CHAPTER 5

Failure of Constitutional Machinery in the States—an Analysis

I. Introduction

The brief historical survey of the various impositions of President’s rule demonstratively shows that the power to impose President’s rule on a state is much wider than was ever envisaged by the members of the Constituent Assembly, even though it is true that some members of the Constituent Assembly were aware that this extensive power could be abused considerably.

Before we go any further, it might be useful to set out in a skeletal and summary form, the manner in which the various impositions of President’s rule have been classified in the previous chapter.

Analytical distribution of President’s rule

A. The Nehru era

(i) President’s rule at the instance of the Congress High Command
Punjab (1951)

(ii) President’s rule imposed on the breakup of Congress and non-Congress coalitions
(a) Non-Congress coalitions
  Pepsu (1953)
  Travancore Cochin (1956)
(b) Congress coalitions
  Andhra (1954)
  Orissa (1961)

(iii) President’s rule because of an alleged breakdown of law and order
Kerala (1959)

B. The Lal Bahadur Shastri interlude

(i) President’s rule because of alleged instability in the political situation
Kerala (1964)
Kerala (1965)
C. The Indira Gandhi years

(i) President's rule pending elections in newly created states
   Manipur (1972)
   Tripura (1972)

(ii) President's rule following Congress party instructions from the centre following situational confusion in states with Congress ministries
   Punjab (1966)
   Andhra Pradesh (1966)
   Gujarat (1974)
   Uttar Pradesh (1973)

(iii) President's rule on the basis that there was situational confusion in states with non-Congress ministries
   Haryana (1967)
   West Bengal (1968)
   Uttar Pradesh (1968)
   Tamil Nadu (1975)

(iv) President's rule following an election which did not produce a clear majority for any party contesting the election
   Rajasthan (1967)
   West Bengal (1971) was a similar situation but a minority government was formed which later requested a dissolution to seek a fresh mandate because of the Bangla Desh war.

(v) President's rule where the Congress withdrew support from a ministry which was in power due to Congress support
   Punjab (1968)
   Punjab (1971)

(vi) President's rule, coalition ministries and defections
   Bihar (1969)
   Bihar (1969)
   Bihar (1971)
   West Bengal (1970)
   Kerala (1970)
   Uttar Pradesh (1970)
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Orissa (1971)
Orissa (1973)
Orissa (1976)
Mysore (1971)
Gujarat (1971)
Gujarat (1976)
Nagaland (1975)
Manipur (1974)

D. The Janata rule

(i) President's rule following the allegation that nine states had lost credibility with their electorates

Bihar (1977)
Haryana (1977)
Himachal Pradesh (1977)
Madhya Pradesh (1977)
Orissa (1977)
Punjab (1977)
Rajasthan (1977)
Uttar Pradesh (1977)
West Bengal (1977)

(ii) Other examples of the imposition of President's rule with support from coalition governments.

Jammu and Kashmir (1977)
Karnataka (1977)
Tripura (1977)

In many ways these various impositions of President's rule defy classification. It is highly questionable whether all these impositions of President's rule are, in fact, examples of what the Constitution calls a failure in the constitutional machinery of the state. Conveniently interpreted, this phrase can mean anything that the party in power wants it to mean. But it is doubtful that it was intended that the central government should have carte blanche in its interpretation of the use of the powers under article 356. To some extent, the Constitution itself provides political safeguards to prevent the abuse of the powers to impose President's rule because the imposition of President's rule on any state will lapse if it is not approved by Parliament. The contribution that Parliament has made in controlling President's rule is discussed in another chapter. For the present, it is
important to note that the fact that Parliament may not resolve to approve the imposition of President's rule will not invalidate any action taken during the intervening period from the time the proclamation is made until Parliament disapproves of it. Thus President's rule can and has been used for a short period of time without any control by Parliament.

Another possible avenue for elucidating the meaning of the phrase “failure of the constitutional machinery of the state” is the superior judiciary. The Supreme Court of India and High Courts of the various states have the constitutional duty to interpret the Constitution. But this interpretational duty may—in certain cases—be hedged in by certain self-imposed limitations. The courts, while willing to discharge their constitutional functions, are not always willing to adjudicate on what are called “political questions”. The imposition of President's rule on a state is a political question as well as a constitutional question. The courts have not always been very keen to entertain disputations on the political aspect of any particular imposition of President's rule. This circumspection has somehow also resulted in the courts not providing a clear answer as to the extent and amplitude of the power to impose President's rule in a state. The courts, whose contribution in this regard is discussed in a later chapter have, therefore, not been very helpful in providing criteria to determine the extent of the power to impose President's rule in a state on the grounds that there is a failure in the constitutional machinery of a state.

Even though Parliament and the courts have not been very helpful in determining the width of article 356 of the Constitution, it is important to attempt some kind of analysis of the permissible limits of the President's power under that article.

II. Common sense, parliamentary democracy and federalism

No discussion about the width of article 356 can take place without considering the framework of parliamentary democracy and federalism within which the President's power under article 356 can be exercised. Although there is some controversy as to whether India has a federal, quasi-federal or unitary Constitution, there is no doubt that the Constitution sought to distribute power between the centre and the states—both of which were envisaged as autonomous institutions. The Constitution gave a vast amount of power to the centre. In addition, the centre was also given a fair measure of emergency powers. Even so, the Constitution nevertheless intended the states that formed the Union of India to be viable political and administrative units. The Constitution did not intend to create provincial state units on the one hand and then permit the viability of these states to be removed by an extended use of the emergency powers of the centre. The centre's emergency powers were meant to be used in emergencies even
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though the constitutional provisions formulating these powers are, from the point of view of sustaining a healthy federal structure, couched in an uncomfortably vague way.

Each state was to operate a system of parliamentary government. This meant that the Council of Ministers in power in the states were ultimately accountable to their own legislative assemblies and not to central government. At the same time, both the central and state governments were expected to cooperate with each other even though it was expected that difficulties and problems would arise between the various states and the centre. It was provided that the Supreme Court could be used—to a limited constitutional extent—to resolve some of these disputes. But the success of the federal experiment depended also on the extent to which the centre could cooperate with states and not constantly seek to impose its will on the states. The success of the federal experiment also depended on the extent to which the parliamentary system of government could function smoothly in the states. The centre's forbearance in not interfering too much in matters that concerned the states exclusively was only part of the methodology for achieving a balanced geographic distribution of power in India. The states, too, had to try to evolve responsible patterns of Cabinet government. This did not necessarily mean emulating the Westminster model. It meant discovering an Indian version of parliamentary government which could successfully combine the three elements of efficiency and stability, representation and accountability.

Looked at from the point of view of federalism, however, it is also important to read article 356 along with article 355. Article 355 imposes a duty on the union. Article 355 states:

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 the Constitution.

This duty is quite wide and can be very far-reaching. The power in article 356 is a correlative power to give effect to this duty. The purpose of this duty is not to impose restrictions on the state. The existence of this duty creates rights in the states. The duty of the union resolves itself into three aspects:

(i) The duty of the union to protect every state against external aggression.

(ii) The duty of the union to protect every state from internal disturbance.
The duty of the union to ensure that the government of the state is carried on in accordance with the provisions of the Constitution.

These various duties and the powers given in article 356 to execute these duties must be set in the general framework of parliamentary government and the federal structure of the Indian Constitution.

Inevitably, a lot depended on the personnel element. The people who manned the institutions that the Constitution purported to create could make or unmake India's Constitution. B.R. Ambedkar emphasised this in the Constituent Assembly when he said:

> However good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution.\(^1\)

The 'personnel' element cannot make a totally unworkable constitution workable; but the fate of a constitution can often be determined by the calibre of those that run it.

It is in the context of this sort of background that we have to consider the amplitude of the President's rule provisions. The power to impose President's rule on a state is an emergency power. It is supposed to be used under emergency conditions. Any analysis or interpretation of the circumstances when President's rule can be imposed must take into account the fact that the states were intended to work as decentralised political units with parliamentary governments of their own operating within the conspectus of a federal system. The phrase 'failure in the constitutional machinery of the state' must also be interpreted in this light. The manner in which the President's rule provisions have been interpreted by successive governments at the centre leaves considerable room for doubt as to whether the common sense approach of respecting the principles of federalism and parliamentary government has been followed.

### III. The political interpretation of article 356

We have already briefly surveyed how the powers under article 356 have been used and abused by successive governments at the centre. The political interpretation of the power of the President to impose President's rule on a state has been very wide indeed. It has covered an amplitude of

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1. \(\text{XI C.A.D. 975 (November 25, 1949)}\).
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situations President's rule has been imposed in some states because the Congress party at the centre found it convenient to do so. It has also been imposed on the basis that there has allegedly been a breakdown of law and order in the state, or an increase in public corruption. President's rule has also been imposed because it has been alleged that there is a lot of political instability in a state. Sometimes this allegation of political instability is borne out by the facts; sometimes it is not. Various gubernatorial reports have mentioned financial difficulties as one of the reasons for imposing President's rule on a state. The reasons for the imposition of President's rule have been multifarious. The real question is whether all these reasons were and are justified?

One way to answer this question is by analytically considering the various interpretations that can be given to the amplitude of the power contained in article 356. We shall consider two interpretations.

The narrow interpretation

The wide interpretation

(i) The narrow interpretation

We have already seen that the words used in article 355 give the union three distinct duties:

(i) to protect every state against external aggression;
(ii) to protect every state from internal disturbance;
(iii) to ensure that the government of the state is carried on in accordance with the provisions of the Constitution.

A narrow interpretation of article 356 would be to read the words expressing duty (iii) as being in pari materia to duty (i) and (ii). This means that the phrase "that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution" in article 356 should be interpreted so that the use of article 356 is limited to situations similar to those arising out of external aggression or internal disturbance.

This is certainly a plausible interpretation. It does not, however, explain why article 356 is solely devoted to situations where the governance of a state cannot be carried on in accordance with the provisions of the Constitution. Article 356 makes no mention of "external aggression" or "internal disturbance".

At the same time the words used in article 356 which refer to "a situation ... in which the Government of the State cannot be carried on in accor-
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dance with the provisions of the Constitution” cannot be treated as “catch-all” in nature. On that basis even a small indiscretion committed by a minor official can be treated as an example of the kind of situation contemplated in article 356.

The governing principle of the “narrow interpretation” is that the failure in the constitutional machinery of the state must be of a “serious” nature. Arguably, a situation involving “external aggression” or “internal disturbance” would be a “serious” situation of sufficient import to attract the intervention of the President under article 356.

This “serious” theory—if one may call it—merits further examination. Article 352 of the Constitution envisages the declaration of a “national” emergency only when a “grave” situation exists of the kind described in article 352. The word “situation” in article 356 is not qualified by any such adjective. It might, therefore, be suggested that it is not totally implausible that the Founding Fathers of the Constitution deliberately wanted to make the amplitude of the power contained in article 356 much greater than the width of the power in article 356. However, even if we accept that the power in article 356 is much wider than the power contained in article 352—as indeed it must be, because the words used are suggestively wider—it does not follow that the power contained in article 356 is unlimited; or that it is left to the government of the day to interpret the provisions of article 356 as it pleases. It is for this reason that it is suggested that, analytically, the powers contained in article 356 should be used when a “serious” situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.”

We have already seen in our survey of the various impositions of President’s rule that the centre has not really interpreted article 356 in the spirit of what we have called the “serious” theory. The centre has interfered on various occasions on various pretexts. Sometimes the explanation that has been offered has been convincing; sometimes it has not. The government in power in the centre has, however, usually relied on various kinds of reasons as being persuasively convincing. Let us consider these in three groups.

(a) A breakdown in law and order and administration.

(b) Stringent financial exigencies.

(c) Political problems.

Let us consider each in turn.

(a) A breakdown in law and order and administration

This is one of the reasons given in various instances—either as a main
or as a supportive reason—for the imposition of President’s rule in a state. The most famous—or, some might say, infamous—example of this, was the imposition of President’s rule in Kerala in 1959. But there are also various other instances where a breakdown in law and order was given as a supportive explanation for the imposition of President’s rule in a state. Thus the breakdown of law and order and its effect on the administration was also given on the floor of the Lok Sabha before President’s rule was declared in Pepsu in 1953. One of the reasons for the imposition of President’s rule in Uttar Pradesh in 1973 was that there was a breakdown of law and order owing to a revolt by some members of the Provincial Armed Constabulary. The Governor, in his report, also mentioned communal troubles and atrocities on harijans. When President’s rule was imposed on the State of Gujarat in 1974, it was stated that considerable agitation was taking place in Gujarat. The police had to open fire against the rioters who were protesting against the general increase in prices. ‘Law and order’ were always mentioned as a reason for the imposition of President’s rule in West Bengal.

Similarly, the effect of contemporary events, whether political or otherwise, on the administration has also been referred to as a reason for the imposition of President’s rule. A political scientist has, relying on a newspaper report, countenanced the view that President’s rule may have been imposed in Kerala in 1964 also because there were charges of corruption against R. Sankar, the leader of the Congress legislative party and Deputy Chief Minister of the Congress-Praja Socialist Party coalition. When President’s rule was imposed in Haryana in 1967, Governor B.N. Chakravarty argued in a very concerned manner that continuing defections were having a deleterious effect on the administration. President’s rule was also imposed in Punjab in 1968. Governor Pavate in a book that he wrote later recounting his days as Governor, wrote that the Punjab Government had always faced difficult problems of law and order. Farmers were enriched by the abundant yield of their farms with the introduction of machinery. They owned three or four firearms not just to meet the challenge of rivals but also as a matter of prestige. Their petty quarrels sometimes ended in shooting. Then the police force had to deal with Naxalites operating in some parts of the state in addition to the usual labour trouble in industrial towns. Cases of blackmailing and communal harassment, particularly of Harijans, cropped up now and again. Drinking, particularly of country liquor, went on in the state on a very large scale. Sometimes young women were kidnapped and maltreated, and then nothing was heard of them. Murders took

2. Maheshwari, President’s Rule in India (1977)47.
place at the slightest provocation. The police service had been so badly demoralised that district officers often looked to the Chief Minister or Home Minister for guidance in handling such cases. Officers are afraid of taking action as this might annoy some minister or the other.\(^3\)

If this was the normal pathology of the social and political life of the state, two alternative consequences can be said to follow. The first is that the state should constantly be under President's rule. The second is that since "law and order" is a subject within the jurisdiction of the state, a democratic government in the state should deal with these problems rather than permit a Governor (imposed from above) and acting with advisors also appointed from above, to interfere. India's Constitution was designed so that both methods can be used. As it happens, in this particular instance the politics of the State of Punjab were also torn apart by political defections. The first method was, therefore, invoked owing to political instability, which made the use of the second method difficult.

The case of Tamil Nadu in 1976 is, however, particularly important. The Tamil Nadu government had just a few more months to go before it faced elections for the state assemblies. President's rule was imposed because the government in power in Tamil Nadu was alleged to be corrupt. There is great force and plausibility in the view that the government should have been asked to face the polls rather than the one-man Sarkaria Commission. The allegation that such a corrupt government might have "rigged" the election is not convincing. A general breakdown in the administration was also suggested by Governor Narain as one of the reasons for declaring President's rule in Karnataka in 1977.

Not all these allegations of a breakdown in law and order on the administration were "serious". In fact, we have already noted the reflection that the law and order problems in Kerala in 1959 may well have been instigated, *inter alia*, by the party in power in the centre. It is for this reason that it can be argued that an alleged breakdown in law and order is not itself sufficient for the imposition of President's rule.

\(^{(b)}\) *Stringent financial exigencies*

We have already seen that in the Constituent Assembly Santhanam forecasted that one of the reasons for the imposition of President's rule could be the existence of a financial situation which justified intervention by the centre. President's rule has not been introduced in a state solely due to financial causes. But, the existence of extenuating financial circumstan-

ces have often been given as one of the reasons for the imposition of President's rule.

When President's rule was imposed in Kerala in 1959, the Governor's report stated that "[t]he financial position in the state had deteriorated" because the state had a considerable overdraft with the Reserve Bank even though it was "admitted that this state of affairs was not peculiar of Kerala" and that "[s]ome other State Governments were in a similar position". In Orissa in 1961, the Finance Minister, R.N. Shingdeo, refused to submit the budget to the state assembly until some of his demands about the continuance of the Congress-Ganatantra coalition were met. When Governor Dharma Vira recommended the imposition of President's rule in West Bengal, he mentioned the difficulties created in passing the state's budget because the Speaker adjourned the assembly sine die. The Governor mentioned that the adjourned assembly was scheduled to consider the State Budget and a number of important legislative measures including Bills for enactment of ordinances within a given time.

In Bihar in 1968, the Governor's report stated, inter alia, that President's rule was needed "urgently so that consequential steps may be taken to enable drawals from the consolidated fund before the 1st July 1968."

In Punjab in 1968, a serious problem was created because the Speaker, Joginder Singh Maan, repeatedly adjourned the House. In an extremely tense political situation, the Governor passed an ordinance on financial matters, summoned the legislative assembly and directed it to consider the Appropriation Bills, grants and other financial matters. All this was during the pendency of an adjournment by the Speaker. When the assembly met on March 18, 1968, the Speaker affirmed his ruling about the adjournment of the assembly and left the House which continued to consider the financial business it had been directed to consider, with the Deputy Speaker in the chair. The Punjab High Court held that, although the Governor could reconvene the assembly, the Speaker having reaffirmed his ruling that the assembly was adjourned, the rest of the proceedings of the assembly (including its decisions on financial matters) were not constitutional. This decision was reversed by the Supreme Court. Whatever the merits of the controversy, there is no doubt that an embarrassing financial situation had arisen in the state which was resolved only because the Supreme Court took an extremely wide view of the Governor's ordinance-making power. Budgetary problems were also created when President's

rule was imposed in Punjab in 1971. In Gujarat in 1971, one of the reasons why the Governor advised the Chief Minister to advise him to dissolve the House was so that the budget for the rest of the financial year could be passed.

Financial matters are important to the government of every state. The government of each state is accountable to the people of the state and it must pass a budget. To use the passing of a budget as a ploy for political bargaining purposes, as was done by the Finance Minister in Orissa in 1961, is irresponsible. Each time a political situation is created whereby the budget cannot be passed, the government of the state tempts providence and invites the intervention of the centre. Needless to say, this is sometimes done deliberately by politicians in the state. Sometimes, both government and opposition politicians want to create a crisis so as to attract the use of the power in article 356.

Many of these financial situations should never arise. But some of these difficulties can be overcome—and the Supreme Court’s judgement in the Punjab budget case countenances this view—by the Governor using his power to issue ordinances under article 213 of the Constitution. This is a temporary measure. But it means that the use of the more drastic remedy of imposing President’s rule under article 356 does not have to be exercised with a dubious alacrity.

Even in this case, there is room for considering the application of what we have called the “serious” theory approach to the Constitution. There is no doubt that some of the states in which President’s rule was imposed had serious law and order, administrative and financial problems. One way to look at these situations is for the centre to leave it to the state to determine what sort of solution it should adopt to deal with such problems. A corollary to this is that the centre should be able and willing to help the state after mutual discussion. Another way to look at the problem is on the lines of what we have called the “serious” theory. Accordingly, President’s rule should be imposed if the situation has become really “serious”. A corollary to this should be that the parliamentary governmental structure of the state should be respected and that, although the centre should have the final say in serious situation, such matters should be stated for mutual discussion. President’s rule should not be imposed as a punitive political correction; but be the product of mutual discussion. The third approach can be called the whimsical approach. This approach consists of the view that the centre can impose President’s rule when a situation has arisen in which the President feels that the government of the state is not carried on in accordance with the provisions of the Constitution. This is irrespective of whether the situation is serious or not. A refined version of this view can also be called the wider view which we shall consider later.
President's rule has been imposed in a large number of cases where there have been political problems. These political problems are of various types.

The first class of these problems can be called the class of “self induced” political situations. Thus, there have been a large number of cases where President's rule was imposed as a result of party instructions from above. This was done at the convenience of the Congress party at the centre and sometimes even against the will of the Chief Minister of the state, as in the case of the first imposition of President's rule in Punjab in 1951. Gopichand Bhargava, the Chief Minister of Punjab, protested that President's rule ought not to be imposed. His protests did not convince the Congress bosses in Delhi. He resigned. President’s rule was imposed in Punjab. Party instructions from the centre were also responsible for the imposition of President’s rule in Punjab again in 1966 even though in this case there was some comity between the views of the Chief Minister of the state, Ram Kishan and the Congress High Command in Delhi. Again, President’s rule was imposed in Andhra Pradesh in 1973. The Congress High Command in Delhi imposed President’s rule even though the Congress had a majority in the assembly. The assembly was kept suspended for a few months and the Congress party—having permitted themselves some political breathing space—returned to form a ministry. A similar pattern was followed in Uttar Pradesh in the same year. The party in the centre advised Kamalapati Tripathi to resign rather than deal with the problems that were facing the state. There is no doubt that the law and order situation in the state was bad. But the assembly was kept suspended for three months and H.N. Bahuguna was sworn in as Chief Minister. Could this changeover not have been affected straightaway without the imposition of President’s rule especially as there was no question of the Congress party’s majority in the assembly being in question. This technique of using the President's rule provisions to help to get the Congress party's own house in order arose again in Uttar Pradesh in 1975-76 when President’s rule was imposed for two months or so in order to enable the Congress to elect a successor to Chief Minister Bahuguna. These are all examples of “self induced” political situations. The President’s rule provisions should be used to deal with these situations.

The second class of political situations where President’s rule was imposed can be classed as “politically convenient” situations. These include the category of “self induced” political situations which we have just described but they are much wider. Examples of this are the example of Andhra Pradesh in 1954 when the communists were not given a chance to form a
mistrust. It is claimed by many that the imposition of President's rule in Kerala in 1959 was also such an example. Again the imposition of President's rule in Rajasthan in 1967 was a blatant example of not permitting a non-Congress government to come into power. The imposition of President's rule in Uttar Pradesh for 18 days in 1970 when T.N. Singh became Chief Minister of the state, is also an example. President's rule was imposed in Orissa in 1976 because there was a crisis of leadership in that state. The power to impose President's rule should not be used for political convenience.

Finally there is a third class of the imposition of President's rule which we shall call "difficult political imbroglios". This class consists of difficult political situations. Strictly speaking, all instances of the impositions of President's rule precipitate or are precipitated by "political imbroglios". Here, we use the term "political imbroglio" to mean those marginal situations in which, in the normal course of events, a parliamentary democracy based on a two party system cannot work without difficulty. In India, the situations that arise under this head are, broadly speaking, the following:

**Situation I**

Where, during the pendency of President's rule in a state, after elections have been held in that state, no single party has emerged with a majority.

**Situation II**

Where the state is not under President's rule, and no single party has emerged in the state following elections to the state assembly.

**Situation III**

Where a coalition breaks up or a ministry supported by another party falls because the latter withdraws its support.

**Situation IV**

Where a coalition breaks up due to legislators changing their alignment from one party to another (this process is usually abbreviated in political circles to "defection"); or because of a non-confidence motion against a coalition.

**Situation V**

Where a government with a majority falls because there is a defection or a no confidence motion against that government.

All these "situations" had arisen in the states. Thus situation I arose in West Bengal in 1970, when elections were held during the pendency of
President's rule and no single party (or combination of parties had a majority). This sort of situation also arose in Kerala in 1965. In the former case, however, a government was formed, whereas in the latter case President's rule was re-imposed. Situation II arose in Rajasthan in 1967. There are several examples of President's rule being imposed on the breakup of a coalition or where a party withdraws support for the party in power. These include Orissa in 1961. In 1968, a difficult situation arose in Punjab when the Congress withdrew its support from a ministry. The Congress party repeated this exercise in the same state in 1971. Difficulties in keeping a coalition together also arose in Bihar in 1972 and in Orissa in 1971. More recently in 1977, the coalition in Tripura broke up because of the withdrawal of the support of the Communist Party of India (Marxist).

Situation IV arose in a large number of situations. These are situations where coalitions broke down because of defections. These include Pepsu in 1953, Andhra in 1954, Kerala in 1964, Haryana in 1967, Bihar in 1969, Manipur in 1969, Orissa in 1973, Nagaland in 1975 and Gujarat in 1976. Situation V does not involve coalitions. The most celebrated examples of majority governments collapsing is when Congress (O) governments in Mysore and Gujarat fell because of defections in 1971 when, following Indira Gandhi’s victory in the general elections, various legislators in these states defected from Congress (O) to Indira Gandhi’s Congress (R).

Many of all these situations depend on the role of the Governor and the extent to which the centre is willing to let parliamentary government evolve peculiar provincial patterns of its own in the states.

To sum up, we have classified three kinds of political difficulties:

A. Self induced political situations
B. Politically convenient situations
C. Difficult political imbroglios.

The power to impose President's rule should not be used in classifications A and B. It should be reserved for use in classification C which we have further sub-divided into five situations.

We have already indicated that the role of the Governor is crucial in all these matters. There is a vast literature on the role of the Governor. In fact, a special committee of Governors was appointed to consider what the role of a Governor in these difficult political situations ought to be. That report is reproduced as one of the appendices. This report was optimistic to some extent. It observed:

When we consider the consequential process of readjustment of political life that has evolved in the eighteen states, with the kind of
A lively democracy that we have, it was inevitable that there should arise feelings of doubt and distrust. But we feel that given time and the realization among all political parties of the need to observe certain norms of political behaviour, the difficulties which raise their head, sometimes suddenly, will find their own solution and our democracy will function smoothly and effectively.

What the report says mildly needs to be stressed more strongly. It is politicians who create political imbroglios; it is for politicians to show some self-restraint in these matters. Defections have become a part of India's political culture.

Apart from this, let us concentrate on two specific matters. The first is the Governor's relationship with the centre. The second is how Governors actually dealt with the situations I to V that we have classified as representing "difficult political imbroglios".

Under the Constitution, the Governor is the executive head of the state. He is appointed by the President who is advised in this, as in almost all constitutional matters, by the Prime Minister. A Governor should normally be appointed for five years. But this is not always the case. There are various instances where the centre may have shortened the tenure of a particular Governor for political reasons. Thus in Punjab in 1966, Governor Ujjal Singh was replaced by Dharma Vira, two days before the latter sent his report recommending the imposition of President's rule in Punjab. Again Governor Dhavan of West Bengal went on 'leave' and later resigned as Governor of West Bengal in 1971 well before his tenure expired. This may have taken place because he invited the Communists to prove that they had a majority in the legislature with a view to forming a government, because they were the single largest minority party. We have already seen that at some stage the Constituent Assembly toyed with the idea of an elected Governor. We will not go into the merits of that controversy again. It is important to consider whether or not a Governor should, or should not, have security of tenure so that the centre cannot transfer a Governor or induce him to resign when he acts in an upright and constitutionally correct manner. The chairman of the committee of Governors, Bhagwan Sahay, and Dhavan, who was also a member of that committee told the present writer that the idea that the Governor should be given security of tenure was considered before the Governor's Committee but was abandoned though not disapproved. In the present writer's opinion, the Governors should have security of tenure. Otherwise, the centre has much too much power and can manipulate their gubernatorial nominees.
At the same time, the Governor must himself behave in a constitutionally correct and neutral way. Governor Sampurnanand's various manouevres to avoid a non-Congress ministry coming into power in Rajasthan in 1967 were highly questionable. Again, it can be argued that Governor Trivedi should have at least given the Communists a chance of proving that they could possibly form a ministry in Andhra Pradesh in 1954, much in the same way that Governor Dhavan gave the Communists the chance to show whether or not they could command a majority in Bengal. Whether Jyoti Basu was right in demanding that the majority be tested in the legislature and not informally before the Governor, is a matter we shall consider later. Like Governor Dhavan in Bengal in 1970 and 1971 Governor Suthankar consulted members of the opposition with a view to forming an alternative ministry in Orissa in 1961 before recommending the imposition of President rule. This course was also followed by Governor Giri in Kerala in 1964. Again in Orissa in 1971 Governor Ansari at least explored the possibility of an alternative ministry. In the same state in 1973, however, Governor Jatti did not seriously consider the possibility of an alternative government. There are, of course, difficult situations, like that faced by Governor Kanungo in Bihar in 1967. But, when all is said and done, the Governor must be neutral and be seen to be neutral. Each time a ministry resigns or a coalition breaks up or a government falls, the Governor must, as a general rule, explore the possibility of alternative government. No state should be without an elected government. But a caveat must be added to this. There are times when the politics of some of the states of India make this impossible.

Difficult political imbroglios: The five situations

We have already outlined five situations in this classificatory category. These five situations may be broadly classified into two categories.

A. Category I: Where no single party has a clear majority following elections to the state assembly. These are the situations I and II described above.

B. Category II: Where a government resigns or is made to resign for various reasons. These are the situations III, IV and V described above.

Category I: The two situations that arise in this category are slightly different. In situation I, the state in question is already under the imposition of President rule. In situation II, it is not.

In both these cases, the governing principle must be to form a ministry. The minority party or any other coalition that can be formed—must be
given an opportunity to form a ministry. The only difficulty that arises is that the Governor can never be sure that the ministry will survive. In fact, in certain cases, the provincial political situation may be such that he may feel the need to be assured that the ministry will survive. In this situation he has the following choices:

(i) ask the largest minority party or coalition to form a ministry and face the assembly to determine the ministry’s fate. We shall call this the “assembly” technique;

(ii) adopt the procedure of asking the leader of the largest minority party or coalition to furnish some kind of evidence (usually a list of the legislators that support him) that his government will have a majority in the assembly. We shall call this the “list” technique;

(iii) adopt the procedure that the leader of the largest minority party or coalition not just supply some evidence of the potential support he claims to have in the assembly but to actually ‘parade’ the legislators who support him. This shall be called the “parade” technique.

Since the governing principle must be that each state must have a parliamentary system of government, the first solution is the best. Afterall, if no party had a clear majority in Lok Sabha elections or elections to the House of Commons in the United Kingdom, the President or the Queen (as the case may be) will not impose their own rule and let the country continue to be run without a government. The same principle should apply, mutatis mutandis, to state governments. The largest party should be invited to form a government. The political scientist Siwach calls this approach the “Sri Prakasa” doctrine because Prakash who had been a Governor of various states adhered to this view. Siwach also mentions the support of Subba Rao, the former Chief Justice of India, for this view.5

There are one or two difficulties with this doctrine which we must at least note, even though the view must be given support. The first difficulty is that politics in the Indian states is such that the swearing in of a minority government may have the effect of encouraging defections, because a potential defector looks with favour on the prospect of office in a government in power. Secondly, a Governor is in a difficult position if he swears in a “minority” ministry knowing that that ministry is going to collapse.

This second difficulty merits further examination. We can, perhaps, introduce a distinction suggested by Governor Dhavan in West Bengal in 1970. This is the distinction we have postulated between situation I and situation II. It will be recalled that in situation I the state is already under

President's rule. Before President's rule is lifted, the President has to be satisfied that the government of the state in question can be carried on in accordance with the provisions of the Constitution. This is usually done on receiving a report from the Governor. The question is this: Can a Governor who knows that a minority ministry is going to fall actually recommend to the President that the government of the state can be carried on according to the provisions of the Constitution? The West Bengal precedent of 1970 could be interpreted as suggesting that in situation I the Governor is duty bound to verify that the government he is about to swear-in will be a stable one. The constitutional question that arises is whether the swearing in of a minority ministry with the latent in-built possibility—or even probability—of instability amounts to an action which invites the failure of the constitutional machinery of the state? Clearly, there is nothing unconstitutional about a minority ministry being defeated on the floor of the assembly. But a Governor faced with a situation with so much incipient instability cannot send an “all-is-well-in-this-state” political message to the President.

Even though situation I is a more difficult situation than situation II, there are two ways to approach both these situations. The first is the “wait-and-see” method, whereby the Governor swears in the minority ministry and leaves the situation to evolve as best as it can. This method is consistent with the development of a parliamentary democracy, but may not be wholly suited to India. The second method is the “make-sure-before-hand” method where the Governor makes sure before hand that the ministry about to be sworn will survive its first day in the assembly. This view is a cautious view. It has not, however, been adopted only out of a sense of caution. It has also arisen at times, as we have seen, because a Governor has not always been willing to swear a particular party in power.

The compromise techniques used by Indian Governors have not always been consistent and clear.

Category II: These cover what we have earlier described as situations III, IV and V. These situations are, by and large, a reflection on Indian state politics.

As long as it is done for clearly understood policy reasons, the mere break up of a coalition is not wrong in itself. The members of many coalitions do not always see eye to eye with each other. Similarly, there is nothing wrong with a legislator conscientiously changing sides because of a genuine shift in the framework of his political thinking on a particular
matter. Problems arise when members of coalitions join hands with each other in the knowledge that the coalitions are temporary. Equally, problems arise when politicians defect for temporary political ends.

When politicians abuse the silent morality on which the parliamentary system is supposed to work, Governors have no other choice but to advise the President to invoke the provisions of article 356. But there is some room for the view that a Governor should sometimes permit political events to take their own course. Arguably, Governor Dharma Vira should have allowed Chief Minister Ajoy Mukherjee some time to organize himself to face the assembly rather than dismiss him because the latter wanted a few days extra time before he met the assembly.

Gubernatorial willingness to swear in alternative ministries also encourages a decline in the standards of political morality. If a minister has been defeated on the floor of the house, the Governor should give him the option of appealing to the electorate. In the interim, President's rule should not be imposed and the Chief Minister should continue in power. The only exception to this rule is where a Chief Minister makes habit of appealing to the electorate. This approach accords with our general view that article 356 should be invoked only in serious cases.

A concluding remark on the narrow interpretation

The powers under article 356 cannot be interpreted so that the phrase “the Government of the State cannot be carried on in accordance with the provisions of the Constitution” is read in pari materia to the phrases “external aggression” and “internal disturbance” in article 355. The difficulty with this interpretation is not just that it is not borne out by the text of the Constitution but also that it does not take us very much further than before. The words “external disturbance” and “internal aggression” can be interpreted in various ways.

We have taken the view that article 356 be invoked where a “serious” situation has arisen so that the government of the state cannot be carried on in accordance with the provisions of the Constitution. The word “serious” should be given a strict interpretation. “Serious” should mean “very serious”. Any other view would be inconsistent with the concepts of parliamentary government on which the Indian Constitution is based at federal and state levels.

(ii) The wider interpretation

The wider interpretation need not detain us too long even though it is the interpretation that has been followed by successive central governments.
Analytically, the wider interpretation is constructed in the way in which the courts have construed it. According to this construction, the interpretation of article 356 by the executive at the centre entails making a political decision. Article 356 merely demands that the President—advised in this, as in most matters, by the Prime Minister—is satisfied on the receipt of a report from the Governor, or otherwise, that the government of the state cannot be carried on in accordance with the provisions of the Constitution.

This argument proceeds in two forms. Both these forms of argumentation have been considered and accepted, in varying degrees, by various judges, as we shall see in a later chapter. One form of argumentation is that the satisfaction of the President is subjective and it is up to him—advised by his Prime Minister—to decide whether the government of the state can be carried on in accordance with the provisions of the Constitution. Another form of argumentation—which can be seen as alternative to the first form of argumentation or even give support to it—is that the Constitution lays down a form of procedural control in that a declaration of President's rule needs to be approved by Parliament.

The major difficulty with the wide theory is that it gives an extremely wide power to the centre. The fact that Parliament has to ratify a proclamation under article 356 may not always be an effective political safeguard. In the first place, the party in power in the centre has invariably had a majority in both Houses of Parliament. It is only latterly that the Janata government has not had a majority in the Rajya Sabha. But there is a second reason why the parliamentary control included in article 356 may not be an effective safeguard. The proclamation of President's rule lapses in a state unless it is ratified by both Houses of Parliament in two months. Sometimes President's rule is imposed for a very brief time and parliamentary approval is not necessary. Thus President's rule lasted for 44 days in Rajasthan in 1967, 18 days in Uttar Pradesh in 1970, 52 days in Uttar Pradesh in 1975-76 and less than two calendar months in Kerala in 1970. Even more interesting is the Orissa example of 1971 where a Presidential proclamation under article 356 lapsed on the March 12, 1971. The next day, a fresh proclamation was issued. Arguendo, for one day the state of Orissa was constitutionally in a state of “no-government”. The third reason why political control by Parliament can become ineffective is that Parliament can refuse to ratify a Presidential proclamation but it cannot question, what has been done in the interim between the time when President's rule is declared and when Parliament refuses to ratify the proclamation under article 356. A powerful example of this is the example of 1977 when President's rule was declared in nine states in April 1977, because the
Janata government in the centre felt that the Congress governments in these states should seek a fresh mandate from the people. The Presidential proclamation dissolved the legislatures of these states and called for fresh elections. Even if both Houses of Parliament refused to ratify the proclamation, the Janata government would have achieved its objectives. The decision to call for elections in these nine states was irreversible. The union Parliament could not change that decision.

By and large, the courts, for various reasons and to various degrees, seem to have accepted the wider interpretation. Although this is discussed later, it would not be out of place to state that even the wider interpretation demands the existence of a political morality and a dignified restraint on the part of the centre and Governors to preserve the spirit of parliamentary democracy on which the government of the states is based.

IV. A summary

The words of article 356 are so wide that they can almost be interpreted any way the central government wants to interpret them. Article 356 is about a failure of the constitutional machinery in the states. This is, however, the heading of article 356. The actual wording is such that the central government can impose President’s rule “if a situation had arisen that the Government of the State cannot be carried on in accordance with the provisions of the Constitution”. These words can mean anything because the Constitution does not countenance even a small peon accepting a bribe. But such a situation could not be the sort of situation that the Founding Fathers envisaged would attract the use of article 356 by the centre.

The President’s rule provisions must be interpreted in a manner consistent with the principles of federalism and parliamentary government on which the Constitution is based. These principles should govern the use of article 356 irrespective of the interpretation we give to the width of the power contained in article 356.

A narrow interpretation of the President’s rule provision is that it must be used only in serious cases and not used as an excuse to make possible the political management of the politics of a state. The wider interpretation is that the exercise of the powers given under article 356 are political in nature and can be controlled through parliamentary safeguards.

We take the view that although there are parliamentary safeguards to the exercise of the power, and these political mechanisms must be used to control the exercise of the power of the President to impose President’s rule on the states, these political safeguards are not enough. The President’s power to impose “his” rule in the states is a significant power. It must
not be used so as to destroy the federal structure of the Constitution. It must also not be used to interfere with the working of parliamentary government in the states, even though it must be said that state politics often leaves a lot to be desired. A vote in Parliament that a particular imposition of President's rule was wrong cannot repair damage that is already done. In the long run this damage is not just of a transient temporary political nature. It is much more serious. Around the transient and apparent damage created, wider, and often unhealthy political trends acculturate. These are not just five questions of law. They affect the political, economic and social life of the nation.