President under Article 74,

Clause (1) in regard to the dissolution of the Legislative Assemblies of the Plaintiff-States. The exercise of power under Article 356, Clause (1), it

was said, depends on a wide range of situations depending upon varied and diverse considerations and it is not possible to say what grounds might

ultimately weigh with the Council of Ministers in giving their advice to the President under Article 74, Clause (1). Secondly he urged that in any

event the ground that the Legislative Assemblies of the Plaintiff-States had ceased to reflect the will of the electorate and, therefore, in order to

ascertain the will of the people and give effect to it, it was appropriate that the Legislative Assemblies should be dissolved and election should be

held, was a ground which had reasonable nexus with the basic condition for invoking the exercise of power under Article 356, Clause (1) and it

was a legitimate and relevant ground which could be taken" into account in arriving at the satisfaction that the Government of the State cannot be

carried on in accordance with the provisions of the Constitution. These were the rival contentions of the parties which we must now proceed to

consider.

154. But before we do so, we must at the threshold refer to one other argument of the learned Additional Solicitor General which sought to

exclude, the jurisdiction of the Court in relation to a question of this kind. He contended that the question whether in a particular State a situation

has arisen where the Government of the State cannot be carried on in accordance with the provisions of the Constitution and, therefore action

should be taken under Article 356, Clause (1) is essentially a political question entrusted by the Constitution to the Union executive and on that

account it is not justiciable before the Court. He urged that having regard to the political nature of the problem, it is not amenable to judicial

determination and hence the Court must abstain from inquiring into it. We do not think we can accept this argument. Of course, it is true that if a

question brought before the Court is purely a political question not involving determination of any legal or constitutional right or obligation, the

Court would not entertain it, since the Court is concerned only with adjudication of legal rights and liabilities. But merely because a question has a

political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of

constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional

question can, therefore, fail to be political. A Constitution is a matter of purest politics, a structure of power and as pointed out by Charles Black in

Perspectives in Constitutional law" "constitutional law" symbolizes an inter section of law and politics, wherein issues of political power are acted

on by persons trained in the legal tradition, working in judicial institutions, following the procedures of law, thinking as lawyers think". It was

pointed out by Mr. Justice Brennan in the Opinion of the Court delivered by him in Baker v. Carr, 369 U.S. 186 an epoch making decision in

American constitutional history, that "the mere fact that the suit seeks protection of a political right does not mean that it presents a political

question." This was put in more emphatic terms in Nixon v. Herndon 273 U.S. 536 by saying that such an objection "is little more than a play upon

words". The decision in Baker v. Carr, (Supra) was indeed a striking advance in the field of constitutional law in the United States. Even before

Baker v. Carr., the courts in the United States were dealing with a host of questions "political" in ordinary comprehension. Even the desegregation

decision of the Supreme Court in Brown v. Board of Education 347 U.S. 483 had a clearly political complexion. The Supreme Court also

entertained questions in regard to the political right of voting and felt no hesitation about relieving against racial discrimination in voting and in

Gomillion v. Lightfoot 364 U.S. 339. , it did this even when the racial discrimination was covert, being achieved by so redrawing a municipal

boundary as to exclude virtually all Negroes and no whites, from the city franchise. It is true that in Colegrove v. Green 328 U.S. 549 the Supreme

Court refused relief against Congressional districting inequities in Illinois, but only three out of seven Justices who sat in that case based their

decision on the ground that the question presented before them was political and non-justiciable and this view was in effect and substance reversed

by the Supreme Court in Baker v. Carr. The Supreme Court in Baker v. Carr, held that it was within the competence of the federal Courts to

entertain an action challenging a statute apportioning legislative districts as contrary to the equal protection clause. This case clearly decided a

controversy which was political in character, namely, apportioning of legislative districts, but it did so because a constitutional question of violation

of the equal protection clause was directly involved and that question was plainly and indubitably within the jurisdiction of the Court to decide. It

will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare "Judicial hands

off". So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly

be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert in the clearest terms, particularly in the

context of recent history, that the Constitution is *Suprema tex*, the paramount law of the land and there is no department or branch of government

above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and

it has to act Within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it shall be- the sole

judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This

Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on

each branch of government, whether it is limited and if so, what are the limits and whether any action of that branch transgresses such limits. It is for

this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law. To quote the words

of Mr. Justice Brennan in Baker v. Carr, ""Deciding whether a matter has in any measure been committed by the Constitution to another branch of

government or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional

interpretation and is a responsibility of this Court as ultimate interpreter of the Constitution"". Where there is manifestly unauthorised exercise of

power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of

government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional

plan and to work them into life in the cases that reach the Court. ""Tact and wise restraint ought to temper any power but courage and the

acceptance of responsibility have their place too"". The Court cannot and should not shirk this responsibility, because it has sworn the oath of

alliance to the Constitution and is also accountable to the people of this Country. There are indeed numerous decisions of this Court where

constitutional issues have been adjudicated upon though enmeshed in questions of religious tenets, social practices, economic doctrines or

educational policies. The Court has in these cases adjudicated not upon the social, religious, economic or other issues, but solely on the

constitutional questions brought before it and in doing so, the Court has not been deterred by the fact that these constitutional questions may have

such other overtones or facets. We cannot, therefore, decline to examine whether there is any constitutional violation involved in the President

doing what he threatens to do, merely on the facile ground that the question is political in tone, colour or complexion.

155. But when we say this, we must make it clear that the constitutional jurisdiction of this Court is confined only to saying whether the limits on the

power conferred by the Constitution have been observed or there is transgression of such limits. Here the only limit on the Power of the President

under Article 356, Clause (1) is that the President should be satisfied that a situation has arisen where the Government of the State cannot be

carried on in accordance with the provisions of the Constitution. The satisfaction of the President is a subjective one and cannot be tested by

reference to any objective tests. It is deliberately and advisedly subjective because the matter in respect to which he is to be satisfied is of such a

nature that its decision must necessarily be left to the executive branch of Government. There may be a wide range of situations which may arise

and their political implications and consequences may have to be evaluated in order to decide whether the situation is such that the Government of

the State cannot be carried on in accordance with the provisions of the Constitution. It is not a decision which can be based on what the Supreme

Court of United States has described as "judicially discoverable and manageable standards." It would largely be a political judgment based on

assessment of diverse and varied factors, fast changing situations, potential consequences, public reaction, motivations and responses of different

classes of people and their anticipated future behavior and a host of other considerations, in the light of experience of public affairs and pragmatic

management of complex and often curious adjustments that go to make up the highly sophisticated mechanism of a modern democratic

government. It cannot, therefore, by its very nature be a fit subject-matter for judicial determination and hence it is left to the subjective satisfaction

of the Central Government which is best in a position to decide it. The Court cannot in the circumstances, go into the question of correctness or

adequacy of the facts and circumstances on which the satisfaction of the Central Government is based. That would be a dangerous exercise for the

Court, both because it is not a fit instrument for determining a question of this kind and also because the Court would thereby usurp the function of

the Central Government and in doing so, enter the "Political thicket", which it must avoid if it is to retain its legitimacy with the people. In fact it

would not be possible for the Court to undertake this exercise, apart from total lack of jurisdiction to do so, since by reason of Article 74 Clause

(2), the question whether any and if so what advice was tendered by the Ministers to the President cannot be enquired into by the Court and

moreover, "the steps taken by the responsible Government may be founded on information and apprehensions which are not known to and cannot

always be made known to, those who seek to impugn what has been done." (Vide *Ningkan v. Government of Malaysia* [1970] A.C. 379. But one

thing is certain that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to

examine it, because in that case there would be no satisfaction of the President in regard to the matter which he is required to be satisfied. The

satisfaction of the President is a condition precedent to the exercise of power under Article 356, Clause (1) and if it can be shown that there is no

satisfaction of the President at all, the exercise of the power would be constitutionally invalid. Of course by reason of Clause (5) of Article 356, the

satisfaction of the President is final and conclusive and cannot be assailed on any ground but this immunity from attack cannot apply where the

challenge is not that the satisfaction is improper or unjustified, but that there is no satisfaction at all. In such a case it is not the satisfaction arrived at

by the President which is challenged, but the existence of the satisfaction itself. Take, for example, a case where the President gives the reason for

taking action under Article 356, Clause (1) and says that he is doing so, because the Chief Minister of the State is below five feet in height and,

therefore, in his opinion a situation has arisen where the Government of the State cannot be carried on in accordance with the provisions of the

Constitution. Can the so called satisfaction of the President in such a case not be challenged on the ground that it is absurd or perverse or mala fide

or based on a wholly extraneous and irrelevant ground and is, therefore, no satisfaction at all. It must of course be concerned that in most cases it

would be difficult, if not impossible, to challenge the exercise of power under Article 356, Clause (1) even on this limited ground, because the facts

and circumstances on which the satisfaction is based would not be known, but where it is possible, the existence of the satisfaction can always be

challenged on the ground that it is mala fide or based on wholly extraneous and irrelevant grounds. This proposition derives support from the

decision of the Judicial Committee of the Privy Council in *King Emperor v. Banwari Lal Sarma* 72 LA. 57 where Viscount Simon, L.C. agreed

that the Governor General in declaring that emergency exists must act bona fide and in accordance with his statutory powers. This is the narrow

minimal area in which the exercise of power under Article 356, Clause (1) is subject to judicial review and apart from it, it cannot rest with the

Court to challenge the satisfaction of the President that the situation contemplated in that clause exists.

156. Let us now turn to the facts and examine them in the light of the principle discussed. It would seem from the above discussion that if it can be

established affirmatively (1) that the proposed action of the President under Article 356, Clause (1) would be based only on the ground that the

Legislative Assemblies of the Plaintiff-States have ceased to reflect the will of the electorate and they should, therefore, be dissolved with a view to

giving an opportunity to the people to elect their true representatives and (2) that this ground is wholly extraneous and irrelevant to the question

which the President has to consider for the purpose of arriving at the requisite satisfaction, the Plaintiff-States might have a case for injunction

against the Union of India. But we are afraid that neither of these two propositions can be said to be established in the present suits.

157. Re: Proposition 1: It is not possible to accede to the argument of the Plaintiff-States that the ground that the Legislative Assemblies of the

Plaintiff-States have lost the mandate of the people and no longer reflect the will of the electorate is the only ground on which the President would

act, in case he decides to exercise the power under Article 356, Clause (1), which, subsequent to the making of our order on 29th April, 1977, he

has in fact done. It is true that this ground is mentioned in the "directive" of Shri Charan Singh and the statement of Shri Shanti Bhushan, but 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). There may be other grounds before the Council of Ministers which may not

have been articulated by Shri Charan Singh and Shri Shanti Bhushan. It is also possible that in a rapidly changing situation, new grounds may

emerge by the time the Council of Ministers considers the question and these grounds may persuade the Council of Ministers to decide to take

action under Article 356, Clause (1). The Court cannot equate the points of view-expressed by Shri Charan Singh and Shri Shanti Bhushan with

the advice of the Council of Ministers nor can the Court speculate as to what would be the grounds which would ultimately weigh with the Council

of Ministers. Moreover, it may be noted that this is not the only ground referred to in the "directive" of Shri Charan Singh. He has also after

referring to the virtual rejection in the Lok Sabha elections, of the candidates belonging to the ruling party in the Plaintiff-States, pointed out:

158. The resultant climate of uncertainty is causing grave concern to us. We have reasons to believe that this has created a sense, of diffidence at

different levels of Administration. People at large do not any longer appreciate the propriety of continuance in power of a party which has been

unmistakably rejected by the electorate. The climate of uncertainty, diffidence and disrespect has already given rise to serious threats to law and

order.

159. The premise on which the entire superstructure of the argument of the Plaintiff-States is based is thus wanting.

160. Re: Proposition 2: It is not necessary to consider the question arising under this proposition on the view taken by us in regard to the first

proposition, but since the question was argued before us in some detail, we think it proper to express our opinion upon it. The question is: can the

ground that the Legislative Assembly of a State has ceased to reflect the will of the electorate and that the Legislative Assembly and the electorate

are at variance with each other be said to be wholly extraneous and irrelevant for the purpose of Article 356. Clause (1) ? Has it any nexus with

the matter in regard to which the President is required to be satisfied under Article 356, Clause (1) ? Does it bear at all on the carrying of the

Government of the State in accordance with the provisions of the Constitution ? Now, we have no doubt at all that merely because the ruling party

in a State suffers defeat in the elections to the Lok Sabha or for the matter of that, in the panchayat elections, that 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 the center. It is also not an unusual

phenomenon that the same electorate may elect a majority of members of one party to the Legislative Assembly, while at the same time electing a

majority of members of another party to the Lok Sabha. Moreover, the Legislative Assembly, once elected, is to continue for a specific term and

mere defeat at the elections to the Lok Sabha prior to the expiration of the term without anything more would be no ground for its dissolution. The

defeat would not necessarily in all cases indicate that the electorate is no longer supporting the ruling party because the issues may be different. But

even if it were indicative of a definite shift in the opinion of the electorate, that by itself would be no ground for dissolution, because the Constitution

contemplates that ordinarily the will of the electorate shall be expressed at the end of the term of the Legislative Assembly and a change in the

electorate's will in between would not be relevant. It may be noted that the Constitution does not provide for a right of recall, individual or

collective. If such a provision were there it might have perhaps justified the argument that the ruling party in the State having lost in the elections to

the Lok Sabha, the continuance of the Legislative Assembly would not be in accordance with the provisions of the Constitution. To dissolve the

Legislative a provision, the defeat of the ruling party in a State at the Lok Sabha elections cannot by itself, without anything more, support the

inference that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. To dissolve the Legislative

Assembly solely on such ground would be an indirect exercise of the right of recall of all the members by the President without there being any

provision in the Constitution for recall even by the electorate. The situation here is, however, wholly different. This is not a case where just an

ordinary defeat has been suffered by the ruling party in a State at the elections to the Lok Sabha. There has been a total rout of , candidates

belonging to the ruling party. In some of the Plaintiff States, the ruling party has not been able to secure a single seat. Never in the history of this

country has such a clear and unequivocal verdict being given by the people, never a more massive vote of no-confidence in the ruling party. When

there is such crushing defeat suffered by the ruling party and the people have expressed themselves categorically against its policies, it is

symptomatic of complete alienation between the Government and the people. It is axiomatic that no Government can function efficiently and

effectively in accordance with the Constitution in a democratic set up unless it enjoys the goodwill and support of the people. Where there is a wall

of estrangement which divides the Government from the people and there is resentment and antipathy in the hearts of the people against the

Government, it is not at all unlikely that it may lead to instability and even the administration may be paralysed. The consent of the people is the

basis of democratic form of Government and when that is withdrawn so entirely and unequivocally as to leave no room for doubt about the

intensity of public feeling against the ruling party, the moral authority of the Government would be seriously undermined and a situation may arise

where the people may cease to give respect and obedience to governmental authority and even conflict and confrontation may develop between

the Government and the people leading to collapse of administration. These are all consequences which cannot be said to be unlikely to arise from

such an unusual state of affairs and they may make it impossible for the Government of the State to be carried on in accordance with the provisions

of the Constitution. Whether the situation is fraught with such consequences or not is entirely a matter of political judgment for the executive branch

of Government. But it cannot be said that such consequences can never ensue and that the ground that on account of total and massive defeat of

the ruling party in the Lok Sabha elections, the Legislative Assembly of the State has ceased to reflect the will of the people and there is complete

alienation between the Legislative Assembly and the people is wholly extraneous or irrelevant to the purpose of Article 356, Clause (1). We hold

that on the facts and circumstances of the present case this ground is clearly a relevant ground having reasonable nexus with the matter in regard to

which the President is required to be satisfied before taking action under Article 356 a.(1)

161. These are the reasons which have prevailed with us in making our order dated 29th April, 1977 dismissing the Suits and Writ Petitions and

rejecting the prayer for interim injunction.

Goswami, J.

162. We already dismissed the suits and the writ petitions on April 29, 1977 and accordingly rejected the prayers for interim injunctions. We

promised to give our reasons later and the same may now be stated.

163. The facts of all these matters appear in the judgment of the learned Chief Justice and need not be repeated.

164. The fundamental questions involved in these suits are these:

- (1) Do the suits lie under Article 131 of the Constitution of India ?
- (2) What is the scope of Article 356 vis-a-vis the Court's jurisdiction ?
- (3) If the suits lie, is there a case for permanent injunction and, as an intermediate step, for an interim temporary injunction ?
- (4) Have the writ petitioners any fundamental rights to maintain their applications under Article 32 of the Constitution?

165. In these suits as well as in the Writ Petitions the central issue that is involved is the constitutional right of a Council of Ministers to function as

the Government of a State and of a Legislative Assembly to continue until expiry of its term provided for in the Constitution.

166. The suits are filed under Article 131 of the Constitution. Article 131 gives this Court exclusive original jurisdiction in any dispute-

- (a) between the Government of India and one or more States: or
- (b) between the Government of India and any State or States on one side and one or more other States on the other: or
- (c) between two or more States.

167. Although the expression used in Article 131 is any dispute, the width of the expression is limited by the words that follow in respect of the

nature of dispute that can be entertained by this Court in its original jurisdiction. It is only a dispute which involves any question of law or fact on

which the existence or extent of a legal right of the contending party depends that can be the subject matter of a suit under Article 131. The dispute

should be in respect of legal rights and not disputes of political character. The Article, thus, refers to the parties that may be arrayed in the litigation

as well as to the subject matter of the dispute. (See 283250

168. The suits are, in form, being filed by the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa. But is the

dispute sought for adjudication within the scope or ambit of Article 131 ? That is the first question.

169. In a parliamentary form of Government when one Government is replaced by another, the State's continuity is not snapped. There may come

a moment in the life of a Government when it may cease to be truly representative of the people and, therefore, the interest of the State as a polity

or legal entity and that of the Government established on party system may cease to be identical. In such a situation, factual or imminent, a suit by a

State Government in the name of the State against the Union Government's action in defence of the former's legitimate existence and right of

continuance will not relate to the legal right of the State. The judgment, whether in truth and reality a particular situation exists or is portentously

imminent, may be correct or incorrect, but it is a political issue. The Court's jurisdiction is not political but entirely judicial.

170. The right of a particular State to sue is not always equivalent to the right of the Council of Ministers in all matters. Even if a Government goes

the State lives. Whether a particular Council of Ministers can survive threats to their existence depends no doubt immediately on its ability to enjoy

the confidence of the majority in the Legislature but also, in the last resort, in its ability to enjoy the confidence of the political sovereign, the

electorate. The questions affecting the latter domain are of highly political complexion and appertain to political rights of the Government and not to

legal rights of the State. The rights agitated by the plaintiffs are principally of the Governments concerned who are interested in continuing the

legislatures whose confidence they enjoy. On the other hand, it is claimed by the Home Minister in his letter that these Legislatures have lost the

mandate of the people and that there is clear evidence of their having lost the confidence of the people as a result of the verdict in the recent

general election to the Parliament. The Court is not concerned whether this is a correct assessment or not. The Union Government is entitled to

take political decisions. However, even if a political decision of the Government of India affects legal rights of the State as a legal entity, the

existence and extent of that right will be triable under Article 131. The question is, are legal rights of the State involved in the dispute ?

171. Article 131 speaks of a legal right. That legal right must be that of the State. The dispute about a legal right, its existence or extent, must be

capable of agitation between the Government of India and the States. The character of the dispute within the scope of Article 131 that emerges is

with regard to a legal right which the States may be able to claim against the Government. For example, the State as a party must affirm a legal

right of its the which the Government of India has denied or is interested in denying giving rise to a cause of action. For the purpose of deciding

whether Article 131 is attracted the subject matter of the dispute, therefore, assumes great importance. Part VI deals with the States. The word

State"" is not defined for the purpose of Article 131 in Part V. The ""State"" is, however, defined under Article 12 for the purpose of Part III

(Fundamental Rights). This is the definition also for Part IV (Directive principles of State Policy). Under Article 367(1), the provisions of the

General Clauses Act, 1897, are applicable for interpretation of the Constitution. Section 3(58) of the General Clauses Act defines State, after the

commencement of the Constitution (Seventh Amendment), Act, 1956, to mean a State specified in the First Schedule to the Constitution and shall

include a Union Territory. The First Schedule to the Constitution describes 22 States and 9 Union Territories. The State Government is separately

defined u/s 3(60) of the General Clauses Act-thus keeping the distinction. Article 131 of the Constitution relates to legal rights of the State or of the

Government of India. Any violation of the provisions of the Constitution impinging on the rights of the States or of the Government of India will be

justiciable under Article 131. Similarly, boundary disputes or disputes relating to rival claims to receipts from taxes and other duties between two

States are cognizable by this Court, to refer only to a few instances. Now in these above mentioned cases the rights of the State as a legal entity

distinguished from the Government, being the executive agent, will be involved. Even if one Government is replaced by another Government, such

a dispute will not abate or disappear since the State endures and the cause of action survives.

172. Keeping in view the above concept, we will undertake to examine the nature of the dispute which is involved in these suits. Shortly stated the

States apprehend a grave threat to the assumption of the executive functions of, the State by the President on non-compliance with the advice, or

direction contained in the letter of the Home Minister. It is true that the threat to an illegal action also furnishes a cause of action for a suit or

proceeding.

173. Under Article 172(1) all the State Assemblies, except Orissa, will continue, if not dissolved earlier, for a period of six years from the date

appointed for its first meeting and in that view in the normal course will continue for some more months. The Legislative Assembly of the State of

Orissa, on the other hand, having held its election in 1974, will in the normal course continue till 1980 unless earlier dissolved. The States

apprehend that this normal life of the Legislatures is going to be snapped resulting in the annihilation of their legal and constitutional rights under

Article 172(1). That furnishes a cause of action for the suits for permanent injunction according to the plaintiffs.

174. The dispute is this: The Home Minister, Government of India is asking the Chief Ministers of the Governments of the States to advise the

Governors to dissolve the Legislative Assemblies. The Chief Ministers declined to accept the advice and filed the suits. What is the nature of this

dispute ? On the one hand there is the claim of a right to continue the present Government of the State and necessarily to continue the Legislative

Assembly and on the other the right to take action under Article 356 by the President to assume functions of the State Government. This dispute

involves a major issue of great constitutional importance and the aggrieved party may have other appropriate forum to complain against any

substantial injury. Even so, it is not a dispute between the State on the one hand and the Government of India on the other. It is a real dispute

between the Government of the State and the Government of India. It is no doubt a question of life and death for the State Government but not so

for the State as a legal entity. Even after the dissolution of the Assembly the State will continue to have a Government for the time being as

provided for in the Constitution in such a contingency.

175. A Legislature of the State under Article 168 consists of the Governor and the Legislative Assembly or where there is a Legislative Council

both the Houses. This also has its significance in comprehending the nature of the dispute. The members constituting the State Legislature of which

the Council of Ministers is the executive body, alone, do not even constitute the State Legislature. The Governor is an integral part of the State

Legislature under the Constitution. The rights of the Council of Ministers or of the members of the State Legislature cannot, therefore, be equated

with the rights of the State even though those rights may be those of the State Government, pro tempore.

176. The distinction between the State and the Government is brought out with conspicuous clarity in the following passages:

The distinction between the State and its Government is analogous to that between a given human individual, as a moral and intellectual person and

his material physical body: By the term State is understood the political person or entity which possesses the law making right. By the term

Government is understood the agency through which the will of the State is formulated, expressed and executed. The Government thus acts as the

machinery of the State and those who operate this machinery,.....act as the agents of the State.

In all constitutionally organised States the State is permitted to sue in the courts not only with reference to its own proprietary or contractual

interests, but also in behalf of the general interests of its citizen body. When appearing as plaintiff in the latter capacity it is known as *Parens*

Patriae. This jurisprudential doctrine is stated in the *Cyclopedia of Law and Procedure* as follows:

"A State, like any other party, cannot maintain a suit unless it appears that it has such an interest in the subject-matter thereof as to authorise the

bringing of the suit by it.

177. In this connection, however, a distinction, should be noted between actions by the people or by the State in a sovereign capacity and suits

founded on some pecuniary interest for proprietary right". The Fundamental Concepts of Public Law by Westel W. Willoughby

The value of the distinction between State and government is the possibility it offers of creating institutional mechanisms for changing the agents of

the state, that is, the government, when the latter shows itself inadequate to its responsibilities.

178. I am clearly of opinion that the subject matter of the dispute in these suits does not appertain to legal rights of the States concerned to satisfy

the requirement of Article 131 of the Constitution. These suits are, therefore, not maintainable in law and on this ground they are liable to be

dismissed.

179. With regard to the Writ Petitions I had the opportunity to go through the judgments of my brothers Bhagwati and Gupta and I entirely agree

with their reasoning and conclusion. I am clearly of opinion that there is no violation of the fundamental rights guaranteed to the petitioners under

Articles 19(1)(f) and 31 of the Constitution as a consequence of the threatened dissolution of the Legislative Assembly. The Writ Petitions are,

therefore, not maintainable and are liable for rejection.

180. Since, however, the question of mala fides of the proposed action of the Home Minister was argued at length with a pointed focus on the

ensuing Presidential, election, I should touch on the point.

181. It is submitted that these grounds, ex facie, are completely irrelevant and extraneous and even mala fide. Mr. Niren De referred to the

decision of the Privy Council in *King-Emperor v. Benoari Lal Sarma* Ors. 72 LA. 57 and read to us the following passage:

It is to be observed that the section (72 of Government of India Act, 1935) does not require the Governor-General to state that there is an

emergency, or what the emergency is either in the text of the ordinance or at all and assuming that he acts bona fide and in accordance with his

statutory powers, it cannot rest with the courts to challenge his review that the emergency exists.

182. Relying on the above passage Mr. De submits that this Court is entitled to examine whether the direction is mala fide or not.

183. The Additional Solicitor General has drawn our attention to *Bhagat Singh Ors. v. The King-Emperor* 58 LA. 169 which is a decision of the

Privy Council followed in *Benoari Lal Sarma's* case (supra). He read to us the following passage:

state of emergency is something that does not permit of any exact definition. It connotes a state of matters calling for drastic action, which is to be

judged as such by some one. It is more than obvious that some one must be the Governor-General and he alone. Any other view would render

utterly inept the whole provision. Emergency demands immediate action and that action is prescribed to be taken by the Governor-General. It is he

alone who can promulgate the Ordinance.

184. The President in our Constitution is a constitutional head and is bound to act on the aid and advice of the Council of Ministers (Article 74).

This was the position even before the amendment of Article 74(1) of the Constitution by the 42nd Amendment (See 279979

185. The position has been made absolutely explicit by the amendment of Article 74(1) by the Constitution 42nd Amendment which says "there

shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in

accordance with such advice." What was judicially interpreted even under the unamended Article 74(1) has now been given parliamentary

recognition by the Constitution Amendment. There can, therefore, be no doubt that the decision under Article 356 of the Constitution which is

made by the President is a decision of the Council of Ministers. Because certain reasons are given in the letter of the Home Minister, it cannot be

said that those will be the only grounds which will weigh with the Council of Ministers when they finally take a decision when the advice has been

rejected by the Chief Ministers. There are so many imponderables that may intervene between the time of the letter and the actual advice of the

Council of Ministers to the President. There may be further developments or apprehension of developments which the Government may have to

take not of and finally when the Council of Ministers decides and advises the President to issue a proclamation under Article 356, the Court will be

barred from enquiring into the advice that was tendered by the Cabinet to the President (Article 74(2)). Then again under Article 356(5), the

satisfaction of the President in issuing the proclamation under Article 356(1) shall be final and conclusive and shall not be questioned in any court

on any ground. In the view I have taken, I am not required to consider in the matters before us whether Article 356(5) of the Constitution is ultra

vires the Constitution or not. Even the Additional Solicitor General based his arguments on the very terms of Article 356(1) de hors Article 356(5)

relying upon Bhagat Singh's case (supra) that the subjective satisfaction of the President is not justiciable. It is in view of this stand of the Union

that Mr. De drew our attention to Benoari Lal Sarma's case (supra) where the Privy Council seems to have indicated that the question of mala

fides could be gone in to by the court. Mr. De submits that a mala fide order under Article 356 will be no order in the eye of law.

186. I am not prepared to say that this Court, which is the last recourse for the oppressed and the bewildered, will, for good, refuse to consider

when there may be sufficient materials to establish that a proclamation under Article 356(1) is tainted with mala fides. I would, however, hasten to

add that the grounds given in the Home Minister's letter cannot be any strength of imagination be held to be mala fide or extraneous or irrelevant.

These ground will have reasonable nexus with the subject of a proclamation under Article 356(1) of the Constitution. The matter would have been

entirely different if there were no proposal, *pari passu*, for an appeal to the electorate by holding elections to these Assemblies.

187. In view of my conclusion that the suits and Writ Petitions are not maintainable I do not feel called upon to deal with the question whether

there is a case for permanent injunction or other appropriate writ in these matters. The suits and the Writ Petitions were, therefore, already

dismissed.

188. I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we

were considering judgment after having already announced the order and there was mention of this pending matter during the conversation. I have

given this revelation the most anxious thought and even the strongest judicial restraint which a Judge would prefer to exercise, leaves me no option

but to place this on record hoping that the majesty of the High Office of the President, who should be beyond the high-watermark of any

controversy, suffers not in future.

Untwalla, J.

189. The unanimous order of the Bench in these cases was delivered on April 29, 1977. The judgments in support of the order are now being

delivered. While generally agreeing with the reasons given in the leading judgment of the learned Chief Justice, on some of the points I would like to

add a few words and make some observations of my own.

190. As to the maintainability of the writ applications filed by some of the members of the Punjab Legislature under Article 32 of the Constitution

of India, I would, as at present advised, not like to express any opinion one way or the other. I will assume in their favour that at the threshold the

applications are maintainable. Yet they do not make out a case for issuance of any kind of writ, direction, or order.

191. But as to the maintainability of the suits filed under Article 131 by the various States I would like to say that, although the point is highly

debatable and not free from difficulty, the dispute of the kind raised in the suits does not involve any question whether of law or fact on which the

existence or extent of any legal right of the States concerned depends. To my mind the dispute raised is between the Government of India and the

Government or the Legislative Assembly of the States concerned. One or more limbs, namely and the Government, the Legislature or the Judiciary

of a State cannot be equated with the State. Although the expression ""legal right"" occurring in Article 131 embraces within its ambit not only the

constitutional rights of the States but also other kinds of legal rights, the dispute must relate to the territory, property or some other kind of legal

right of the State. Broadly speaking, the nature of the dispute in these cases is that the President on the advice of the Council of Ministers, in other

words, the Government of India proposes to exercise his powers under Article 356 for making a proclamation in order to dissolve the Legislative

Assembly of the State concerned and to dislodge the Council of Ministers, the particular Government in power in that State. Such a dispute, in my

opinion, is not a dispute vis-a-vis the legal right of the State a unit of the Union of India. It falls short of that. What is alleged is that pursuant to the

impugned proclamation the President will 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 exerciseable by the Governor including the power to dissolve the Assembly under Article 174(2)(b). Such a proposed or threatened

action does affect the legal right of the Government in power and the Legislative Assembly a part of the State Legislature, but not of the State itself.

The State undoubtedly is entitled to have a Governor a Government in one form or the other and the Legislature. No part of it can be abolished.

Abolition would affect the legal right of the State. But it is not quite correct to say that a State has legal right to have a particular Governor or a

particular Government or a particular Legislative Assembly. In contrast to the word "dissolved" used in Article 174 I would point out the provision

of "abolition" of the Legislative Council of a State mentioned in Article 169. Similarly, to illustrate my view point, I may refer to Article 153 which

provides "there shall be a Governor for each State" and Article 156 which provides for a particular Governor holding office during the pleasure of

the President. If a dispute arises in relation to an action or threat of the Government of India under Article 153 it will affect the legal right of the

State as the State cannot exist without a Governor. But if the dispute concerns merely the removal of a particular Governor by the President, it only

affects the legal right of the person holding the office or the Government of the State but not of the State itself. That the distinction, though subtle, is

significant and appreciable, is clear from the language of the various clauses of Article 131 itself as also from the definitions of State Governments

given in Section 3(58) and 3(60) of the General Clauses Act. In my considered judgment, therefore, the suits as instituted under Article 131 are

not maintainable.

192. But I would not rest content to maintain the dismissal of the suits only on this technical ground.

193. Putting the matter briefly in some words of my own as to the merits of the suits I would like to emphasize, in the first instance, that it is difficult

to presume, assume or conclude that the only basis of the proposed action by the President is the facts mentioned in the letter of the

194. Home Minister to the Chief Ministers of the States concerned or the speech of the Law Minister of the Government of India. There is no

warrant nor any adequate material disclosed in any of the complaints in support of any assertion to the contrary, Secondly, even if one were to assume

such a fact in favour of the plaintiffs or the petitioners the facts disclosed, undoubtedly, lie in the field Or an area purely of a political nature, which

are essentially non-justiciable. It would be legitimate to characterise such a field as prohibited area in which it is neither permissible for the Courts

to enter nor should they ever take upon themselves the hazardous task of entering into such an area. In the very nature of things the President must

be left to be the sole Judge, of course, on the advice of Ms Council of Ministers, for his satisfaction as to whether there exists or not a situation in

which the Government of a State cannot be carried on in accordance with the provisions of the Constitution. Such a satisfaction may be based on

receipt of a report from the Governor of a State or otherwise. Neither can the President be compelled to disclose all the facts and materials

leading to his satisfaction for an action under Article 356 nor is his conclusion as to the arising of a situation of the kind envisaged in Article 356(1),

generally speaking, open to challenge even on the disclosed facts.

195. I, however, must hasten to add that I cannot persuade myself to subscribe to the view that under no circumstances an order of proclamation

made by the President under Article 356 can be challenged in a Court of Law. And, I am saying so notwithstanding the provision contained in

Clause (5) of the said Article introduced by the Constitution (38th Amendment) Act, 1975. In support of the divergent views canvassed before us

either in relation to the proclamation of emergency under Article 352 or a proclamation under Article 356, extreme hypothetical examples were

cited on one side or the other. From a practical point of view most of such examples remain only in hypothesis and in an imaginary world. It is

difficult to find them in reality but yet not impossible in a given case or cases. Then, where lies the difference? Even before the introduction of

Clause (5) in Article 356 or a similar clause in some other Articles, such as Articles 352 and 123, the doors were closed for the Courts to enter

the prohibited area which is popularly and generally called the political field. If the validity of the action taken by the President in exercise of his

power, say, under any of the three Articles referred to above is challenged attracting the necessity of entering the prohibited field to peep into the

reality of the situation by examination of the facts for themselves, either on the ground of legality or malafides the Courts have always resisted and

shall continue to resist the inducement to enter the prohibited field; for example, *Bhagat Singh Ors. v. The King-Emperor*; 58, I A, 169. *King*

Emperor v. Benoari Lal Sarma Ors.; 72 I A 57. *Lakhi Naryana Das v. The Province of Bihar etc. etc* [1949] F.C.R.693 and 280265. To put it

graphically Clause (5) has merely put a seal on such closed doors to check more emphatically the temptation or the urge to make the Courts enter

the prohibited field. Attempts have always been made by the party who is out of the field of power, if I can equate it with the prohibited field

aforesaid, to induce the Court to enter that field in order to give relief against the taking of the extra-ordinary steps by the President on the advice

of the Government in power. On the other hand, the party in power has always resisted such move. In a democracy the current of public opinion

and franchise may push a particular ship on one side of the shore or the other. But this Court, like the Pole Star, has to guide and has guided the

path of all mariners in an even manner remaining aloof from the current and irrespective of the fact whether a particular ship is on this shore or that.

196. But then, what did I mean by saying that a situation may arise in a given case where the jurisdiction of the Court is not completely ousted ? I

mean this. If, without entering into the prohibited area, remaining on the fence, almost on the face of the impugned order or the threatened action of

the President it is reasonably possible to say that in the eye of law it is no order or action as it is in flagrant violation of the very words of a

particular Article, justifying the conclusion that the order is ultra vires, wholly illegal or passed mala fide, in such a situation it will be tantamount in

law to be no order at all. Then this Court is not powerless to interfere with such an order and may, rather, must strike it down. But it is incompetent

and hazardous for the Court to draw such conclusions by investigation of facts by entering into the prohibited area. It would be equally untenable

to say that the Court would be powerless to strike down the order, if on its face, or, if I may put it, by going round the circumference of the

prohibited area, the Court finds the order as a mere pretence or a colourable exercise of the extra-ordinary powers given under certain Articles of

the Constitution. In a given case it may be possible to conclude that it is a fraud on the exercise of the power. But as I have said above in all such

types of cases from a practical point of view are likely to seldom occur and even if they occur may be few and far between, the Courts have to

arrive at such conclusions by checking their temptation to enter the prohibited area of facts which are essentially of a political nature. It is in this

context Lord Mac Dermott seems to have observed in the case of Stephen Kalong Ningkan and Government of Malaysia [1970] A C, 379 :

The issue of justiciability raised by the Government of Malaysia led to a difference of opinion in the Federal Court, the Lord President of Malaysia

and the Chief Justice of Malaya holding that the validity of the proclamation was not justiciable and Onr J. holding that it was. Whether a

proclamation under statutory powers by the Supreme Head of the Federation can be challenged before the courts on some or any grounds is a

constitutional question of far-reaching importance which, on the present state of the authorities, remains unsettled and debatable.

197. In the application of the principle enunciated by me and in the demarcation of the prohibited area, opinions may sometimes differ, mistakes

may sometimes be committed either by unduly enlarging the area of the prohibited field or by unduly limiting. But such differences are inherent in

the very nature of administration of justice through human agency. No way out has yet been involved nor can one conceive of a better

methodology. Nonetheless the Courts and the Judges manning them are the best arbiters of judging their own limits of jurisdiction as the custodian

of the functions to watch and see every Lmb of the State acting under the Constitution in accordance with it. It is intrinsic and not uncommon to

find that a party in control of the field which I have described as a prohibited area would be trying to view and make that area as large as possible

and the party outside that field will endeavour to narrow it down as far as feasible. But the Courts do keep and have got to keep that area the

same as far as it is humanly and legally possible to do so either for the one or the other party. It is neither possible nor advisable or useful to make

an attempt to define such area by taking examples one way or the other to illustrate as to when the Court would be able to say that: "I am striking

out a particular order of the President without entering the prohibited area or vice versa". In these cases I would rest content by saying that, as I

view the facts placed before us, they are exclusively within the prohibited area.

198. The main theme of contention has been that the President cannot make the proclamation because when laid before each House of the

Parliament in accordance with Clause (3) of Article 356 it is sure or very likely that it will not be approved by the Rajya Sabha where the party in

power in the concerned States is in clear majority; in any event, the President cannot and should not be permitted to take any action pursuant to

the proclamation of dissolving the Assembly without the approval of both the Houses of Parliament, as the act of dissolution will be irretrievable

and in flagrant violation of the federal structure of the constitution. I find no words of such limitation on the power of the President either in the

original Article as framed and passed by the Constituent Assembly or in any of the amendments brought therein from time to time. The

proclamation made and any action taken pursuant thereto, if otherwise valid and not open to challenge in the manner and within the limitation I have

indicated above, are valid till the proclamation lasts, the maximum period of which is two months even without the approval of the Houses of

Parliament. On the revocation of the proclamation by the President or its disapproval or non-approval by either House of the Parliament the

proclamation merely ceases to operate without in any way affecting or invalidating the action taken pursuant to the proclamation before its cesser

of operation. No body has yet suggested, nor could any one do so, with any semblance of justification that such a wide power conferred on the

President even by the original Constitution as passed and adopted by the people of India could have any relevancy to the so called destruction of

the basic federal structure of the constitution. In this respect I, for myself, do not see any appreciable or relevant difference between the action of

dissolution of an Assembly by the Governor of a State in exercise of his power under Article 14(2)(b), or such an action taken pursuant to the

proclamation under Article 356(1)(a). There may be justifiable and genuine differences of opinion between the politicians, political thinkers, jurists

and others whether the grounds of the proposed action disclosed so far in the letter of the Home Minister or the speech of the Law Minister of the

Government of India can necessarily lead to the conclusion whether a situation has arisen in which the Government of the State cannot be carried

on in accordance with the provisions of the constitution. Firstly, the possibility of other grounds being there for the proposed action under Article

356 cannot be ruled out. Even if ruled out, the conclusion drawn on the facts disclosed cannot be said to be so perverse, erroneous and palpably

unsustainable so as to enable this Court to say that standing on the fence the Court can declare that the proposed action of proclamation on these

facts falls in the category of the cases where the Court will be justified to prevent the threatened action by injuncting the President either to issue the

proclamation or to dissolve the Assembly of a particular State. I, for one, would meticulously guard myself against expressing any opinion one way

or the other except saying that the facts disclosed so far, in my considered judgment, are definitely and exclusively within the prohibited area and

the conclusions drawn therefrom are reasonably possible, especially in the background of Article 355. On the facts, as they are, it is difficult,

rather, impossible to say that the proposed proclamation is going to be made mala fide with an ulterior motive. Apart from the other technical and

insurmountable difficulties which are therein the way of the plaintiffs or the petitioners in getting any of the reliefs sought I have thought it advisable

to pin-point in my own humble way the main grounds in support of the order we have already declared.

Fazal Ali, J.

199. In a big democracy like our's the popularly elected executive Government has sometimes to face a difficult and delicate situation and in the

exercise of its functions it has to perform onerous duties and discharge heavy responsibilities which are none too easy or pleasant a task.

Circumstances may arise where problems facing the Government are political, moral, legal or ethical calling for a careful and cautious exercise of

discretion of powers conferred on the Government by the Constitution of the country. Even though the Government may have acted with the best

of intentions, its actions may displease some and please others, as a result of which serious controversies and problems arise calling for an

immediate and satisfactory solution. The present suits filed by some of the States and the writ petitions filed by three members of the Legislative

Assembly of Punjab are ridden with legal and constitutional problems due to an action taken by the Central Government to meet, what in its

opinion was, an unprecedented political situation. My Lord the Chief Justice has succinctly detailed the facts of the present suits and the petitions

and it is not necessary for me to repeat the same, except in so far as they may be relevant for the decision of the conclusions to which I arrive. I

might also mention that I fully agree with the judgment proposed by my Lord the Chief Justice giving complete reasons for the order which the

Court had unanimously passed on April 29, 1977, dismissing the suits as also the writ petitions and rejecting the injunctions sought for and other

interim orders. I would, however, like to give my own reasons high-lighting some of the important aspects that arise in the case.

200. By virtue of the President's order dated the 18th January 1977 published in the Gazette of India-Extraordinary, Part I-section 1- by a

notification dated the 19th January 1977 the President in exercise of the powers conferred upon him by Sub-clause (b) of Clause (2) of Article 85

of the Constitution dissolved the Lok Sabha. This notification was soon followed by another notification dated the 10th February 1977 issued by

the Ministry of Law, Justice and Company Affairs calling upon all the parliamentary constituencies to elect members in accordance with Section

14(2) of the Representation of the People Act, 1951. In pursuance of this Notification the Election Commission on the same day appointed the

dates when elections were to be held in various constituencies. This order was passed u/s 30 of the Representation of the People Act, 1951.

Further details are not necessary for the purpose of deciding the issues arising in this case. Suffice it to mention that in consequence of the elections

which were held in March 1977, the Congress Party was almost routed in Bihar, U.P., Himachal Pradesh, Haryana, Madhya Pradesh, Orissa,

Punjab, Rajasthan and West Bengal and particularly in some of the States not a single candidate set up by the Congress Party was returned: The

Congress also lost its majority in the Lok Sabha as a result of which the Government at the center was formed by the Janata Party in coalition with

the Congress for Democracy. Mr. Morarji Desai the present Prime Minister was sworn in after being elected as the party leader on March 24,

1977 and he selected his Council of Ministers on March 25, 1977. Soon thereafter the Union Home Minister addressed a letter to the aforesaid

nine states, namely, Bihar, U.P., Himachal Pradesh, Haryana, Madhya Pradesh, Orissa, Punjab, Rajasthan and West Bengal, asking them to

advise their respective Governors to dissolve the Assemblies and seek a fresh mandate from the people.

201. The six plaintiffs, namely, the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa have filed suits in this Court

praying for a declaration that the letter of the Home Minister was illegal and ultra vires of the Constitution and not binding on the plaintiffs and

prayed for an interim injunction restraining the Central Government from resorting to Article 356 of the Constitution. A permanent injunction was

also sought for by the plaintiffs in order to restrain the Central Government permanently from taking any steps to dissolve the Assemblies until their

normal period of six years was over. The writ petitioners who are some members of the Legislative Assembly of Punjab have filed writ petition

complaining of violation of their fundamental rights and have also prayed for similar injunctions. The prayer of the plaintiffs as also that of the

petitioners has been seriously contested by the defendant/respondent Union of India on whose behalf the Additional Solicitor-General raised

several preliminary objections and also contested the claim on merits.

202. Having discussed the nature of the claim by the plaintiffs, it may now be germane to examine the preliminary objections taken by the

defendant to the maintainability of the suits by the plaintiffs as also of the petitions. The first preliminary objection raised by the Additional Solicitor

General was that the suits were not maintainable under Article 131 of the Constitution because one of the essential requirements of Article 131 was

that there must be a dispute between the Government of India and one or more States and the present dispute is, on the very face of the allegations

made by the plaintiffs, not between the Government of India and one or more States, but it is between the Government of India and the States

Governments which is not contemplated by Article 131 of the Constitution. Mr. Niren De, appearing for some of the plaintiffs, however, submitted

that the language of Article 131 is wide enough to include not only the States but also the State Governments which alone can represent the states

and context any legal right on behalf of the States.

203. It was next contended by the Additional Solicitor-General that even if the first condition of Article 131 is satisfied, there was no dispute as

contemplated by Article 131. Mr. Niren De rebutted this argument by contending that the letter of the Home Minister disclosing the grounds on

which the Central Government proposed to take action for dissolution of the Assemblies was a sufficient dispute which entitled the plaintiffs to

approach this Court under Article 131.

204. Lastly, it was submitted by the Additional Solicitor-General that while the plaintiffs have prayed for the relief of both temporary and

permanent injunctions, this Court, hearing a suit under Article 131 of the Constitution, cannot grant the relief for injunction and the only relief which

this Court can give would be purely of a declaratory character. This point, however, was later on given up by the Additional Solicitor-General and

in our opinion rightly, because Section 204 of the Government of India Act, 1935, which preceded the Constitution contained an express

provision, viz. Sub-section (2) which expressly barred the right of the Court to grant any relief excepting a declaratory one, whereas in Article 131

of the Constitution that particular clause has been deliberately omitted and the restriction imposed under that clause by the Government of India

Act has been removed, as a result of which this Court can grant any relief which it thinks suitable and which is justified by the necessities of a

particular case.

205. In order to examine the validity of the contentions put forward by counsel for the parties, it may be necessary to extract the provisions of

Article 131 of the Constitution, the relevant part of which runs thus:

131. Original jurisdiction of the Supreme Court Shall to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other

Court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other, or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

206. An analysis of this provision would indicate that before a suit can be entertained by this Court under this provision, the following conditions

must be satisfied:

(i) that there must be a dispute;

(ii) that the dispute must be between the Government of India and one or more States or between Government of India and any State or States on

one side and one or more other States on the other, or between two or more States;

(iii) that the dispute must involve any question (whether of law or fact) on which the existence or extent of a legal right depends; and

(iv) that there is no other provision in the Constitution which can be resorted to solve such a dispute.

207. Before we apply these conditions to the facts of the present case, it may be necessary to run through the contents of the letter of the Home

Minister as also the Press interviews given by him and by the Law Minister which according to the plaintiffs form an integral part of the

communication received by them from the Home Minister. My Lord the Chief Justice has extracted in extenso the press statements as also the

contents of the letter of the Home Minister written to the various Chief Ministers of the States and I would like, however, to indicate the main

points contained therein for the purpose of deciding whether or not a real dispute arose in the case.

208. The statement of the Home Minister to the Press is extracted at p. 25 in Original Suit No. 2 of 1977 and the relevant part of the same runs

thus:

We have given our most earnest consideration to the unprecedented political situation arising out of the virtual rejection, in the recent Lok Sabha

Elections of the Congress candidates in several States. I have in mind Punjab, Haryana, Himachal Pradesh, Rajasthan, Madhya Pradesh, Bihar,

Orissa, Uttar Pradesh and West Bengal.

....People at large do not any longer respect the propriety of the Congress Governments in these States, continuing in power without seeking a

fresh mandate from the electorate.

209. Similarly the relevant part of the contents of the Home Minister's letter to the Chief Ministers may be extracted thus:

We have given our earnest and serious consideration to the most unprecedented political situation arising out of the virtual rejection, in the recent

Lok Sabha elections, of candidates belonging to the ruling party in various States.. We have reasons to believe that this has created a sense of

diffidence at different levels of administration. People at large do not any longer appreciate the propriety of continuance in power of a party which

has been unmistakably rejected by the electorate.

(Emphasis supplied)

210. Relevant portions of the extracts from the interview given by Mr. Shanti Bhushan in a spotlight programme of the All India Radio- may also

be quoted from Annexure "B" of the Paper Book in Original Suit No. 1 of 1977 filed by the State of Rajasthan which run thus:

In an interview in the spot-light programme of All India Radio he said that the most important basic feature of the Constitution was democracy,

which meant that a Government should function with the broad consent of the people and only so long as it enjoyed their confidence. If State

Governments chose to govern the people after having lost the confidence of the people, they would be undemocratic Governments he said.

(Emphasis supplied)

.... rather the most important basic feature of the Constitution was democracy which meant that a Government should function with the broad

consent of the people and only so long as it enjoyed the confidence of the people.

Mr. Shanti Bhushan said that the mere fact that at one time the Government in the States enjoyed the confidence of the people did not give them

the right to govern unless they continued to enjoy that confidence. If a situation arose in which a serious doubt was cast upon the Government

enjoying the continued confidence of the people, then the provision for premature dissolution of the Assembly immediately came into operation.

The provision not merely gives the power but it casts a duty because this power is coupled with duty, namely, the Assembly must be dissolved

immediately and the Government must go to the people to see whether it has the continued confidence of the people to govern.

211. Thus analysing the stands taken by the Home Minister and the Law Minister, the following grounds appear to have been relied on by them for

the purpose of maintaining that the Assemblies should be dissolved and the Chief Ministers themselves should advise the Governors accordingly:

(1) that an unprecedented political situation had arisen by the virtual rejection, in the recent Lok Sabha elections, of the Congress candidates in the

States concerned, namely the plaintiffs in the six suits including Uttar Pradesh, Haryana and West Bengal);

(2) that the people at large did not consider it expedient for the Congress Governments to continue without seeking a fresh mandate, when the

Congress party was completely routed in the Lok Sabha elections from the States concerned;

(3) that the constitutional experts have also advised the Home Minister that the State Governments have impliedly forfeited the confidence of the

people;

(4) that there is a climate of uncertainty which has created a sense of diffidence at different levels of administration;

(5) that such a climate of uncertainty has given rise to serious threats to law and order;

(6) that the most important basic feature of the Constitution being democracy, a Government had to function with the broad consent of the people

so long as it enjoyed its confidence. If the State Government lost the confidence of the people, then it would be undemocratic for them to continue;

(7) that if a situation arises in which a serious doubt was cast upon the Government enjoying the continued confidence of the people, then the

provision for premature dissolution of the Assembly would at once be attracted. Where such a situation arises, the power contained in the

Constitution is coupled with a duty to dissolve the Assembly and direct the Government to go to the people in order to see whether it has the

continued confidence of the people to govern them.

212. The correctness of the extracts quoted above from the documents filed by the plaintiffs has not been disputed by the Additional Solicitor-

General. Mr. Niren De contends that in view of the stand taken by the Law Minister and the Home Minister there arose a clear dispute between

the Government of India and the State Governments so as to call for an adjudication by this Court. In my opinion, the crucial question to be

considered is whether or not there is a dispute. Statements by Ministers or even by the Government or made by one party and denied by the other

may not amount to a dispute, unless such a dispute is based on a legal right. A "dispute" has been defined in the Webster's Third New International

Dictionary as follows:

verbal controversy: strife by opposing argument or expression of opposing views or claims: controversial discussion.

213. A dispute, therefore, clearly postulates that there must be opposing claims which are sought to be put forward by one party and resisted by

the others. One of the essential ingredients of Article 131 is that the dispute must involve a legal right based on law or fact. The question which one

would ask is what is the legal right which is involved in the statements given by the Home Minister or the Law Minister or the letter addressed by

the Home Minister to the Chief Ministers 7 The governmental authorities have merely expounded the consequences of the interpretation of the

constitutional provisions relating to the dissolution of the Assemblies. There can be no doubt that under Article 356 it is the Central Government

alone which, through its Council of Ministers, can advise the President to issue a proclamation dissolving the Assemblies. The word "otherwise

clearly includes a contingency where the President acts not on the report of the Governor but through other modes, one of which may be the

advice tendered by the Council of Ministers. Under Article 74 as amended by the Constitution (Forty-second Amendment) Act, 1976, the

relevant part of Which may be extracted below:

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions,

act in accordance with such advice.

the Council of Ministers has to aid and advise the President and once the advice is given, the President has got to accept it, there being no

discretion left in him. Thus" if the Central Government chooses to advise the President to issue a proclamation dissolving an Assembly, the

President has got no option but to issue the proclamation. This manifestly shows that the Central Government has a legal right to approach the

President to issue a Proclamation for dissolution of an Assembly as a part of the essential duties which the Council of Ministers have to perform

while aiding and advising the President. The State Governments, however, do not possess any such right at all. There is no provision in the

Constitution which enjoins that the State Government should be consulted or their concurrence should be obtained before the Council of Ministers

submit their advice to the President regarding a matter pertaining to the State so far as the dissolution of an Assembly is concerned. Article 356

also which confers a power on the President to issue a Proclamation dissolving an Assembly does not contain any provision which requires either

prior or subsequent consultation or concurrence of the State Government before the President exercises this power. In these circumstances, can it

be said that the State Governments have a right to assert that an order under Article 356 shall not be passed by the President or to file a suit for a

declaration that the President may be enjoined from passing such an order ? The right of the State Governments to exist depends on the provisions

of the Constitution which is subject to Article 356. If the President decides to accept the advice of the Council Ministers of the Central

Government and issues a proclamation solving the Assemblies, the State Governments have no right to object to the constitutional mandate

contained in Article 356. It is conceded by Mr. Niren De that if the President, on the advice of the Council of Ministers, would have passed a

notification dissolving the State Assemblies under Article 356, the plaintiffs were completely out court and the suits would not have been

maintainable. It is not understandable how the position would be any different or worse if the Central Government chose to be fair to the State

Governments concerned by informing them of the grounds on the basis of which they were asked to advise their Governors to dissolve the

Assemblies. The mere fact that such letters were sent to the State Government entertaining gratuitous advice would not create any dispute, if one

did not exist before, nor would such a course of conduct clothe the State Government with a legal right to call for a determination under Article 131.

If the State Governments do not possess such a legal right or for that matter any right at all, then they cannot put forward any claim before a Court

for a declaration or injunction. Mr. Niren De however, submitted that the very fact that the Home Minister was compelled to address a communication to the Chief Ministers of the State Governments for advising the Governors to dissolve the respective Assemblies and the Chief

Ministers refused to accept the advice of the Home Minister shows that a dispute arose. In my opinion however, the contention does not appear to

be well founded. Assuming that the Home Minister's letter to the Chief Ministers raised some sort of a dispute, the moment the Chief Ministers

answered that let and spurned the advice given by the Home Minister, the dispute came to an end and ceased to exist. Unless there is an existing

dispute involving a legal right between the parties, the forum provided by Article 131 cannot be availed of by any party. I am fortified in my view by a

decision of the Federal Court in *The United Provinces v. The Governor-General in Council* [1939] F.C.R. 124, where Gwyer, C.J., speaking for

the Court observed thus:

The Federal Court has by Section 204(1) of the Constitution Act an exclusive original jurisdiction in any dispute between the Governor-General in

Council (or, after federation, the Federation) and any Province, if and in so far as the dispute involves any question, whether of law or fact, on

which the existence or extent of a legal right depends. It is admitted that the legal right of the Province to have the fines now under discussion

credited to Provincial revenues and not to the Cantonment Funds depends upon the validity or otherwise of Section 106 of the Act of 1924. The

plaintiffs deny the validity of the section, the defendant asserts it; and it seems to me that this is clearly a dispute involving a question on which the

existence of a legal right depends.

214. This case affords a clear illustration of a real dispute involving a legal right. In that case the main dispute was regarding the question whether

the fines credited to Provincial revenues and not to the Cantonment Funds belonged to the Province or the Central Government through the

Cantonment. It will be noticed that the Federal Court clearly held (hat such a dispute clearly fell within the purview of Section 204(1) of the

Government of India Act which was in pari materia to Article 131 of the Constitution. That case is purely illustrative and decides that it is only such

type of disputes as are contemplated by Article 131. For these reasons, therefore, I am clearly of the view that having regard to the facts and

circumstances of the present case, it has not been established that there was any dispute involving a legal right between the Government of India

and the State Governments and therefore one of the essential ingredients of Article 131 not having been fulfilled the suits are not maintainable on

this ground alone.

215. The next preliminary objection taken by the Additional Solicitor General was that there is no dispute between the Government of India and

the States because what Article 131 postulates is that the dispute must be between the Government of India and the States as understood in the

proper sense, namely, the territories comprising the State or the permanent institutions comprised in it, e.g., the Governor, the Legislature, the High

Court, the Public Service Commission and the like. In other words, where the Central Government wants to oblish the Legislature completely or to

abolish the institution of the Governor or the High Court, this will be a matter which will concern the State and the State Government as such. I am

inclined to agree with the contention put forward by the Additional Solicitor-General. What Article 131 takes within its fold is not the State

Government comprising of a particular set of Ministers, but the Government itself, which exists for ever, even though the personnel running the

Government may change from time to time. Article 12 of the Constitution, the scope of which is restricted only to the fundamental rights, does

provide that the ""State"" includes the Government and Parliament of India and the Government and the Legislature of each of the States. Here the

term ""State"" has been given a very broad spectrum because the definition is dealing with the exposition of fundamental rights and its various

incidents which have to be interpreted in the broadest possible sense so as to protect the citizen from any institution included in the term ""State

which even includes not only the Government of the State but also Government of India. Article 12, however, does not apply to Chapter IV where

Article 131 occurs and which deals with the Union Judiciary. In fact the word ""State"" as mentioned in Article 131 has not been defined anywhere

in the Constitution. Under Article 367 if any term is not defined in the Constitution recourse can be had to the General Clauses Act, 1897, for the

purpose of understanding the meaning of such a term. Section 3(58) of the General Clauses Act defines ""State"" thus:

State""-

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B

State or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a

Union territory:

216. On the other hand Section 3(23) defines the word ""Government"" or ""the Government"" as including both the Central Government and any

State Government. Thus it will be clear from the definition of ""State"" given in Section 3(58) of the General Clauses Act that the ""State"" does not

include the State Government.

217. The relevant parts of Articles 1 and 3 of the Constitution run thus:

1. Name and territory of the Union:

(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the first schedule.

(3) The territory of India shall comprise-

(a) the territories of the States;

(b) the Union territories specified in the First Schedule; and

(c) such other territories as may be acquired.

3. Formation of new States and alteration of areas, boundaries or names of existing States:

Parliament may by law-

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a

part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

218. A perusal of these Articles would reveal in unequivocal terms that wherever the Constitution has used the word "State" without any

qualification it means "State" in the ordinary sense of its term, namely, the State along with its territory or institutions. Article 3 expressly empowers

the Parliament to increase or diminish the area or territory of any State. It has no reference to the State Government at all or for that matter to a

particular State Government run by a particular party. In my opinion, therefore, the word "State" in Article 131 has also been used in this ordinary

sense so as to include only the territory of the State and the permanent institutions contained therein. A dispute arising between the personnel

running the institutions is beyond the ambit of Article 131. Further more, it would appear that Clause (a) and (b) of Article 131 deliberately and

advisedly use the word "Government of India and one or more States". If the intention was to bring even a State Government as run by the Council

of Ministers within the purview of this provision, then the words "one or more State Governments" should have been used instead of using the

word "State". This is, therefore, an intrinsic circumstance which shows that the founding fathers of the Constitution intended that the dispute should

be confined only to the Government of India and the States as a polity or a constituent unit of the republic instead of bringing in dispute raised by

the Government run by a particular Council of Ministers which does not pertain to the State as such.

219. Thus, summarising my conclusions on this point, the position is that the import and purport of Article 131 is to decide disputes between one

State and another or between the Government of India and one or more States. The founding fathers of the Constitution have used the word

"State" in Article 131 both deliberately and advisedly so as to contemplate the State as a constituent unit of the Union along with its territory and

permanent institutions. The question as to the personnel who run these institutions is wholly unrelatable to the existence of a dispute between a

State and the Government of India. It is only when there is a complete abolition of any of the permanent institutions of a State that a real dispute

may arise. A mere temporary dissolution of an Assembly under Article 356 does not amount to an abolition of a State Assembly, because after

such dissolution under the provisions of the Constitution elections are bound to follow and a new Legislature would evidently come into existence

after the voters have elected the candidates. Unfortunately, there is no clear decision of this Court directly on this point, but on a true and proper

construction of Article 131, I am of the view that a dispute like the present is totally outside the scope of Article 131 of the Constitution. For these

reasons, therefore, I hold that the State Governments who have raised the dispute in this case are not covered by the word "State" appearing in

Article 131 and therefore the suits are not maintainable on this ground also. I, therefore, record my respectful dissent from the view taken by my

lord the Chief Justice and brother Judges on this particular point.

220. Similarly in the case of writ petitions, the Additional Solicitor-General raised a preliminary objection as to the maintainability of the petitions. It

was contended that the right of the petitioners as members of the Legislative Assembly of Punjab was not a fundamental right as envisaged by part

III of the Constitution. At the most, the right to receive allowances as members of the Assembly was merely a legal right consequent upon their

election as members of the Assembly. It was not a right which flowed from the Constitution. Thus argued the Additional Solicitor-General that

there being no infraction of any fundamental right; the petitioners cannot be allowed to take recourse to Article 32 of the Constitution of India. This

argument was sought to be repelled by Mr. Garg, Counsel for the petitioners, on the ground that in view of the decision of this Court in 272355

commonly known as ""Privy Purses Case""-the right to receive allowances by the petitioners was undoubtedly a right to property and by the

threatened dissolution of the Assembly there was a direct threat to the fundamental right to property which the petitioners had both under Article

19(1)(f) and Article 31 of the Constitution. Very attractive though they are, we are, however, unable to accept the arguments put forward by Mr.

Garg. This Court in the Privy Purses Case was considering a legal right in quite a different context, namely, Article 291 of the Constitution which

has since been repealed by the Constitution (Twenty-sixth Amendment) Act, 1971. Article 291 as it stood then may be extracted thus

291. Privy purse sums of Rulers:

Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment

of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler or such State as privy purse-

(a) such sums shall be charged on and paid out of, the Consolidated Fund of India, and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

221. A perusal of this provision would clearly indicate that the founding fathers of the Constitution sought to guarantee certain legal rights conferred

on the Rulers by making the sums paid to them a charge on the Consolidated Fund of India. The payments made to the Rulers were guaranteed by

the Constitution itself and it was in view of this peculiar and special provision that this Court held that the right of the Rulers to receive payments

free of tax was not only a legal right flowing from the Constitution but also a right to property, because a charge was created on the Consolidated

Fund of India for the payments to be received by the Rulers. In other words, the right to property arose directly from the status occupied by the

Rulers under the Constitutional provision itself and it was not consequent upon the Rulers obtaining a particular status as members of the Assembly

or otherwise which may be consequential to the acquisition of their subsequent status. In the instant case, the right of the petitioners is only a limited

right inasmuch as it subsists only so long as the Assembly runs its usual course of six years. The right may also cease to exist if the Assembly is

dissolved by the President by issuing a proclamation under Article 356. The right, therefore, subsists only so long as these two contingencies do

not occur. Further more, the Constitution does not guarantee any right or allowances to the Members of the Assembly which are given to them by

local Acts or Rules. In these circumstances, therefore, the ratio decidendi of the Privy Purses Case cannot apply to the petitioners. Hedge, J., while

dealing with the nature of the legal right possessed by the Rulers in the Privy Purses case observed as follows:

As I am satisfied that the rights under Articles 31 and 19(1)(f) have been contravened it is not necessary to examine the alleged contravention of

other rights.

I have earlier come to the conclusion that the right to get the privy purse under Article 291 is a legal right. From that it follows that it is a right

enforceable through the courts of law. That right is undoubtedly a property. A right to receive cash grants annually has been considered by this

Court to be a property-see 281236 . Even if it is considered as a pension as the same is payable under law namely Article 291, the same is

property-see 279695

222. It is obvious that the observations of this Court cannot apply to the petitioners who cannot be said to have any fundamental right contained in

Part III of the Constitution. For these reasons, therefore, I am of the opinion that the preliminary objection raised by the Additional Solicitor-

General is well founded and must prevail.

223. Since we have heard the 6uits and the petitions on merits at great length also, even if we assume that the writ petitions are maintainable, we

shall deal with the merits of both the suits and the writ petitions. We now proceed to deal with the merits of the suits and the writ petitions, although

we think that the suits of the plaintiffs as also the petitions are liable to be rejected on the preliminary objections raised by the Additional Solicitor-

General.

224. Coming to the merits, three contentions were put forward before us by counsel for the plaintiffs and the petitioners:

(1) that the letter sent by the Home Minister to the Chief Ministers amounted to a directive by the Central Government to the Chief Ministers to

advise the respective Governors for dissolving the Assemblies resulting in interference in the federal set up of the States contemplated by the

Constitution;

(2) that even if the letter of the Home Minister was not a directive, it clearly amounted to a threat to the right of the present Government to continue

in office and to be dissolved if the directions given to the Chief Ministers were not carried out;

(3) that the circumstances mentioned in the letter did not constitute sufficient reason for dissolution of the Assemblies under Article 356 and the

action of the Central Government in writing the letter to the Chief Ministers and giving interviews at the Press and the All India Radio amounted to

a mala fide and colourable action which was sufficient to vitiate the advice which the Council of Ministers might give to the President for resorting

to Article 356 of the Constitution.

225. Lastly, Mr. Niren De as also Mr. Garg submitted that Article 356 would have no application to the facts of the present case.

226. We shall now deal separately with the contentions raised by counsel for the parties. As regards the first contention that the letter of the Home

Minister to the Chief Ministers of the plaintiff-States amounted to a directive issued by the Central Government, it was clarified by counsel for the

plaintiffs that the Central Government had no authority under any provision of the Constitution to give a directive to the Chief Ministers in the

matter concerning purely the States. In the first place, a careful perusal and an adroit analysis of the contents of the letter does not at all show that it

amounts to a directive given by the Central Government to the Chief Ministers. Although the Home Minister has expressed his views in the matter,

but in the concluding portion of the letter he has merely advised the Chief Ministers without interfering with their absolute discretion. The concluding

portion of the letter extracted thus-

I would, therefore, earnestly command for your consideration that you may advise your Governor to dissolve the State Assembly in exercise of

powers under Article 174(2)(b) and seek a fresh mandate from the electorate. This -alone would in our considered view, be consistent with

constitutional precedents and democratic practices.

clearly shows that no compulsion was brought to bear on the Chief Ministers by the Home Minister and he sought to state certain facts with great

stress for the consideration of the Chief Ministers. The words ""earnestly commend for your consideration that you may advise"" clearly show that

the Home Minister sought to give a friendly advice to the Chief Ministers as to what they should do in the facts and circumstances of the situation.

The words ""may advise"" further indicate that the Home Minister did not intend to give any mandatory directions to the Chief Ministers in the

matter. In other words, the aforesaid letter if properly construed is no more than an act of political courtesy containing a suggestion or an advice or

a fervent appeal to the Chief Ministers to consider the desirability of advising the Governors to dissolve the Assemblies in view of the facts and

circumstances disclosed in the said document. It is in no measure binding on the Chief Ministers and it is open to them to refuse to act on the

gratuitous advice tendered by the Home Minister which the Chief Ministers have already done. Reading the letter as a whole, as I do, I am unable

to regard the letter as a directive issued by the Central Government and as contemplated by Articles 256 and 257 of the Constitution of India. In

fact Article 256 which runs thus:

227. Obligation of States and the Union:

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which

apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government

of India to be necessary for that purpose.

clearly defines the limits within which the executive power of Parliament may exist and the directions contemplated by Article 256 can be given to

the States only within the limited sphere as prescribed by Article 256 i.e., in relation to existing laws made by Parliament and those laws which

apply in the States. Article 257 contains a note of warning and caution to both the Union and the States against functioning in such a way so as to

impede or prejudice exercise of the executive power of the Union. Article 257 contains a further restriction on the Government of India in that the

power has to be exercised only for the purposes mentioned in Articles 256 and 257.

228. With due respects of my Lord the Chief Justice, I am unable to subscribe to his view that the directive contained in the letter must be carried

out, as I am clearly of the opinion that the letter does not amount to a directive as contemplated by Articles 256 and 257 of the Constitution and

cannot be binding on the Chief Ministers as it pertains purely to the States concerned, namely, giving of the advice to the Governors for dissolution

of the Assemblies. Our Constitution contains a well distributed system of checks and balances on the various constituents, namely, the Union, the

States, the Executive, the Legislature and the Judiciary. An analysis of the provisions of the Constitution would show that a separate sphere for

each of the constituent units has been carved out and they have to function within the limits of their sphere, or within the limits of the orbit, as my

lord the Chief Justice has put it. In order to ensure a smooth and efficient, pragmatic and purposeful working of the Constitution, it is necessary that

the Union and the States should work in close cooperation and absolute coordination with each other. Any confrontation may lead to a

constitutional breakdown which may be avoided in all circumstances. Under Article 174(2) Clauses (a) and (b) the Governor has the power to

prorogue the House or to dissolve the Legislative Assembly. It is obvious that this power has to be exercised by the Governor generally on the

advice of the Council of Ministers. The Chief Minister, as the head of the Council of Ministers in the State, has the undoubted discretion to advise

the Governor to dissolve the Assembly if a particular situation demands such a step. The Chief Minister is the best judge to assess the

circumstances under which such an advice should be given to the Governor. The Central Government cannot interfere with this executive power of

the State Government by giving directions under Article 256 or Article 257 of the Constitution, because the dissolution of the Assembly by the

Governor is purely a matter concerning the State and does not fall within the four corners of either Article 256 or Article 257 of the Constitution.

229. It was also contended that the direction contained in the letter of the Home Minister amounts to a serious interference with the federal set-up

contemplated by the Constitution and is likely to bring the autonomy enjoyed by the States into jeopardy. My Lord the Chief Justice has dealt with

the federal aspect of the Constitution in great length and has pointed out that while our Constitution is based on a federal pattern it is, to quote Dr.

Ambedkar ""a tight mold of Federalism"" so that it can move from a federal to unitary plane, according as the situation requires. The federal nature of

our Constitution has been clearly explained by my Lord the Chief Justice and I fully agree with his views and have nothing useful to add. It is,

however, not necessary for me to dilate on this point, because in my view the letter of the Home Minister does not amount to a directive at all and

therefore the question of interference with the autonomous rights of the State Government does not arise. As to what would have happened if a

directive was given by the Central Government in a matter like this is a purely hypothetical question which does not call for any answer in the facts

and circumstances of the present case as the same does not arise. In this view of the matter it is obvious that the plaintiffs cannot get a relief for a

declaration that the letter amounted to a directive and being against the authority of law was ultra vires and hence not binding on the plaintiffs. In

fact it seems to me that the plaintiffs themselves did not take the letter as a directive at all and had, therefore, written back to the Home Minister

refusing to accept the advice given to them.

230. The next question that arises for consideration is whether the letter of the Home Minister amounts to a threat to dissolve the Assembly.

Although there are no clear words in the letter or in the interviews to show that any kind of threat or force was used against the Chief Ministers

concerned, but even assuming that the letter contained a veiled threat, I fail to see what kind of relief the plaintiffs could get, even if this is so. The

Chief Ministers of the States had the right to advise the Governors to dissolve the Assemblies or not to do so. Even if there was a threat given by

the Home Minister they could have ignored the threat because the right to advise the Governors to dissolve the Assemblies belonged to the Chief

Ministers of the States themselves and as indicated by me the Central Government had no right to interfere with this discretion of the Chief

Ministers.

231. Mr. Garg appearing for the petitioners, however, submitted that the action of the Central Government amounted to a threat of the

fundamental right of the petitioners and he was entitled to ask for an injunction restraining the Central Government from resorting to Article 356. In

the first place, I have already held that the petitioners had no fundamental right at all so as to approach this Court under Article 32 of the

Constitution. Assuming that they had the right the threat was not so imminent and the prayer made by the petitioners was premature as no action

appears to have been taken by the Central Government at the time when the petitions were filed. Finally, if the Central Government had a

constitutional power to advise the President to dissolve the Assemblies under Article 356 the Courts could not interfere with the exercise of that

power, because the fundamental right of the Petitioners itself existed so long as the Assembly was not dissolved. Article 172 of the Constitution

itself provides that the Assembly of every State shall continue for six years, unless dissolved earlier. The petitioners therefore could not have a

better right than what was conferred by Article 172. If the Assembly was dissolved earlier than six years, i.e. before its full duration expired, under

the provisions of the Constitution itself no complaint could be made by the petitioners that there had been an infringement of their fundamental right.

It was not a case where the petitioners had indefeasible right to property which itself was threatened. The right of the petitioners, if any, was merely

a temporary and inchoate right. For these reasons, therefore, even if the letter of the Home Minister be treated to be a veiled threat, the petitioners

cannot get any relief from this Court.

232. Coming to the third contention that the circumstances mentioned in the letter did not constitute sufficient reason for dissolution of the

Assemblies under Article 356, the same was repelled by the Additional Solicitor-General mainly on the ground that the Courts could not go into

the sufficiency or adequacy of the materials on the basis of which the Council of Ministers of the Central Government could give any advice to the

President. It was also argued that this matter was not a justiciable issue. In order to answer this contention we have to consider two different

facets. Firstly, whether or not the issue was justiciable. Apart from Clause (5) of Article 356 which gives the order passed by the President under

this Article complete immunity from judicial scrutiny it was pointed out by the Additional Solicitor-General that even before Clause (5) which was

added by the Constitution (Forty second Amendment) Act, 1976 the law laid down by this Court, Privy Council and the High Courts was the

same. Reliance was placed on a decision of the Privy Council in Bhagat Singh and Ors. v. The King-Emperor L.R. 58 IndAp 169, where the Privy

Council, dwelling on the question whether the existence of an emergency was justiciable or not observed thus:

A state of emergency is something that does not permit of any exact definition; It connotes a state of matters calling for drastic action, which is to

be judged as such by some one. It is more than obvious that that some one must be the Governor General and he alone. Any other view would

render utterly inept the whole provision.

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Yet, if the view urged by the petitioners is right, the judgment of the Governor-General could be upset either (a) by this Board declaring that once

the Ordinance was challenged in proceedings by way of habeas corpus the crown ought to prove affirmatively before a Court that a state of

emergency existed, or (b) by a finding of this Board after a contentious and protracted inquiry that no state of emergency existed and that the

Ordinance with all that followed on it was illegal.

In fact, the contention is so completely without foundation on the face of it that it would be idle to allow an appellant to argue about it

233. A similar view was taken by the Federal Court in *Lakhi Narayan Das v. Province of Bihar* [1949]F.C.R.693, where describing the nature

and incidents of an Ordinance, the Court observed as follows:

The language of the section shows clearly that it is the Governor and the Governor alone who has got to satisfy himself as to the existence of

circumstances necessitating the promulgation of an Ordinance. The existence of such necessity is not a justiciable matter which the Courts could be

called upon to determine by applying an objective test.

234. The same view was taken by this Court in 280265 where it was observed thus:

It is however well-settled that the necessity of immediate action and of ""Promulgating an Ordinance is a matter purely for the subjective satisfaction

of the Governor. He is the sole Judge as to the existence of the circumstances necessitating the making of an Ordinance. His satisfaction is not a

justiciable matter. It cannot be questioned on ground of error of judgment or otherwise in court-see *State of Punjab v. Sat Pal Dang* (1969) 1

S.C.R. 633.

235. The Andhra Pradesh High Court has also expressed the same view in 944555 where it was observed thus:

We have seen that there is a wide range of situations when the President may act under Article 356. The important thing to notice is that the

Constitution does not enumerate the situations and there is no "satisfactory criteria for a judicial determination" of what are relevant considerations.

The very absence of satisfactory criteria makes the question one which is intrinsically political and beyond the reach of the Courts. The

considerations which are relevant for action under Article 356 and the weighing of those considerations appear to be clearly matters of political

wisdom, not for judicial scrutiny.

236. I find myself in complete agreement with the observations made by the learned Judge.

237. The same view was taken by another Division Bench of the Andhra Pradesh High Court in *5. R. K. Hanumantha Rao v. State of Andhra*

Pradesh (1975) 2 A.W.R. 277.

238. It is obvious that exercise of discretion under Art 356 by the President is purely a political matter and depends on the advice that the

President gets from the Council of Ministers. The Council of Ministers are the best judge to assess the needs of the situation, the surrounding

circumstances, the feelings and aspirations of the people and the temper of the times. If on an overall assessment of these factors the Council of

Ministers in their political wisdom or administrative expediency decide to tender a particular advice to the President The Courts cannot enter into

this arena which is completely beyond judicial scrutiny. Even if the Chief Ministers did not think it advisable to dissolve the Assemblies, their views

are not binding on the Central Government which can form its own opinion. The exercise of the power under Article 356 by the President is a

matter which falls directly within the exercise of the powers of the Union and the Council of Ministers need not be guided by the views of the Chief

Ministers in the exercise of this power. In *colegrove v. Green* [1945] 328 U.S. 549 Justice Frankfurter very aptly observed thus:

We are of opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power

which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to

time, has refused to intervene in controversies.

239. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention

in an essentially political contest be dressed up in the abstract phrases of the law.

240. It is manifestly clear that the Court does not possess the resources which are in the hands of the Government to find out the political needs

that they seek to subserve and the feelings or the aspirations of the nation that require a particular action to be taken at a particular time. It is

difficult for the Court to embark on an inquiry of that type. Thus what the Constitution (Forty-second Amendment) Act, 1976 has done by adding

Clause (5) to Article 356 is to give statutory recognition to the law laid down by the Courts long before.

241. Mr. Niren De submitted in reply to the argument of the learned Additional Solicitor-General that in two cases the Privy Council had taken a

contrary view. Reliance was placed on a decision of the Privy Council in *King Emperor v. Benoari Lal Sarma* L.R. 721.A. 57 where Viscount

Simon, L.C. observed thus:

Their Lordships entirely agree with Rowland J's view that such circumstances might, if necessary, properly be considered in determining whether

an emergency had arisen; but, as that learned judge goes on to point out, and, as had already been emphasized in the High Court, the question

whether an emergency existed at the time when an ordinance is made and promulgated is a matter of which the Governor-General is the sole

judge. This proposition was laid down by the Board in *Bhagat Singh v. The King-Emperor*-L.R. 58 IndAp 169.

242. Although the first part of the observations of their Lordships supports the argument of Mr. Niren De to some extent, the second part of the

observations clearly shows that their Lordships had fully endorsed the proposition laid down by the Court in *Bhagat Singh's* case (*supra*). In these

circumstances, therefore, this authority does not appear to be of any assistance to Mr. Niren De.

243. Reliance was also placed on *Padfield v. Minister of Agricultural, Fisheries and Food* L.R. [1968] A.C. 997 where Lord Denning, M. R.,

observed as follows:

If it appears to the court that the Minister has been, or must have been, influenced by extraneous considerations which ought not to have influenced

him-or, conversely, has failed, or must have failed, to take into account considerations which ought to have influenced him-the court has power to

interfere.

244. These observations, however, do not support the argument of Mr. Niren De at all. Even if an issue is not justiciable, if the circumstances

relied upon by the executive authority are absolutely extraneous and irrelevant, the Courts have the undoubted power to scrutinise such an exercise

of the executive power. Such a judicial scrutiny is one which comes into operation when the exercise of the executive power is colourable or mala

fide and based on extraneous or irrelevant considerations. I shall deal with this aspect of the matter a little later. It is, however, sufficient to indicate

here that an order passed under Article 356 is immune from judicial scrutiny and unless it is shown that the President has been guided by

extraneous considerations it cannot be examined by the Courts.

245. This brings us to the second facet of this argument, namely, whether the facts stated in the letter of the Home Minister or in the press or the

radio interviews are sufficient to enable the Central Government to take a decision to advise the President to dissolve the State Assemblies. We

have already extracted the important portions of the statements made in the letter of the Home Minister and in the radio interview of the Law

Minister and the Press interview of the Home Minister. These assertions made by the Ministers of the Central Government have, however, to be

read and understood in the light of the prevailing circumstances which are established from the notifications issued by the Government of India from

time to time which we shall deal with hereafter.

246. By virtue of Ministry of Home Affairs, Notification No. G.S.R. 353 (E) dated June 26, 1975 the President of India issued a proclamation

declaring that a grave emergency exists whereby the security of India was threatened by internal disturbance. This notification was followed by

another Ministry of Home Affairs Notification No. G.S.R. 361 (E) dated June 27, 1975 issued by the President under Clause (1) of Article 359 of

the Constitution by which the right of any person to move any Court for the enforcement of the rights conferred by Article 14, Article 21 and

Article 22 of the Constitution were suspended for the period during which the proclamation of emergency was in force. Then followed the

Maintenance of Internal Security (Amendment) Ordinance, 1975 (No. 4 of 1975) which was promulgated on June 29, 1975 and published in the

Government of India Gazette, Extra-ordinary, Part II, Section I dated June, 1975 pp. 213-15. Section 5 of the Ordinance added Section 16A and

Sub-section(6) of Section 16A provided that it shall not be necessary to disclose to any person detained under a detention order the grounds on

which the order had been made during the period the declaration made in respect of such a person was in force. This was followed by the

Maintenance of Internal Security (Amendment) Act, 1976 passed on January 25, 1976 which added Sub-section (9) to Section 16A of the

principal Act which provided that the grounds on" which an order of detention was made or purported to be made u/s 3 against any person in

respect of whom a declaration was made under Sub-section (2) or Sub-section (3) and any information or materials on which such grounds or a

declaration under Sub-section (2) or a declaration or confirmation under Sub-section (3) etc. was made was to be treated as confidential and shall

be deemed to refer to matters of State and it would be against the public interest to disclose the same. Thus the effect of this provision was that no

Court could call for the materials on the basis of which the order of detention was passed. In other words, any detention made during this period

was put beyond judicial scrutiny. While this state of affairs existed, the President by order dated January 18, 1977 dissolved the Lok Sabha under

Article 85 of the Constitution as would appear the Lok Sabha Secretariat Notification dated January 19, 1977 published in the Government of

India Gazette Extraordinary, Part I, Section I, dated January 19, 1977. This was followed by notification dated February 10, 1977 by the Ministry

of Law, Justice and Company Affairs passed under Sub-section (2) of Section 14 of the Representation of the People Act, 1951 by which the

President called upon the parliamentary constituencies to elect members in accordance with the provisions of the said Act and of the rules and

orders de thereunder. In pursuance of this notification the Election Commission of India issued a notification on the same day appointing the dates

of elections to be held in various constituencies which varied from 16th to 20th March, 1977. According to this Notification there were 54

constituencies in Bihar, 10 constituencies in Haryana, 4 in Himachal Pradesh, 40 in Madhya Pradesh, 25 in Rajasthan, 85 in Uttar Pradesh, 42 in

West Bengal, 21 in Orissa and 13 in Punjab. All these constituencies elected their representatives and from the results of the Lok Sabha as

published in the Indian Express of March 25, 1977 it would appear that out of 85 constituencies in Uttar Pradesh not a single candidate belonging

to the Congress party was returned. Similarly in Bihar out of 54 constituencies not a single candidate of the Congress party was elected. Similarly

out of 13 constituencies in Punjab and 10 constituencies in Haryana not a single candidate of the Congress party was returned. The same position

obtained in Himachal Pradesh where out of 4 constituencies not a single Congress candidate was elected. In the States of Madhya Pradesh,

Rajasthan, West Bengal and Orissa, the Congress party appears to have fared very badly also. In Madhya Pradesh out of 40 seats, the Congress

party could bag only one seat, whereas in Rajasthan also the Congress met with a similar fate where it got only 1 seat out of 25 seats. In Orissa,

also the Congress got only 4 seats out of 21 and in West Bengal it got only 3 seats out of 42. It would thus appear that in the nine states referred

to above, the Congress party was practically routed. It is also clear that the voters who voted for the candidates standing for the Lok Sabha in the

States were more or less the same who had voted the Congress party in the State Assemblies during the previous elections.

Thus, summarising the position in short, it is clear -

- (1) that a grave emergency was clamped in the whole country;
- (2) that civil liberties were withdrawn to a great extent;
- (3) that important fundamental rights of the people were suspended;
- (4) that strict censorship on the press was placed; and
- (5) that the judicial powers were crippled to a large extent

247. In the new elections the Congress party suffered a major reverse in the nine states and the people displayed complete lack of confidence in

the Congress party. The cumulative effect of the circumstances mentioned above may lead to a reasonable inference that the people had given a

massive verdict not only against the Congress candidates who fought the elections to the Lok Sabha but also to the policies and ideologies

followed by the Congress Governments as a whole whether at the center or in the States during the twenty months preceding the elections. In these

circumstances it cannot be said that the inference drawn by the Home Minister that the State Governments may have forfeited the confidence of the

people is not a reasonable one or- had no nexus with the action proposed to be taken under Article 356 for dissolution of the Assemblies.

248. It was in the background of these admitted facts that the Central Government formed the opinion that the State Governments should seek a

fresh mandate from the people because they ceased to enjoy the confidence of the people of the States concerned. In other words, the Central

Government thought that from the nature of the concerned, results of the elections a reasonable inference could be drawn that the State

Governments concerned had forfeited the confidence of the people. It was, however, vehemently argued by the plaintiffs and the petitioners that

the mere fact that the Congress party lost its majority in the Lok Sabha was not sufficient to lead to the irresistible inference that the Congress

Governments in the States also forfeited the confidence of the people in the States where they were in overwhelming majority so as to call for

dissolution of the Assemblies and fresh elections. Mr. H. R. Gokhale, appearing for the State of Punjab, argued that even in the past it had often

happened that the people had voted candidates of one party for the Lok Sabha and another party for the States and a similar distinction seems to

have been made by the voters this time also. The instance cited by Mr. Gokhale was of 1967 elections. This solitary circumstance in my opinion

does not appear to be of much avail, because having regard to the circumstances prevailing before the last elections what inference should be

drawn is a matter to be considered by the Central Government and not by the Courts. The Central Government, on a complete and overall

assessment of the election results and the circumstances prevailing during the emergency as detailed above, in that the fundamental rights of the

people were suspended, the right of the detenus to move the Courts was almost crippled, strict censorship was placed on the press and this state

of affairs having prevailed for about 20 months when elections were held after which the people gave their clear verdict against the Congress so far

as the Lok Sabha election were concerned may have had some justification for coming to the conclusion that the State Governments had forfeited

the confidence of the people. It is true that if the opinion of the Central Government was based on extraneous or irrelevant materials or it was

guided by purely personal considerations or ulterior motives, the Court could have held such an action to be mala fide and struck it down. In

284538 his Court explained as to what was the true nature and character of a mala fide action and quoted the following observations of

Warrington, L.J., where it observed thus:

The appellants characterised the whole action as lacking in bona fide. The action can only be questioned if it is ultra vires and proof of alien or

irrelevant motive is only an example of the ultra vires character of the action, as observed by Warrington, L. J., in the following passage:

My view then is that only case in which the Court can interfere with an act of a public body which is, on the face of it, regular and within its

powers, is when it is proved to be in fact ultra vires and that the references in the judgments in the several cases cited in argument to bad faith,

corruption, alien and irrelevant motives, collateral and indirect objects and so forth, are merely intended when properly understood as examples of

matters which if proved to exist might establish the ultra vires character of the action in question.

249. I find myself in complete agreement with the observations made by Warrington, L. J., extracted above.

250. But the serious question to be considered here is as to whether the action of the Central Government in trying to persuade the Chief Ministers

to advise the Governors to dissolve the Assemblies can be said to be mala fide or tainted by personal motives or extraneous considerations. It was

suggested that the present ruling party wanted to have a President of its own choice and, therefore, it wanted to dissolve all the Assemblies and

order fresh elections so that they are able to get candidates of their own choice elected to the various Assemblies. In the first place, there is no

reliable material to prove this fact or to show that the Central Government was in any way swayed by those considerations. Secondly, if the

Congress Governments in the States concerned were so sure of their position, I do not see any reason why they should not be able to face the

challenge and after taking fresh mandate from the people vindicate their stand. Furthermore, we have to look at the circumstances catalogued

above in order to find out whether an inference drawn by the Central Government from those circumstances can be said to be a reasonable one.

Even assuming that from the circumstances mentioned above, the other inference that the electorate might choose different candidates for the

States and the Lok Sabha is equally possible that by itself does not make the action of the Central Government mala fide or ultra vires. If two

inferences are reasonably possible, the very foundation of mala fide disappears. On the other hand, the important question to ask oneself is, could

under the circumstances mentioned above and the manner in which the people have acted and reacted to the emergency and the post emergency

era by returning a massive verdict against the Congress, it be said that the Central Government was guided by purely irrelevant or inept

considerations or external or extraneous motives in wanting to have fresh elections to the Assemblies ? The answer must be in the negative. I am

convinced that having regard to the circumstances detailed above, the view taken by the Home Minister and the Law Minister cannot be said to be

either extraneous or irrelevant or mala fide. The contention of the counsel for the plaintiffs and the petitioners on this score is, therefore, overruled.

251. There is yet another facet of this problem. Assuming that the reasons and the grounds disclosed by the Home Minister in his letter are

extraneous or irrelevant this is only the first stage of the matter. The second stage-which is the most vital stage-is the one which comes into

existence when the Council of Ministers deliberate and finally decide to advise the President. As to what further grounds may be considered by

them at that time is anybody's guess. It is quite possible that the Council of Ministers may base the advice on grounds other than those mentioned

in the letter of the Home Minister. Article 74(2) which runs thus:

(2) The question whether any and if so what advice was tendered by Ministers to the President shall not be inquired into in any court.

completely bars any inquiry by any Court into the matters which form the subject-matter of the advice given by the Council of Ministers to the

President. This Court, therefore, cannot probe into that matter. In these circumstances, the argument of counsel for the plaintiffs and the petitioners

cannot be accepted at this stage. It is true that while an order passed by the President under Article 356 is put beyond judicial scrutiny by Clause

(5) of Art 356, but this does not mean that the Court possesses no jurisdiction in the matter at all. Even in respect of Clause (5) of Article 356, the

Courts have a limited sphere of operation in that on the reasons given by the President in his order if the Courts find that they are absolutely

extraneous and irrelevant and based on personal and illegal considerations the Courts are not powerless to strike down the order on the ground of

mala fide if proved. We must, however, hasten to add that this does not mean that the Central Government has a free licence to pass any arbitrary

or despotic order or to clothe it with a blanket power to do any thing it likes against the well established legal norms or principles of political ethics.

Such an arbitrary or naked action in a suitable case may amount to a fraud on the Constitution and destroy the very roots of the power exercised.

In fact the Additional Solicitor-General candidly conceded that if the action under Article 356 is absolutely and demonstrably absurd or perverse

or self-evidently mala fide and there is total absence of any nexus whatsoever between the action taken and the scope and object of Article 356,

judicial intervention may be available in such a case. For the reasons that I have already given, this is, in my opinion, not the position here. We,

however, think that this is the least expected of such a high and mature authority as the Council of Ministers of the Central Government. We might

also like to stress the fact that as the reasons given by the Council of Ministers in tendering their advice to the President cannot be inquired into by

the Courts, we expect the Central Government in taking momentous decisions having far reaching consequences on the working of the

Constitution, to act with great care and circumspection and with some amount of objectivity so as to consider the pros and cons and the various

shades and features of the problems before them in a cool and collected manner. The guiding principles in such cases should be the welfare of the

people at large and the intention to strengthen and preserve the Constitution and we do hope that this matter will receive the serious attention of the

Government. The stamp of finality given by Clause (5) of Article 356 of the Constitution does not imply a free licence to the Central Government

to give any advice to the President and get an order passed on reasons which are wholly irrelevant or extraneous or which have absolutely no

nexus with the passing of the Order. To this extent the judicial review remains. In the instant case, however, considering the circumstances

indicated above, I feel that the grounds taken by the Home Minister have got a clear nexus with the issue in question, namely, the passing of an

order by the President under Article 356 in order to dissolve the State Assemblies. The argument of mala fide put forward by the plaintiffs and the

petitioners is, therefore, rejected.

252. I now come to the last contention raised by counsel for the plaintiffs and the petitioners. Mr. Garg, appearing for the petitioners vehemently

contended that Article 356 has absolutely no application to the facts of the present case, as it does not give any power to the President to dissolve

the Assembly. In order to examine this argument closely, it may be necessary to extract the relevant part of Article 356 thus:

356. (1) If the President on receipt of report from the tile Governor of a State or otherwise, is satisfied that a situation has arisen in which the

government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the

Governor or any body or authority in the State other than the Legislature of the State;

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(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

resolution of both Houses of Parliament:

X X X X X

(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.

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

or otherwise to make a proclamation. In the instant case as there is no report of the Governor of any of the States, the President can act on other

methods which includes the advice given to him by the Council of Ministers. Another condition that is necessary for the application of Article 356 is

that the President must be satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Great stress was laid on this part of the ingredient of Article 356(1) by counsel for the plaintiffs and the Petitioners who contended that there is not

an iota of material to show that there was any apprehension that the Government of the State could not be carried on in accordance with the

provisions of the Constitution or there was any break-down of the Constitutional machinery. This is, however, a matter which depends on the

subjective satisfaction of the President based on the advice of the Council of Ministers. It is not for the Court to make an objective assessment of

this question as if it were sitting in appeal over the advice given by the Council of Ministers or the order passed by the President. Even so, there

can be no doubt that having regard to the circumstances in which the Congress was completely routed in the nine States during the Lok Sabha

Elections, the possibility of the State Governments having lost the confidence of the people cannot be ruled out. If so, to continue in office even

after this would be purely undemocratic in character. As our Constitution is wedded to a democratic pattern of Government, if a particular State

Government ceases to be democratic or acts in an undemocratic fashion, it cannot be said that the Government of the State is carried on in

accordance with the provisions of the Constitution. Such a course of action is opposed to the very tenor and spirit of the Constitution. In these

circumstances, therefore, on the facts and materials placed before us, the second part mentioned in Article 356 appears to have been prima facie

satisfied and the argument of the learned Counsel for the plaintiffs and the petitioners on this ground is not tenable.

254. It was then contended by Mr. Garg that a perusal of Clause (3) of Article 356 and the proviso thereof clearly shows that the proclamation

can operate only for the period of two months and automatically expires at the expiration of this period. It is argued that if the Assembly is

dissolved and this action is not capable of being confirmed by the Parliament within two months, then it is incapable of ratification by the Parliament

and therefore, the reasonable inference should be that Article 356 clearly excludes any power to do anything which cannot be ratified including

dissolution of the Assemblies in the States. The argument is undoubtedly attractive and interesting, but on closer scrutiny it does not impress me. In

the first place, under Article 356(1)(a) the President is empowered to assume to himself all or any of the functions of the Government of the State

and all or any of the powers vested in or exercisable by the Governor. The power to dissolve the Assembly is contained in Article 174(2) of the

Constitution which empowers the Governor to prorogue or dissolve the Legislative Assembly. This very power by force of Article 356(1)(a) is

conferred on the President implicitly and once this power is conferred by the application of Article 356(1)(a) the President has the undoubted

jurisdiction to dissolve the Legislative Assembly by assuming the same power which the Governor has under Article 174(2). A Division Bench of

the Kerala High Court in 544986 while interpreting this particular aspect of Article 356 observed as follows:

Article 356(1)(b) empowers the President, whenever he is satisfied of a Constitutional breakdown in the State, to issue a Proclamation declaring

inter alia, ""that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament."" That necessarily implies a

power to dissolve the State Legislature. No resort therefore need be had by the President to the provisions of Article 356(1)(a) read with Article

172 or Article 174 to dissolve the State Legislative Assembly. The power to dissolve the State Legislature is implicit in Clause (1) (b) of Article

356 itself.

255. I full endorse the aforesaid observations which lay down the correct law on the subject on this particular aspect of the matter.

256. As Article 356 occurs in Part XVIII of the Constitution which relates to emergency provisions, it is obvious that when the Assembly is

dissolved no Council of Ministers is in existence and, therefore there is no occasion for either the Governor or the President to take the advise of

the Council of Ministers of the State. In these circumstances, therefore, I am clearly of the opinion that Article 356(1)(a) confers the powers of the

Governor under Article 174(2) on the President in clear and categorical terms and I cannot infer exclusion of the power merely from the fact that

the proclamation is to expire after two months. Even if the order dissolving the Assembly cannot be ratified by the Parliament under Clause (3) of

Article 356 that makes no difference, because Clause (3) does not touch actions taken, proceedings completed, consequences ensued and orders

executed. At the time when Parliament exercises the control, all these actions have already taken place and it is not possible to put the clock back

or to reverse actions which have already been taken and completed, nor was such a contingency contemplated by the founding fathers of the

Constitution. I am therefore, unable to accent the argument of Mr. Garg on this point.

257. It was further argued by Mr. Garg as also by Mr. Bhatia appearing for the State of Himachal Pradesh that even assuming that Article 356(1)

(a) confers the power given to the Governor by Article 174(2) it would be a proper exercise of the discretion of the President to prorogue the

Assembly instead of taking the extreme course of dissolving it. This, however, is purely a matter which lies within the domain of politics. The Court

cannot substitute its discretion for that of the President nor is it for the Court to play the role of an Advisor as to what the President or the Council

of Ministers should do in a particular event. The Central Government which advise the President is the best Judge of facts to decide as to what

course should be adopted in a particular case, namely, whether the Legislative Assembly should be prorogued or should-be dissolved and it is

open to the President to take any ,of these two actions and if he prefers one to the other, this matter is beyond judicial review. For these reasons,

therefore, I am clearly of the opinion that Article 356 does not contain any express or implied limitations on the nature or functions of the Governor

which are to be exercised by the President under Article 356(1)(a).

258. I generally agree with my Lord the Chief Justice on the other points lucidly discussed by him, except with regard to his observations regarding

the theory of the basic structure of the Constitution on which I would refrain from expressing any opinion, because the question does not actually

arise for decision in this Case.

259. These are my reasons in support of the unanimous order passed by this Court on April 29, 1977 dismissing the suits and writ petition"s and

rejecting the prayers for injunctions and interim reliefs.

260. There will be no order as to costs.