STATE OF RAJASTHAN & ORS. ETC. ETC.

v.

UNION OF INDIA ETC. ETC.

May 6, 1977

[M. H. BEG, C.J., Y. V. CHANDRACHUD, P. N. BHAGWATI, P. K. GOSWAMI, A. C. GUPTA, N. L. UNTWALIA AND S. MURTAZA FAZAL ALI, JJ.]

Constitution of India, 1950, *Articles* 131, 256, 257—*Advice by Home Minister, Union of India to Chief Minister of State dated* 18-4-1977 *to recommend under Art.* 163 *to the Governor to dissolve Legislative Assembly under Art.* 174(2)(*b*).—*Nature of the advice, whether any relief as prayed for in the suits and petitions can be granted.*

Doctrine of Rough separation of powers—Nature of—Duty of the court regarding questions involving policy matters and constitutional issues—Constitution of India, 1950, *Article* 131.

President's satisfaction under Art. 356—*Whether such a satisfaction can be based only on Governor's report—Power of court to question such satisfaction—Second part of Art.* 355 *covers Proclamation under Article* 356—*Direction by Union Government under Articles* 256, 257 *to the State Government to recommend to the Governor to dissolve the State Legislature, whether such a direction is unconstitutional, illegal and* ultra vires—*Constitution of India,* 1950, *Articles* 74, 163, 174, 255, 256, 257, 355 *and* 356(1)(*a*).

Words and phrases—"State" whether means "State Government"—Constitution of India, 1950, *Article* 367 *read with General Clauses Act,* 1897.

Constitution of India, 1950, *Article* 131—*Whether powers of the Supreme Court to grant relief under Art.* 131 *are restricted to "declaratory judgments".*

Constitution of India, 1950, *Articles* 19(1)(*f*), 31 *and* 32, 195 *and* 356—*Rights of Members of Assemblies to draw their salary under Art.* 195—*Nature of—Whether as a consequence of the threatened dissolution of Legislative Assembly or the Proclamation under Art.* 356(1) *dissolving States Assemblies the rights guaranteed to the petitioners/Legislators are violated.*

Injunction—Permanent/temporary injunction—Order XXXIX C.P.C. read with Order XLVII of the Supreme Court Rules 1966—*Whether a proper relief in a suit challenging a proclamation under Art.* 356.

Constitution of India, 1950, *Articles* 95, 131, *maintainability of a suit under Art.* 131 *and the writ petitions under Article* 32—*Constitution of India, Art.* 356(1) *scope and ambit of the power of the President.*

Under Article 74(1) of the Constitution "there shall be a Council of Ministers to aid and advise the President in the exercise of his functions". Under Article 163 of the Constitution there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor of a State in the exercise of his functions, except insofar as by or under the Constitution required to exercise his functions or any of them in his discretion. Both under Art. 74 and Art. 163 the question whether any, and if so what, advice was tendered by the Council of Ministers to the President/Governor shall not be inquired into in any court. Under Article 174(2)(b), the Governor may from time to time dissolve the Legislative Assembly. Under Article 172(1) a Legislative Assembly of "a State, unless sooner dissolved, shall continue for six years from the date appointed for its meeting and no longer and the expiration of the said period of six years shall operate as a dissolution of the Assembly. Articles 256 & 257 enjoin that the executive powers 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. Under Art. 355, "it shall be the duty of the Union to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution." Article 356 empowers the President to assume to himself all or any of the functions of the Government of the State and all or any of the powers

A vested in or exercisable by the Governor or any body or any authority in the State other than the Legislature of the State, if 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 the Constitution. Under sub-section (5) of Art. 356 "notwithstanding anything in the Constitution, the satisfaction of the President in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.

B The Lok Sabha in which the Congress(R) had an overwhelming majority was dissolved on January 8, 1977 though under the Constitution (Forty Second Amendment Act) it had another year to run out its extended term. In the fresh elections held in March 1977 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 had secured an overwhelming majority of votes of the electorate, formed the new Government at the Centre. On the date that the Janata Government took office, the Congress (R) was in power in various C States including Bihar, Haryana, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.

On April 18, 1977, the 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 Assemblies in exercise of the powers under Art. 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 D practices."

In an interview on April 22, 1977, in the "Spot Light Programme" of All India Radio, Shri Shanti Bhushan, Minister of 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 has been cast on their enjoying the people's confidence, their party having been rejected in the recent Lok Sabha elections." A report of the said interview appeared in various newspapers including the "Statesman" E of the 23rd April. The correctness of the report is not disputed.

The six plaintiff-States, namely, the State of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa 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 Art. 356 of the Constitution. A permanent injunction was also sought for by F the plaintiffs in order to restrain the Central Government permanently from taking any step to dissolve the Assemblies until the fixed period of six years was over. Some of the Members of the Legislative Assembly of Punjab had also filed a writ petition complaining of violation of their fundamental rights and prayed for similar injunctions.

The principal common submissions on behalf of the plaintiffs as well as the petitioners were :—

G Firstly, that the letter 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 Legislative Assembly of the State concerned and that such a proclamation, resulting necessarily in the dismissal of the Ministries in the six States and the dissolution of their Legislative Assemblies upon the grounds given in the letter, is *prima facie* outside the purview of Art. 356 of the Constitution and would be destructive of the federal structure.

H Secondly, that, in any case, the condition precedent to the dissolution of the State Assembly is a ratification by both Houses of Parliament of the Presidential action under Art. 356 so that no 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, the proposed action on the face of it is mala fide and unconstitutional. The respondents' reply in defence are :— A

Firstly, that on allegations made in the plaints no suit could fall within the purview of Art. 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 State Governments and Legislatures without involving constitutional or other legal rights of States as such. B

Secondly, the questions which arise for guaging the existence of a "situation", calling for action under Article 356 are, by their very nature, non-justiciable and they are also made non-justiciable expressly by Art. 356(5) of the Constitution so that, even if a State could, as such, be said to be legally and properly 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. C

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 Art. 356. Hence, on matters stated there, no cause of action could be said to have arisen. D

Fourthly, mere intimation of some facts, fully within the purview of Art. 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 others facts also, for action under Art. 356 of the Constitution. 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. There was nothing beyond bare possibilities before the court so that no anticipatory injunction or order could be granted. E

Dismissing the suits as well as the petitions the Court,

HELD :

Per Beg, C.J. F

(1) 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 for political power through formation of several political powers with different socio-economic policies and programmes and ideologies is legal. Hence, 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 not constitutionally prohibited or *per se* illegal. [24 F-G] G

(2) 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 Governments also. It is the object of every democratic constitution to give such opportunities. Hence a policy devised to serve that end could not be contrary to the basic structure or scheme of the Constitution. [24 B] H

(3) Article 356(1) of the Constitution calls for an assessment of "a situation". In so far as Article 356(1) may embrance matters of political and executive policy and expediency, Courts cannot interfere with these unless and

A until it is shown what constitutional provision the President is going to contravene or has contravened on attempted grounds of action under Art. 356(1) for, while Art. 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 remains for them or what is admitted on behalf of the President to be the grounds of President's satisfaction. [25 D, 26 E-F]

B (4) 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, it cannot be said that resort to Art. 356 of the Constitution is not called for. [25 E-F]

C (5) 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 power under the supremacy of the Constitution. [27 A-B]

D (6) The provisions dealing with the Proclamation of emergency under Art. 352, which have 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 Art. 355, seems to be of somewhat different and broader character. The second part seems to cover all steps which are enough "to ensure" that the Government of every State is carried, "in accordance with the provisions of the Constitution". Its sweep seems quite wide. It is this part of the duty of the Union towards each State which is sought to be covered by a Proclama-
E tion under Art. 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 defects 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 Art. 73(1) really means the Union Council of Ministers, concludes that "the Government of the State cannot be carried out in accordance with the provisions of the Constitution". On the other hand, action under Art. 352 is,
F more properly, only defensive and protective action to be taken to avert or meet a grave and immant danger. [30 C-F]

(7) The language of Art. 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 does not lie in the domain of the Supreme Court. [31 C-D]

H. H. Kesavananda Bharati Sripadagalavaru v. *State of Kerala*, [1973] Supp. S.C.R. p. 1 @ 89, *Smt. Indira Nehru Gandhi* v. *Raj Narain* [1976]
G 2 S.C.R. 347 @ 539; *Har Sharan Varma*, v. *Chandra Bhan Gupta and Ors.*, A.I.R. 1962 All. 301 @ 307 referred to.

(8) A conspectus of the provisions of our Constitution will indicate that, whatever appearance 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. [33 F]

H *Shamsher Singh* v. *State of Punjab*, [1975] 1 S.C.R. p. 814 referred to.

(9) In a sense, 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 co-ordinated and socially, intellectually and spiritually uplifted. 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 reason, 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 seem inevitable. [24 C-E]

(10) 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, Art. 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 Art. 73 of the Constitution, read with Art. 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 Government 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 Government of a State. [36 B-E]

(11) Undoubtedly, the subject is one on which appropriate and healthy conventions should develop so that the power under Art. 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 Art. 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. The Supreme Court cannot, at any rate, interdict such use of powers under Art. 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 or an excess of power on admitted facts. 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. [36 E-H]

(12) All that the Supreme Court can do is to consider whether an action proposed on such a matter on certain grounds, would fall under Art. 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 that it should be resorted to under Art. 356(1) of the Constitution only when "a critical situation" has arisen. It is not always necessary that 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

A capable of being formed which commands the majority in the State Assembly it may be unnecessary. 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 party in the majority in the State Assembly forming the State Government for the time being having been totally and emphatically rejected by the people, 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. It B involves a correct estimate of a "situation". [41 B-E]

(13) Article 174(2)(b) of the Constitution expressly vests the power of resolving the legislative Assembly in the Government 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 State Assembly, when the President assumes Governmental powers by a Proclamation under Art. 356(1). A dissolution by the President after the Proclamation would be as good as a dissolution by the Government of a State whose powers are taken over. [37 C-E] C

(14) Indeed, the usual practice is that the President acts under Art. 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 materials 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. [38 A-C]

Shamsher Singh v. *State of Punjab,* [1975] 1 S.C.R. p. 875 referred to.

D (15) As the question of the proper time for a dissolution of a State Assembly is not a matter extraneous to Art. 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 Art. 356(1) of the Constitution. [41 H, 42 A]

K. K. Aboo v. *Union of India,* A.I.R. 1965 Kerala 229; *Rao Birender Singh* v. *The Union of India* A.I.R. 1968 Punjab 441; In re. *A. Sreeramulu,* A.I.R. 1974 A.P. 106, *Bijenananda Patnaik and Ors.* v. *President of India and Ors.,* A.I.R. 1974 Orissa 52 referred to.

E (16) 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 and legal means of attaining the power to enforce policies F 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 Art. 356 of the Constitution. [42 E-F]

Attorney General v. *Dr. Keyser's Royal Hotel,* 1920 AC 508; *Liversidge* v. *Anderson* 1942 AC 206; *Addl. Dist. Magistrate, Jabalpur* v. *Shivakant Shukla,* 1976 Supp. SCR 173, *Bhagat Singh & Ors.* v. *The King Emperor,* 50 I.A. 169 *King Emperor* v. *Benorilal Sharma* 72 I.A. 57, *Padfield and Ors.* v. *Minister of Agriculture, Fisheries and Food and Ors.,* 1968 A.C. 997 @ 1006 (not G applicable).

(17) In all the grounds of action taken under Art. 356(1) 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 a collateral purpose is sought to be achieved by an impending or actual proclamation under Art. 356 of the Constitution, the Supreme Court will not shirk its duty to act in the manner in which the law may then oblige it to act. But, when allegation made in the plains and in the petitions before the court relate, in substance, only to the H sufficiency of the grounds of action under Art. 356(1) of the Constitution and go no further, the Court cannot proceed further with the consideration of the plaints under Art. 131 or the petitions under Art. 32 of the Constitution. [46 E-G]

(18) Proclamations under Article 356(1) are bound to be placed under Art. 356(3) of the Constitution before each House of Parliament. However, there is not only nothing in Art. 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 Art. 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. [47 A-B]

(19) It is true that the exercise of power under Art. 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 Assembly 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. [47 C-D]

(20) Although Art. 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, its provisions, read with Art. 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 by the President under Art. 356(1)(a). In any case, the provisions of Art. 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 introduce as a condition precedent to the Presidential Proclamation under Art. 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. [49 A-C]

(21) Even if there be some grounds for making a distinction between a State's interest and rights and those of its Government or its members, the Court need not take too restrictive or stringent a view of the States' right 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 Art. 131. [50 F-G]

State of Bihar v. *Union of India and Anr.*, [1970] 2 S.C.R. 522; explained.

United Provinces v. *The Governor General in Council*, 1939 FCR 124; referred to.

Per Chandrachud J.

(1) 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 Centre. "Government of India" means "Union of India" The true construction of Article 131(a) true in substance and true pragmatically is that a dispute must arise between the Union of India and a State. [53 E-G]

(2) The dispute between the Union of India and the State cannot but be a dispute which arises out of the difference between the Government in office at the Centre and the Government in office in the State. But, there is a further pre-requisite 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 contains the true guide for determining whether a particular dispute is comprehended within Art. 131. Mere wrangles between Governments have no place in the scheme of that Article. The purpose of Art. 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. [54 A-C]

(3) When the plaintiff-States by their suits directly or specifically question the constitutional right and authority of the Union Government to issue a directive to the State Governments commending that the Chief Ministers should tender a certain advice to their Governors and 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, 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 Art. 131. [54 D-E]

(4) It is not necessary for attracting the provisions of Art. 131 that the plaintiff must assert a legal right in itself. Art. 131 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. [54 F-G]

(5) The States, have the locus and the interest to contest and seek an adjudication of the claim set up by the Unin Government. The bond of constitutional obligation between the Government of India and the States sustains that locus. [54 H-55A]

(6) The expression "legal right" which occurs in Art. 131 has to be understood in its proper perspective. 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 Art. 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the grounds stated. [55 A-D]

State of Bihar v. *Union of India,* [1970] 2 SCR 522; held inapplicable.

(7) By the Proclamation under Art. 356(1) the Legislative Assemblies of nine States were dissolved and 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 the right to salary which they could only draw if they were members of the Assemblies came to an end. Though the petitioners could not be denied relief on the ground that it was not intended by issuing the Proclamation to deprive them of their salary, the writ petitions were liable to be dismissed on the ground that the injury to the alleged Fundamental Rights of the petitioners was too indirect and remote. [56 G-H]

(8) Whether or not, the Proclamation issued under Art 356 of the Constitution is approved as enjoined in Art. 356(3), it has an assured life for a period of two months and its Validity during that period cannot be whittled down by reading into Art. 356 a condition precedent in the nature of parliamentary approval which, plainly, is not to be found therein. [57 D]

[His Lordship considered it unnecessary to consider the implications of clause (5) of Art. 356, introduced by the 38th amendment and applied "Non-liquet" agreeing with the decision in Stephen Kalang Ningkan *v.* Government of Malaysia, L.R. (1970) A.C. 379, 392]

Per Bhagwati J. (On behalf of Gupta J. & himself)

(1) The satisfaction of the President is a subjective one and cannot be decided by reference to 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. It cannot by its very nature be a fit subject-matter of 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 a Central Government and in doing so enter the "Political thicket" which it must avoid if it is to retain its legitimacy with the people. But, 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 on which he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Art. 356(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 Art. 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 satisfaction itself. In most cases it would be difficult, if not impossible, to challenge the exercise of power under Art. 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, to know them from declarations made the existence of satisfaction can always be challenged on the ground that it is *mala fide* or based on wholly extraneous or irrelevant ground. [81 G, H, 82 A-H, 83 A-B]

Ningkan v. *Govt. of Malaysia,* 1970 A.C. 379, *King Emperor* v. *Benoarilal Sarma,* 72 I.A. 57 referred to.

(2) The defeat of the ruling party at the Lok Sabha election 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. Where there has been a total rout of candidates belonging to the ruling party and in some of the plaintiff-States, the ruling party has not been able to secure even a single seat, it is proof 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 Art. 356, Clause (1).

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, Clause (1). [85 A-H]

A (3) There are two limitations in regard to the nature of the suit which can be entertained by the Supreme Court under Art. 131. One is in regard to parties and the other is in regard to the subject matter. It does not contemplate any private party being arrayed as a disputant on one side or the other. A dispute in which such a private party is involved must be brought before a court, other than the Supreme Court, having jurisdiction over the matter. Moreover, the dispute must be one relating to a legal right and not a dispute on political plane not based on legal right. A legal right which is the subject of dispute need not arise in the context of the Constitution and the federalism B it sets up. So also the power of the Supreme Court to grant relief in a suit under Article 131 is not restricted only to "declaratory Judgment". 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.

[64 E-H, 65 A-D, 66 C]

State of Bihar v. *Union of India & Anr.*, (1970) 2 S.C.R. 522, Explained & doubted;

C

Shamsher Singh v. *State of Punjab*, [1975] 1 S.C.R. 814 referred to.

(4) 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 un- D constitutional assault under Art. 356 clause (1). The present suits seek to enforce legal right of the States arising under the Constitution and the suits could not be thrown out *in limine* as being outside the scope and ambit of Article 131. [68 G-H, 69 A]

(5) The threatened dissolution of the Legislative Assembly did not involve any infraction of the Fundamental right guaranteed to the petitioners under Article 19(1)(f) and 31. [63 H, 64 A]

E

(6) 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 Art. 32. The impact on the fundamental right must be direct and immediate and not indirect or remote.

In the instant case, 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 F would infringe their right to property. The petitioners, as such, are not entitled to maintain the Writ Petition under Art. 32. [63 D, E, 64 A]

(7) The directive of Home Minister, Government of India, was nothing but an advice or suggestion to the Chief Minister of each plaintiff state to recommend to the Government dissolution of the Legislative Assembly of the concerned State. It has been wrongly described as a "directive." It had 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 G a State and the Chief Minister may accept or reject such advice or suggestion as he thinks fit. The advice or suggestion has no binding effect on the Chief Minister and no legal consequences flow from it. Hence it could not be said that 'directive' issued by the Home Minister was unconstitutional, illegal or ultra vires. There was also no question of giving effect to the "directive" and no injunction could, therefore, be granted restraining its implementation. The "directive" if not accepted and carried out could certainly be a precursor to action under Art. 356 Clause (1) and, therefore, might be regarded as indicative of a threat, but standing by itself it could not give rise to any cause of H action in the State to sue for declaration or injunction. [77 H, 78 A-B]

(8) It is true that if a question brought before a 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 for the Court to shrink from performing its duty under the Constitution, if it raises an issue for constitutional determination. A Constitution is a matter of purest politics and a structure of power. [79 G-H] A

(9) Merely because a question has a political colour the court cannot fold its hand 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 lex*, the paramount law of the land and there is no department or branch of Government above or beyond it. [80 F-H] B

Baker v. *Can* 369 U.S. 186; *Nixon* v. *Herndon* 273 U.S. 536; *Brown* v. *Board of Education* 347 U.S. 483; *Gomillion* v. *Lightfoot* 364 U.S. 339, *Colegrore* v. *Green* 328 U.S. 549 quoted with approval. C

Per Goswami J.

(1) Although the expression used in Art. 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 the Supreme 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 subject-matter of a suit under Art. 131. The dispute should be in respect of legal rights and not disputes of political character. Art 131 refers to the parties that may be arrayed in the litigation as well as to the subject-matter of the dispute. [86 F-G] D

State of Bihar v. *Union of India*, [1970] 2 S.C.R. 522 referred to.

(2) 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 States must be able to claim against the Government. Where the Home Minister, Government of India, is asking the Chief Ministers of the Government of the States to advise the Governors to dissolve the Legislative Assemblies, and the Chief Ministers decline to accept the advice, it is not a dispute between the State on the one hand and the Government of India on the other hand. 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. The subject-matter of the dispute does not pertain to legal rights of the State concerned to satisfy the requirements of Article 131 of the Constitution. [87 G, 88 H, 89 A-B, 90 C] E F

(3) Whether there is a case for permanent injunction or other appropriate writ in these matters are not called for in view of the fact that the suits and writ petitions are not maintainable. [92 C-D] G

(*Concurring with Bhagwati and A. C. Gupta, JJ.*)

HELD FURTHER: (4) 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. [90 C-D] H

King Emperor v. *Benorilal Sarma and Ors.* 72 I.A. 57 @ 64; *Bhagat Singh & Ors.* v. *The King Emperor* 58 IA 169; *Shamsher Singh* v. *State of Punjab*, [1975] 1 S.C.R. p. 814 referred to.

A *Per Untwalia, J.*

(1) Assuming that the writ applications filed by some of the Members of the Punjab Legislators under Art. 32 of the Constitution of India are maintainable, the petitioners do not make out a case for issue of any kind of writ direction or order in the present case. [92 G]

(2) The suits as instituted under Art. 131, in the instant case, are not maintainable. The dispute of the kind raised in the suits does not involve B any question whether of law or fact on which the existence or extent of any legal right of the States concerned depends. The facts as disclosed are definitely and exclusively within the prohibited area into 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. [92 H, 93 A, 95 D-F, 97 D]

Bhagat Singh and Ors. v. *The King Emperor* 58 IA 169; *King Emperor* v. *Benori Lal Sarma and Ors.* 72 IA 57; *Lakhi Narayan Das* v. *The Province of Bihar etc.* 1949 F.C.R. 693; *M/s. S. K. G. Sugar Ltd.* v. *State of Bihar and* C *Ors.*, [1975] 1 S.C.R. 312 relied on.

Stephen Kalang Ningkan v. *Govt. of Malaysia* [1970] A.C. 379 referred to.

Per Fazal Ali J.

(1) A dispute clearly postulates that there must be opposing claims which are sought to be put forward by one party and resisted by the other. One of the essential ingredients of Article 131 is that the dispute must involve a legal right based on law or fact. If the Central Government chooses to D advise the President to issue a Proclamation, 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 a 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 pertain- E ing to the State so far as the dissolution of an assembly is concerned. The right of the State Governments to exist depnds on the provisions of the Constitution which is subject to Art. 356. If the President decides to accept the advice of the Council of Ministers of the Central Government and issue a proclamation dissolving the Assemblies, the State Governments have no right object to the constitutional mandate contained in Art. 356.

[103 B, F-H, 104 A-B]

(2) The mere fact that letters were sent to the State Governments contain- F ing gratuitous advice could not create any dispute, if one does 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 an injunction. Unless there is an existing dispute involving a legal right between the parties, the forum provided by Art. 131 cannot be availed of by any party. Having regard to the facts and circumstances of the present case it has not been established that there was any dispute involving the legal right between G the Government of India and the State Governments and therefore, one of the essential ingredients of Art. 131 not having been fulfilled, the suits are not maintainable on this ground alone. [104 C-D, 105 B-C]

United Provinces v. *The Governor General in Council* (1939) F.C.R. 124, 136 followed.

(3) The right of the petitioners as members of the Legislative Assembly of Punjab is not a Fundamental right as envisaged in Part III of the Constitu- H tion. At the most, the right to receive allowance as members of the Assembly is merely legal right consequent upon their election as members of the Assembly. The right of the petitioners is only a limited and inchoate right in as much 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 Art. 356. The right therefore, subsists only so long as these two contingencies do not occur. The Constitution also does not guarantee any right or allowances to the Members of the Assembly which are given to them by local Acts or Rules. It was not a right which flows from the Constitution. Thus, there being no infraction of any Fundamental right, the petitioners could not be allowed to take recourse to Article 32. [107 F-H, 108 G-H]

H. M. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and Ors., v. *Union of India and Ors.*, [1971] 3 S.C.R. 9, distinguished.

(4) The letter does not amount to a directive as contemplated by Art. 256 and 257 and could not 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. The Central Government can not interfere with this executive power of the State Government by giving directions under Article 256 or Art. 257 of the Constitution because the dissolution of the Assembly by the Governor was purely a matter concerning the State and did not fall within the four corners of either Art. 256 or 257. [111 A-F]

(His Lordship refrained from expressing any opinion regarding the theory of the basic structure of the Constitution as the question according to his Lordship did not actually arise for decision in this case.)

(5) Clause (5) of Art. 356 gives the order passed by the President under Art. 356 complete immunity from judicial scrutiny. As such the Courts cannot 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. [116 C-D & 120 G]

Bhagat Singh & Ors. v. *The King Emperor* LR 58 I.A. 169, 172, *Lakhi Narayan Das* v. *Province of Bihar*, 1949 F.C.R. 693, 699; *M/s S. K. G. Sugar Ltd.* v. *State of Bihar and Ors.* [1975] 1 S.C.R. 312 applied.

In re. Sreeramulu A.I.R. 1974 A.P. 106, *S.R.K. Manumantha Rao* v. *State of A.P.* (1975) 2 AWR 277 approved.

Colegrove v. *Green* (1925) 328 U.S. 549 referred to.

King v. *Benoari Lal Sarma*, L.R. 72 IA 57, 64 explained.

Padfield v. *Minister of Agriculture, Fisheries and Food* L.R. 1968 A.C. 997, 1007 Quoted with Approval.

(6) 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 Courts will always interfere and hold such action to be *mala fide* and strike it down. [119 B]

Dr. A. K. Shaihar and Ors. v. *Vice Chancellor, Benaras University*, [1961] 3 S.C.R. 386; followed.

Observation :

As the reasons given by the Council of Ministers in tendering their advice to the President cannot be inquired into by the Courts, it is hoped that the Central Government in taking momentous decisions having far reaching consequence on the working of the Constitution, will 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 that this matter will receive the serious attention of the Government. The stamp of finality given by Cl. (5) of Art. 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. [121 B-D]

A HELD FURTHER : (*dissenting from the majority*)

(7) The import and purport of Art. 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 words "State" in Art. 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 only
B 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 institution of a State that a real dispute may arise. A mere temporary dissolution of an assembly under Art. 356 does not amount to 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.
[107 B-D]

C (8) On a true and proper construction of Art. 131 of the Constitution it may be said that dispute like the present one is totally outside the scope of Article 131 of the Constitution. Therefore, the State Governments who have raised the dispute are not covered by the word 'State' appearing in Article 131 and, therefore, the suits are not maintainable on this ground also. [107 E]

ORIGINAL JURISDICTION : Original Suit Nos. 1 to 6 of 1977.

(Under Article 131 of the Constitution of India.)

D *Niren De, S. K. Tewari, Adv. Genl. Rajasthan, S. M. Jain,* for the Plaintiff in Suit No. 1.

Niren De, Ram Panjwani and *I. N. Stroff,* for the plaintiff in Suit No. 2

H. R. Gokhale, Ram Panjwani, Vijay Panjwani, O. P. Sharma,
E *S. K. Bagga* and *Mrs. S. Bagga,* for the plaintiff in Suit No. 3.

Niren De, D. P. Singh, S. C. Agarwal and *U. P. Singh,* for the plaintiff in Suit No. 4.

Madan Bhatia, for the plaintiff in Suit No. 5.

G. Rath, Adv. Genl, Orissa, Niren De, R. K. Mehta, for plaintiff
F in Suit No. 6.

Soli. J. Sorabjee, Additional Solicitor General (in O. S. Nos. 1-3/77), *B. Datta,* (in Suit Nos. 1-3/77) and *R. N. Sachthey,* for the defendant/respondents in all the matters.

M. K. Garg, S. C. Agarwal and *V. J. Francis,* for the petitioners in the Writ Petitions.

G *J. P. Goyal, S. K. Sinha, B. B. Singh* and *A. K. Srivastava,* for the applicant/interveners—Girdhari Lal Bhargva in O. S. No. 1/77.

J. P. Goyal, Sharad Manohar and *C. J. Sahu,* for the applicant interveners—Chowdhary Devi Lal in Writ Petitions.

The following Judgments of the Court were delivered :

H BEG. C. J. Original Suits Nos. 1 to 6 of 1977, before us now have been filed on behalf of the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, and Orissa against the Union

of India under Article 131 of the Constitution of India. There are also before us three writ Petitions, Nos. 67 to 69 of 1977, by three members of the Legislative Assembly of the State of Punjab against the Union of India and Shri Charan Singh, the Home Minister in the Government of India, and Shri Zail Singh, Chief Minister of Punjab. The six suits and the three Writ Petitions raise certain common questions of law and fact. They were, therefore, permitted to be argued together. We have already dismissed the suits and petitions after hearing them at length and now propose to state our reasons for doing so as stated in our order of 29th April 1977. Before dealing with the questions of fact and law I will indicate the nature of the reliefs sought by each plaintiff under Article 131 and the grievance of each petitioner under Article 32 of the Constitution.

The State of Rajasthan asked for a declaration that what it described as a "directive" contained in the letter dated 18th April, 1977, issued by Shri Charan Singh, the Union Home Minister, to the Chief Minister of the State, is "unconstitutional, illegal and *ultra vires* the Constitution and also a declaration that the plaintiff State is "not constitutionally or legally obliged to comply with or to give effect to the directive contained in the said letter.

The State of Madhya Pradesh seeks the declaration that "the direction/order dated 18th April, 1977, of the defendant through its Home Minister is *ultra vires* the Constitution".

The State of Punjab asks for a declaration of what it describes as "direction/order" as *"ultra vires"* the Constitution.

The State of Bihar calls the letter a "directive" and asks for the declaration that it is "unconstitutional and void". It also prays for a declaration that a refusal by the Chief Minister of Bihar to comply with it "cannot be made the basis for the issue of proclamation under Article 356 of the Constitution". It also seeks a declaration that Article 356 of the Constitution "cannot be invoked for the sole purpose of dissolving the State Legislative Assembly and holding fresh elections for the said Assembly after the defeat of the majority party in the said Assembly in the elections for the Lok Sabha".

The State of Himachal Pradesh prays for eight declarations : firstly, that "the Council of Ministers of the State is not liable to resign and the Legislative Assembly of the plaintiff is not liable to be dissolved on the ground that the Congress Party, which holds a majority in the Legislative Assembly, had lost in the Lok Sabha elections and the Janata Party has come into power at the centre"; secondly, that "the Executive of the Defendant is not entitled to encroach upon the sole prerogative of the Council of Ministers as to the nature of the advice which the latter thinks fit to render to the Governor"; thirdly, that "the provisions of Article 356 of the Constitution are not liable to be invoked by the President merely because the Political party which has been returned to power in the Lok Sabha elections happens to be different from the party which holds majority in the Legislative Assembly of the plaintiff and which might have lost heavily in the said Lok Sabha elections"; fourthly, that "the Legislative Assembly of the plaintiff is not liable to

A be dissolved before the expiry of the term under the Constitution because the views of the electorate have undergone a change as stated in the letter of the defendant's Home Minister dated 18th April, 1977"; fifthly, that "the circumstances mentioned in the letter do not constitute a threat to law and order, and, in any case, such a threat to law and order cannot form any constitutional basis for dissolution of the Legislative Assembly of the plaintiff"; sixthly, that "reasons and circumstances stated in the letter addressed by the defendant to the plaintiff's Chief Minister and the resultant threatened action under Article 356 of the Constitution are wholly unconstitutional and *mala fide* and that a proclamation issued on the facts and circumstances of the present case would be utterly void"; seventhly, that the "condition precedent and prescribed in Article 356(1) of the Constitution is non-existent"; eighthly, that "the Legislature of the plaintiff cannot be dissolved until and unless any proclamation issued under Article 356(1) of the Constitution is ratified by both Houses of Parliament as envisaged by Article 356 (3) of the Constitution".

The State of Orissa asked for a declaration that the "directive" contained in the letter of 18th April, 1977, is "unconstitutional, illegal and *ultra vires* the Constitution" and also that the plaintiff State is "not constitutionally or legally obliged to comply with or to give effect to the directive contained in the said letter".

In addition, each of the plaintiffs in the six suits asks for a permanent as well as an interim injunction in slightly differing terms but the object of all these injunctions sought is abundantly clear and common.

The State of Rajasthan has sought a permanent injunction "restraining the defendant from giving effect to the directive contained in the said letter in any manner". It also asks for permanent injunction restraining the defendant resorting to Article 356 of the Constitution of India to dissolve the Legislative Assembly of the State of Rajasthan and from taking any steps for holding fresh elections to the State Assembly before March, 1978."

"Perpetual" injunctions are sought by the State of Madhya Pradesh against the defendant Union of India to restrain its Government "from enforcing directions contained in the letter and/or dissolving the Legislature of the State".

The State of Punjab prays for "a perpetual injunction to restrain the defendant from enforcing the directions contained in the statement dated 18th April 1977 and in the letter dated 18th April 1977 to the Chief Minister of the plaintiff State and restraining the defendant from dissolving the Legislative Assembly of the plaintiff State or imposing Presidential Rule under Article 356 before March 1978".

The State of Bihar asks for an injunction against issue by the defendant Union of a Proclamation under Article 356 of the Constitution "for the purpose of dissolving the Bihar State Assembly and holding fresh elections for the State Assembly."

The State of Himachal Pradesh seeks a permanent injunction for "restraining the defendant from issuing any Proclamation under Article 356(1) 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 Art. 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.

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.

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

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.

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.

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 Art. 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 States 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.

A 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.

B 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 plaints and petitions for advancing the pleas of "malice in fact" and "malice in law".

The replies on behalf of the Union of India are :

C Firstly, that on allegations made in the plaints no suit before us would fall within the purview of Art. 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 State Governments and Legislatures without involving constitutional or other legal rights of States as such.

D 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 non-justiciable expressly by Article 356(5) of the Constitution so that, even if a State could, as such, be said to be legally and properly interested in the dispute between its Government and the Union Government about the desirability or need for any action E 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 F 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 by serious enough, on the strength G 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 not 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 H 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.

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.

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.

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 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.

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.

A 3. I would, therefore, earnestly commend for your consideration that you may advise pour 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 B 23rd what you propose to do.

With regards,

Yours sincerely,

Sd/-

C (Charan Singh)

Shri Harideo Joshi,
Chief Minister of Rajasthan,
Jaipur".

To substantiate the allegation that the letter constituted a "threat" D 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 E 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* F *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 holding of fresh elections, reports Samachar.

In an interview in the Spot-light programme of All India G 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.

H 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 Centre would 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 Centre 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 objection". 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 to 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 the normal term which was earlier 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 time 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 the 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".

I have set out the two basic sources of complaint in the plaints 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.

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 Art. 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.

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 "detournement 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

A 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.

One purpose of our Constitution and laws is certainly to give electors a periodic opportunity of choosing their State's legislature B 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 right also unless there is a C 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 D may, according to one view, make its dissolution necessary ?

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 Art. 356 or so clearly in conflict with a constitutional provision that a question of excess of power could E 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 capa- F ble of giving rise to the inference that any such constitutionally prohibited action is intended by the Union Government.

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 G 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 H such courses in certain circumstances. It may be urged that States should be permitted to function undisturbed by any directions or advise 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 untill 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.

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 election 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.

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 sitaution 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.

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

A 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.

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 B 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 C has adequately met the objects of lodging political and legal power in its hands, or, whether those who now wield power at the Centre 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.

I think that the two Union Ministers have stated certain grounds D 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 E 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 Presi- F dent, 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.

G

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 H 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.

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 malafide. 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.

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 *H. H. Kesavananda Bharati Sripadagalavaru* v. *State of Kerala* :(1)

> "I must interpret Art. 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".

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".

(1) [1973] Supp. S.C.R. 1.

A 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.

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 : A

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. B C

(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) : D

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 : E

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. F G

(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".

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 H

A 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 B 352 are given in articles 353 and 354 of the Constitution.

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 C in accordance with the provisions of this Constitution."

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, D 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 E 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 F 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.

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 G 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 H 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.

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.

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 Bharati'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.

We have not sat here to determine whether the concept of a basic structure, found in *Kesavananda Bharati'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 : *Smt. Indira Nehru Gandhi* v. *Raj Narain*) (1).

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

(1) [1976] 2 S.C.R. 347 at 539.

A 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 B supremacy must be and has been consistently upheld by this Court.

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 C 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 D is necessary for the smooth operations of our Constitutional machanisms of checks and balances. It implies due respect for and confidence in each organ of our Republic by the other two.

In *Har Sharan Varma v. Chandra Bhan Gupta & Ors.*, (1) the Allahabad High Court, quite rightly observed :—

E "It is not possible for the Court to assess the political forces and complusions 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 F 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 G receives from them and refrain from making uncalled for comments on the wisdom of the acts of the ministers of government."

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 H judiciary, operating within its own sphere, and, just as the judiciary does not interfere with executive or legislative function so long as

(1) A.I.R. 1962 All . 301 at 307.

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.

In some of the plaints, 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 Constitutional, 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.

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.

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 *Shamsher Singh* v. *State of Punjab*(1).

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 maintainance 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 rater 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.

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.

(1) [1975] 1 S.C.R. p. 814.

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".

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

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'.

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.

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."

A 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 B of the Constitution covers cases where the President may want to give direcions 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 C 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 D 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 E in the Govt. of a State.

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 F 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) un- G less 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 H within the Executive field, of operations,

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 justfy its dissolution sooner than the duration it would otherwise enjoy.

It was argued that the only authority empowered to dissolve a legislative 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 'h mself 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.

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 *Shamsher 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 pecple of his State in particular, the Governor is vested with certain discretionaty 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

A 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 B 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.

C 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."

H 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.

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 opin'on 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 disso-

A lution 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".

It was pointed out by Diecy 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 majo-
B rity behind it, was established. He gave two instances; one of a dissolution of Parliament in 1784 and another in 1834.

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

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 detail-
E ed 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
F 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 :

G "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
H 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. A

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 the 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. B C D E

It may be that, if the need to an appeal to the electorate is put forward only as a thin disguise for punishing 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 is alleged in any of the plaints 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 F G H

A 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.

In our country, the power of dissolving the State Legislature has been exercised by the Union Government or by the Governor carrying B 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 : *K. K. Aboo* v. *Union of India & Ors.*(1) *Rao Birinder Singh* v. *The Union of India* C *& Ors.* (2), *In Re A. Sreeamulu*(3) and *Bijayananda Patnaik & Ors.* v. *President of India & Ors.*(4).

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 D 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.

As we have tried to indicate above, attempts to secure political E 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 F 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 G 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 plaints 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 plaints or the petitions

H (1) A.I.R. 1965 Ker. 229.
(2) A.I.R. 1968 Punj. 441.
(3) A.I.R. 1974 AP 106.
(4) A.I.R. 1974 Orissa 52.

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 represensible 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 plaints 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.

We find that in the plaint 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 law 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 & 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*(1)). 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 preeminence 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.

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

(1) [1920] A.C. 508.

A 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 pro-
B clamation 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).

A challenge to the exercise of power to issue a proclamation under Article 352 of the Constitution would be even more difficult to enter-
C tain 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*(1). The principle is
D 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*(2). We need not go so far as that when we have before us only a proclamation under Article 356(1).

E A reference was made by both sides to *Bhagat Singh and Ors.* v. *The King-Emperor*,(3), where the Privy Council interpreted the provisions 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.
F Viscount Dunedin, observed (at p. 172) :

> "A state of emergency is something that does not permit of any exact definition : It cannotes 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
G demands immediate action, and that action is prescribed to be taken by the Governor-General".

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

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(1) [1942] AC 206.
(2) [1976] Suppl. S.C.R. 172.
(3) 50 I.A. 169.

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 precurser 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.

King Emperor v. *Benorilal Sarma & Ors.*(1), also relating to the ordinance making powers of the Governor-General under section 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. Under 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, under 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".

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

A reference was also made to the following passage from *Padfield & Ors.* v. *Minister of Agriculture, Fisheries & Food and Ors.*(2) at p. 1006) :

> "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".

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

(1) 72 I.A. 57.

(2) [1968] A.C. 997 p. 1006.

A 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 *Liversidge's* case (supra), to abstain from judicial interference.

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Courts have consistantly 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 C 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 D 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."

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, E 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 F 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 plaints 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 plaints under Article 131 or the peti- G tions under Article 32 of the Constitution.

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 H 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 Parliamen. a cond tion 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.

A B C D

It was also contended py 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.

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

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> "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;

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

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 Art. 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 Art. 356(1)(a) of the Constitution.

In other words, although Art. 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 Art. 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 Art. 356(1)(a). In any case, the provisions of Art. 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 Art. 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 Art. 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.

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; 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, convenant, 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".

A 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 B 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.

C

Reference was made to passages from *State of Bihar* v. *Union of India & Anr.*(1) and the *United Provinces* v. *The Governor-General in Council.*(2) 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 D 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 of this Court. The view expressed in the *Bihar case* (supra) seemed to have been affected considerably by the fact that there was no pro- E 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.

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 distinc- F tion 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 hypertechnical 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 G 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.

Having considered the cases set out in the plaints and the peti- H tion before us, from every conceivable angle, I am unable to find

(1) [1970] 2 S.C.R. 522.
(2) [1939] F.C.R. 124.

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 Defendents Opposite parties.

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 plaints 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 plaints 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.—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 Centre. This is an unprecedented event since, for the first time in the history of this country, the ruling party at the Centre 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.

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."

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.

A On the 25th/26th April, six out of nine States filed suits in this Court under Art. 131 of the Constitution. On the 25th, three members of the Punjab Legislative Assembly filed Writ Petitions in this Court under Art. 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.

B 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.

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, C 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 art. 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 D 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.

The learned Additional Solicitor-General has raised a preliminary objection to the maintainability of the suits which may first be disposed E 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 art. 131 since the dispute is not be- F tween 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 G 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 H 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 Art. 131.

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 art. 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 prepounded 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 art. 131, a point which I will consider presently, the fact remains that there is no occasion for applivng the dictionary of the General Clauses Act, section 3(60), to the interpretation of art. 131.

The absence of the expression "State Government" and the use in its place of the expression "State" in art. 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 art. 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 art. 131(a) and (b) does not mean that one party to the dispute has to be the Government of the day at the Centre. "Government of India" means "Union of India" because if there be merit in the logic that art. 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 centre. The true construction of art. 131(a), true in substance and true pragmatically, is that dispute must arise between the Union of India and a State.

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.

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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 Centre 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 B disputes which fall within Art. 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 art. 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 C a court proceeding. The purpose of art. 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 art. 131 is attracted.

It seems to me impossible to hold that the suits filed by the six D 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 Governments 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 E 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 art. 131.

The error of the preliminary objection lies in the assumption that it F is necessary for attracting art. 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 art. 131 for, the question for the decision of the Court is not whether this or that particular legislative Assembly is G 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.

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 H 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. A

The expression "legal right" which occurs in art. 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 shirt, is no-subjection."(1) R.W.M. Dias says in his "Jurisprudence" (1976 Ed. pp.-33-4) 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 art. 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated. B C D

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 cataelysmic 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 Art. 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 art. 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. E F G

The debates of the Constituent Assembly (Vol. 8, pp. 588—590) do not throw any light on the question in issue.

The judgment of this Court in *State of Bihar* v. *Union of India*(2) affords no real assistance on the question arising before us. In that case, the Court raised three issues in the suits filed under art. 131. The H

(1) Salmond's Jurisprudence 11th Ed. PP. 276—7.

(2) [1970] 2 S.C.R. 522.

A first issue which related to the question whether the suits were within the scope of art. 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 therto. The only assistance which may be derived from the judgment in that case is that it said that the disputes under art. 131 should be "in respect of legal rights and not disputes of a political character" and that though it was unnecessary to define the B scope of art. 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 art. 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 C 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.

The preliminary objection raised by the learned Aditional Solicitor-General to the maintainability of the suits must therefore be rejected. D

The writ petitions have, however, no cause of action such as can sustain their petitions for the enforcement of fundamental rights under art. 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 art. 19(1)(f) of the Constitution which guarantees to all citizens the right to acquire, hold and dispose of property. E

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 art. 32. But the proclamation having since been issued, it would be hypertechnical to dismiss the writ F petitions on the ground that there was no invasion of the petitioners' rights on the date when the petitions were filed in this Court.

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 art. 356(1) of the G 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 H 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.

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 Art. 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 art. 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 art. 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 art. 356 a condition precedent in the nature of parliamentary approval which, plainly, is not to be found therein. The proviso to clause (3) of art. 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.

The contrast between the provisions of arts. 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 Art. 356

A 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.

The reason for this distinction is evident from the language and B 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 occuring 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 art. C 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 Par- D liament 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.

Mr. Garg expressed a grave concern for the future of democracy, E if this be the true interpretation of art. 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 F 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 Art. 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 G 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 art. 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 H 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 impe-

rious 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. A

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 art. 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 art. 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 art. 360 makes clause (2) of art. 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 arts. 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 art. 19 as against the making of laws and taking executive action, the assumption of powers under clauses (a), (b) and (c) of art. 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 unremedied. B C D E

There is also no substance in the contention that by issuing a proclamation under art. 356, the President cannot assume the power to dissolve a State Assembly. By clause (a) of art. 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 art. 356(1)(a), the President can exercise the power vested in and exercisable by the Governor under art. 174(2)(b) to dissolve the Legislative Assembly of the State. F G

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 H

A 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 B 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 C 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.

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 D 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 art. 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 Minis- E ter'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 necessiating the F issuance of a proclamation for assumption of all or any of the powers mentioned in clause (a), (b) and (c) of art. 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 G 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*.

Such is not the case here. The Home Minister's letter shows that (i) an unprecedented political situation had arisen by the virtual rejec- H tion, in the recent Lok Sabha elections, of candidates belonging to the ruling party in various states; (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 permiss ble 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.

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"(1). 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"(2).

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

(1) "This Honourable Court" by Leo Pfeffer, Indian Reprint 1967, P.7.

(2) *United States* v. *Butler*—297 U.S. 1, 87.

know how it was repelled by Lord Denning M.R. in *Padfield* v. *Minister of Agriculture, Fisheries and Food*(1).

It is also unnecessary to consider the implications of clause (5) of art. 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.

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 art. 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*(2) 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."

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.

These then are my reasons in support of the unanimous order which the Court passed on April, 29, 1977.

BHAGWATI, J.—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

(1) L.R. [1968] A.C. 997, 1006.
(2) L.R. [1970] A.C. 379, 392.

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.

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 sufficent 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 invalid on ground of violation of Articles 19(1)(f) and 31. This surely could never have been intended by the constitution-makers. The direct inpact of the dissolution of the Legislative Assembly would be that the petitioners would cease to be members and obviously no one has a 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

A any infraction of the fundamental right guaranteed to the petitioners under Articles 19(1)(f) and 31 and 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.

That takes us to the question of maintainability of the suits. There are six suits before us filed by the States of Rajasthan, Madhya B 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 C 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 D 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.
>
> E
>
> 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 F not extend to such a dispute."

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. G 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 H in clauses (a), (b) and (c). That was established by a decision of this Court in *State of Bihar* v. *Union of India & Anr.*(1) where this Court pointed out : "——— a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein,

(1) [1970] 2 S.C.R. 522

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 1385 : "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 & 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 now *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 & 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.

A 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.

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 III '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 *Shamsher Singh & Anr.* v. *State of Punjab*(1) 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

(1) [1975 1 S.C.R. 814.

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.

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).

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.

A 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.

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 letter, 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.

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*(1) 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 extraordi-

(1) [1976] Supp. S.C.R. 172.

A nary 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 B machinery in the States and, so far as material, reads as follows :

> "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—
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> (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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> D
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> (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament,
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> (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, in-
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> cluding 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;
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> Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exerciseable by a High Court, or to suspend in whole or in part the operation of any
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> provision of this Constitution relating to High Courts.
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> (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
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> (3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it
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> 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:
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> (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 : A

> '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— B
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> * * * * * *
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> (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."

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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 D 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 E 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 F 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 G 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 H 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 Art. 356 Cl. (1) indeed it

A 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 poined out in his speech while winding up the debate on this Article :

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> "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 Centre 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."

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D 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 E 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

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 F 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 G 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 cause (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 irretriveable action such as dissolution of the H 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 Centre 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.

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

A 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 B 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 conceiveable cases frustrate the very object and purpose of conferment of this power on the President. C 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 D 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 E 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 F 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* G *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 H 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. A

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 width and amplitude of such powers by confining their exercise only to those cases where no irretrievable consequence would ensure 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 Art. 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 B C D E F G H

A 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 B 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 C 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 D 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 E 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 majo- F rity 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.

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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 H 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 alley 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.

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 Art. 356, cl. (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 flow 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 but would certainly be a precursor to action under Art. 356, cl. (I) 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 Art. 356, cl. (I) we find that what is prayed for in this relief is 'permanent injunction restraining the defendent from taking recourse under Art. 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 Art. 356, cl. (I). 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 Art. 356, Cl. (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 Art. 356 cl. (1), the Union of India shall not take recourse to 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 reffected 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 Art. 356, cl. (I) and since this ground was wholly extraneous and

irrelevant to the basic condition for taking action under Art. 356, cl. (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 Art. 356, cl. (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 Art. 74, cl. (1) in regard to the dissolution of the Legislative Assemblies of the Plaintiff-States. The exercise of power under Art. 356, cl. (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 Art. 74, cl. (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 Art. 356, cl. (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.

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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 Art. 356, cl. (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

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A *Perspectives in Constitutional law'* "constitutional law' symbolizes an intersection 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,*(1) an apoch making decision in American constitutional history, that "the mere fact that the
B 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*(2) 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
C comprehension. Even the desegregation decision of the Supreme Court in *Brown* v. *Board of Education*(3) 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*(4), it did this even when the racial discrimination was covert, being achieved by so redrawing a municipal boundary as to exclude virtually all Negroes,
D and no whites, from the city franchise. It is true that in *Colegrove* v. *Green*(5) 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
E 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.
F 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
G the Constitution is *Suprema lex,* 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

(1) 369 U.S. 186.
(2) 273 U.S. 536.
(3) 347 U.S. 483.
(4) 364 U.S. 339.
(5) 328 U.S. 549.

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 tamper 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 alligance 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.

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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 Art. 356, cl. (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

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A 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 B of people and their anticipated future behaviour 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 C 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 D 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 Art. 74 cl. (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 E known to, those who seek to impugn what has been done." (*Vide Ningkan* v. *Government of Malaysia* (1). 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 F power under Art. 356, cl. (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 cl. (5) of Art. 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 G 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 Art. 356, cl. (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 Govermnent of the State cannot be carried on in accordance with the provisions of the Constitution. Can the so H 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

(1) [1970] A.C. 379.

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 Art. 356, cl. (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*(1) 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 Art. 356, cl. (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.

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 Art. 356, Cl. (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.

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 Art. 356, Cl. (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 Art. 356, Cl. (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 Art. 356, Cl. (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

(1) 72 I.A. 57.

A 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 :

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> 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."

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The premise on which the entire superstructure of the argument of the Plaintiff-States is based is thus wanting.

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 Art. 356. Cl. (1) ? Has it any nexus with the matter in regard to which the President is required to be satisfied under Art. 356, Cl. (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 Centre. 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

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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 sufferred 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 Art. 356, Cl. (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 Art. 356. Cl. (1).

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A 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.—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 B same may now be stated.

The facts of all these matters appear in the judgment of the learned Chief Justice and need not be repeated.

The fundamental questions involved in these suits are these :

C (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 injunc- D tion ?

(4) Have the writ petitioners any fundamental rights to maintain their applications under Article 32 of the Constitution?

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 E to continue until expiry of its term provided for in the Constitution.

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

F (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.

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 G 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 shounld 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 sub- H ject matter of the dispute. (See *State of Bihar* v. *Union of India & Anr.*).(1)

(1) [1970] 2 S.C.R. 522.

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. A

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. B C

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 ? D E F

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 own 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. G H

A 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. B 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 under section 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 Go- C vernment 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 Govern- D ment, 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.

Keeping in view the above concept, we will undertake to examine E 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.

F 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 ear- G lier 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 aciton for the suits for permanent injunction according to the plaintiffs.

The dispute is this : The Home Minister, Government of India H 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.

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*.

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."(1)

> "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.

(1) The Fundamental Concepts of Public Law by Westel W. Willoughly, page 49.

A 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'."(1)

"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."(2)

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 C 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.

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 D 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.

Since, however, the question of mala fides of the proposed action E of the Home Minister was argued at length with a pointed focus on the ensuing Presidential, election, I should touch on the point.

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* F *Sarma and Others*(3) 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 G powers, it cannot rest with the courts to challenge his review that the emergency exists."

Relying on the above passage Mr. De submits that this Court is entitled to examine whether the direction is mala fide or not.

(1) The Fundamental Concepts of Public Law by Westel W. Willoughly pp. 487—488.

(2) The State in Theory and Practice by Harold J. Laski, page 25.

(3) 72 I.A. 57, 64.

The Additional Solicitor General has drawn our attention to *Bhagat Singh and Others* v. *The King-Emperor*(1) which is a decision of the Privy Council followed in *Benoari Lal Sarma's* case (supra). He read to us the following passage :—

> "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 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 Ord nance."

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 *Shamsher Singh & Anr.* v. *State of Punjab*)(2). 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 advise." What was judically interpreted even under the unamended Article 74(1) has now been g ven 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 advise 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

(1) 58 I.A. 169, 172.
(2) [1975] 1 S.C.R. 814.

A 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.

I am not prepared to say that this Court, which is the last recourse B 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 extranous or irrelevant. These ground will have reasonable nexus with the subject of a proclamation under Article 356(1) of the Constitution. C 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.

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 D writ in these matters. The suits and the Writ Petitions were, therefore, already dismissed.

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 E 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.

UNTWALIA, J. The unanimous order of the Bench in these cases F 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.

As to the maintainability of the writ applications filed by some of G 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.

But as to the maintainability of the suits filed under Article 131 H 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 con-

cerned 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.

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But I would not rest content to maintain the dismissal of the suits only on this technical ground.

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

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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 plaints 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 B the field or an area purely of a political nature, wh ch 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 his Council of Ministers, for his satisfaction as to whether there exists or C 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 D challenge even on the disclosed facts.

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 E 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 F 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 G 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 and others* v. *The King-Emperor;*(1) *King-Emperor* v. *Benoari Lal Sarma and others;*(2)

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(1) 58, Indian Appeals, 169.
(2) 72 Indian Appeals, 57.

Lakhi Naryana Das v. *The Province of Bihar etc. etc.*(1) and *M/s S.K. G. Sugar Ltd.* v. *State of Bihar and Ors.*(2). 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.

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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 tentamount 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*(3) at pages 391-92 :

D E F G

> "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 Ong J. holding that it was. Whether a proclamation under statutory powers by the Supreme Head of

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(1) [1949] F.C.R.693.
(2) [1975] 1 S.C.R., 312.
(3) [1970] Appeal Cases, 379.

A 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."

In the application of the principle enunciated by me and in the demarcation of the prohibited area, opinions may sometimes differ, B 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 limb C 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 D 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.

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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 F 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 G 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 H 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 adopt-

ed 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 174(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, po.itical thinkers, jurists and others whether the grounds of the proposed action disclosed so far in the le.ter 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 S.ate 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 petit oners 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. 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 politcial, 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

A 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 as-
B pects that arise in the case.

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 Art. 85 of the Constitution dissolved the Lok Sabha. This
C 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 s. 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 under s. 30 of
D 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.
E The Congress also lost its majority in the Lok Sabha as a result of which the Government at the centre 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,
F 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.

The six plaintiffs, namely, the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa have filed
G 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 Art. 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
H 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.

Having discussed the nature of the claim by the plaintiffs, if 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 Art. 131 of the Constitution because one of the essential requirements of Art. 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 Art. 131 of the Constitution. Mr. Niren De, appearing for some of the plaintiffs, however, submitted that the language of Art. 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.

It was next contended by the Additional Solicitor-General that even if the first condition of Art. 131 is satisfied, there was no dispute as contemplated by Art. 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 Art. 131.

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 Art. 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 s. 204 of the Government of India Act, 1935, which preceded the Constitution contained an express provision, *viz.* sub-s. (2) which expressly barred the right of the Court to grant any relief excepting a declaratory one, whereas in Art. 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.

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 Art. 131 of the Constitution, the relevant part of which runs thus :

> "131. *Original jurisdiction of the Supreme Court.*—Subject to the provisions of this Constitution, the Supreme

A 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
B 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."

C 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
D 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
E legal right depends; and

(iv) that there is no other provision in the Constitution which can be resorted to solve such a dispute.

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
F 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
G or not a real dispute arose in the case.

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
H 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.

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.....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."

Similarly the relevant part of the contents of the Home Minister's letter to the Chief Ministers may be extracted thus :

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"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.*

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(Emphasis supplied)

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 :

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"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*".

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(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.

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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.

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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."

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A 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 :

B (1) that an unprecendented 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);

C (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;

D (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;

E (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;

F (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.

G 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 H 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."

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 Art. 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 ? 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 Art. 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 Art. 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 Art. 356 shall not be passed by the President or to file

A a suit for a declaration that the President may be injuncted from passing such an order ? The right of the State Governments to exist depends on the provisions of the Constitution which is subject to Art. 356. If the President decides to accept the advice of the Council of Ministers of the Central Government and issues a proclamation dissolving the Assemblies, the State Governments have no right to object to the constitutional mandate contained in Art. 356. It is conceded B 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 Art. 356, the plaintiffs were completely out of 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 C 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 containing 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 Art. 131. If the State Governments do not possess such a legal right, D 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, E 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 letter and spurned the advice given by the Home Minister, the dispute came to an end and ceased to exist. Unless there is on existing dispute involving a legal right between the parties, the forum provided by Art. 131 cannot be availed of by any party. I am fortified in my view by F a decision of the Federal Court in *The United Provinces* v. *The Governor-General in Council,*(1) where Gwyer, C.J., speaking for the Court observed thus :

> "The Federal Court has by s. 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 G 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 s. 106 of the Act of 1924. The plaintiffs deny the validity of the section, the defendant asserts it; and it seems H to me that this is clearly a dispute involving a question on which the existence of a legal right depends."

(1) [1939] F.C.R. 124, 136.

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 that such a dispute clearly fell within the purview of s. 204(1) of the Government of India Act which was in *pari materia* to Art. 131 of the Constitution. That case is purely illustrative and decides that it is only such type of disputes as are contemplated by Art. 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 Art. 131 not having been fulfilled the suits are not maintainable on this ground alone.

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 Art. 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 Art. 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 Art. 131 occurs and which deals with the Union Judiciary. In fact the word "State" as mentioned in Art. 131 has not been defined anywhere in the Constitution. Under Art. 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

A

(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 :"

On the other hand s. 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 B in s. 3(58) of the General Clauses Act that the "State" does not include the State Government.

The relevant parts of Arts. 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.

C

(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 D

(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—

E

(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;

F

(d) alter the boundaries of any State;

(e) alter the name of any State :"

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 G 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 Art. 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 H arising between the personnel running the institutions is beyond the ambit of Art. 131. Further more, it would appear that cls. (a) & (b) of Art. 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.

Thus, summarising my conclusions on this point, the position is that the import & purport of Art. 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 Art. 131 both deliberately and advisedly so as to contemplate the State as a constituent unit of the Union along with its territory and permanent instituions. 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 Art. 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 Art. 131, I am of the view that a dispute like the present is totally outside the scope of Art. 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 Art. 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.

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 Art. 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 *H. H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur & Ors.* v. *Union of India*(1) commonly known as "Privy Purses Case"—the right to receive allowances by the petitioners was undoubtedly a right to property and by the

(1) [1971] 3 S.C.R. 9.

threatened dissolution of the Assembly there was a direct threat to the fundamental right to property which the petitioners had both under Art. 19(1)(f) and Art. 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, Art. 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 comemncement 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."

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 Art. 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 Arts. 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 Art. 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 *State of M.P.* v. *Ranojirao Shinde and Anr*—(1968) 3 SCR 489. Even if it is considered as a pension as the same is payable under law namely Art. 291, the same is property—see *Madhaorao Phalke* v. *State of Madhya Bharat*—(1961) 1 SCR 957."

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.

Since we have heard the suits 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.

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 advice 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 Art. 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 Art. 356 of the Constitution.

Lastly, Mr. Niren De as also Mr. Garg submitted that Art. 356 would have no application to the facts of the present case.

We shall now deal separately with the contentions raised by counsel for the parties. As regards the first contention that the letter of

A 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 B 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 consi-* C *deration that you may advise your Governor to disolve 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 D 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 E directions to the Chief Ministers in the matter. In othe 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 F 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 Arts. 256 and 257 of the Constitution of India. In fact Art. 256 which runs thus :

> "*Obligation of States and the Union* :
>
> G 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."

H clearly defines the limits within which the executive power of Parliament may exist and the directions contemplated by Art. 256 can be given to the States only within the limited sphere as prescribed by Art. 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 Arts. 256 and 257.

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 Arts. 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 Art. 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 Art. 256 or Art. 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 Art. 256 or Art. 257 of the Constitution.

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

A 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 B 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.

C 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 D 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.

E 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 Art. 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 Art. 32 F 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 Art. 356, the Courts could not interfere with the exercise of that power, because the fundamental right of G 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 Art. 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 H 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.

Coming to the third contention that the circumstances mentioned in the letter did not constitute sufficient reason for dissolution of the Assemblies under Art. 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 Cl. (5) of Art. 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 Cl. (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 others* v. *The King-Emperor*,(1) 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 Gov-, ernor General, and he alone. Any other view would render utterly inept the whole provision.
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> x x x x x x
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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."

A similar view was taken by the Federal Court in *Lakhi Narayan Das* v. *Province of Bihar*(2), 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

(1) L.R. 58 I.A. 169, 172.
(2) [1949] F.C.R. 693, 699.

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."

The same view was taken by this Court in *M/s S. K. G. Sugar Ltd.* v. *State of Bihar and others*(1) 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."

The Andhra Pradesh High Court has also expressed the same view in *In re. A. S. Sreeramulu*(2) 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."

I find myself in complete agreement with the observations made by the learned Judge.

The same view was taken by another Division Bench of the Andhra Pradesh High Court in *S. R. K. Hanumantha Rao* v. *State of Andhra Pradesh.*(3)

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

(1) [1975] 1 S.C.R. 312, 317.
(2) A.I.R. 1974 A.P. 106.
(3) (1975) 2 A.W.R. 277.

on the Central Government which can form its own opinion. The exercise of the power under Art. 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*(1) 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.
>
> 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."

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 Art. 356 is to give statutory recognition to the law laid down by the Courts long before.

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*(2) 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 I.A. 169".

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.

(1) [1945] 328 U.S. 549.
(2) L.R. 72 I.A. 57, 64.

A Reliance was also placed on *Padfield* v. *Minister of Agricultural, Fisheries and Food*(1) 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
B failed, or must have failed, to take into account considerations which ought to have influenced him—the court has power to interfere."

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
C 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 Art. 356 is immune from judicial scrutiny
D and unless it is shown that the President has been guided by extraneous considerations it cannot be examined by the Courts.

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
E 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.

F

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
G under clause (1) of Art. 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
H India Gazette, Extra-ordinary, Part II, Section I dated June, 1975. pp. 213-15. Section 5 of the Ordinance added s. 16A and sub-s.

(1) L.R. [1968] A.C. 997, 1007.

(6) of s. 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-s. (9) to s. 16A of the principal Act which provided that the grounds on which an order of detention was made or purported to be made under s. 3 against any person in respect of whom a declaration was made under sub-s. (2) or sub-s. (3) and any information or materials on which such grounds or a declaration under sub-s. (2) or a declaration or confirmation under sub-s. (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 Art. 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-s. (2) of s. 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 made 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.

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 comulative 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 Centre 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 Art. 356 for dissolution of the Assemblies.

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 funda-

mental 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 *Dr. Akshaibar Lal & Ors.* v. *Vice Chancellor, Banaras Hindu University*(1) this 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." "

I find myself in complete agreement with the observations made by Warrington, L. J., extracted above.

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

(1) [1961] 3 S.C.R. 386.

A 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 B 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 C 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.

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. D 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 adv se 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 :

E

> "(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 F 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 Art. 356 is put beyond judicial scrutiny by cl. (5) of Art. 356, but this does not mean that the Court possesses no jurisdiction in the matter at all. Even in respect of cl. (5) of Art. 356, the Courts have a limited sphere of operation G 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 H 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 Art. 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 Art. 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 Cl. (5) of Art. 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 Art. 356 in order to dissolve the State Assemblies. The argument of *mala fide* put forward by the plaintiffs and the petitioners is, therefore, rejected.

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 Art. 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 Art. 356 thus :

> "356. (1) If the President on receipt of report from the 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;
>
> x x x x x x
>
> (3) Every proclamation under this article shall be laid before each House of Parliament and shall, except

A 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 x

B (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".

The first part of Art. 356(1) gives power to the President to issue a proclamation if he is satisfied on a report of the Governor of the C 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 Art. 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 D part of the ingredient of Art. 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 assess- E ment 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 undemo- F cratic 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 G mentioned in Art. 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.

It was then contended by Mr. Garg that a perusal of clause (3) of Art. 356 and the proviso thereof clearly shows that the proclamation can operate only for the period of two months and automatically H 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 Art. 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 Art. 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 Art. 174(2) of the Constitution which empowers the Governor to prorogue or dissolve the Legislative Assembly. This very power by force of Art. 356(1)(a) is conferred on the President implicitly, and once this power is conferred by the application of Art. 356(1)(a) the President has the undoubted jurisdiction to dissolve the Legislative Assembly by assuming the same power which the Governor has under Art. 174(2). A Division Bench of the Kerala High Court in *K. K. Aboo* v. *Union of India and others,*(1) while interpreting this particular aspect of Art. 356 observed as follows :

> "Art. 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 Art. 356 (1)(a) read with Art. 172 or Art. 174 to dissolve the State Legislative Assembly. The power to dissolve the State Legislature is implicit in Cl. (1) (b) of Art. 356 itself".

I full endorse the aforesaid observations which lay down the correct law on the subject on this particular aspect of the matter.

As Art. 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 Art. 356(1)(a) confers the powers of the Governor under Art. 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 Cl. (3) of Art. 356 that makes no difference, because Cl. (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 accept the argument of Mr. Garg on this point.

(1) A.I.R. 1965 Ker. 229, 231.

A It was further argued by Mr. Garg as also by Mr. Bhatia appearing for the State of Himachal Pradesh that even assuming that Art. 356(1)(a) confers the power given to the Governor by Art. 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 B 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 advises 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 C prefers one to the other, this matter is beyond judicial review. For these reasons, therefore, I am clearly of the opinion that Art. 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 Art. 356(1)(a).

I generally agree with my Lord the Chief Justice on the other D 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.

These are my reasons in support of the unanimous order passed by this Court on April 29, 1977 dismissing the suits and writ petitions E and rejecting the prayers for injunctions and interim reliefs.

There will be no order as to costs.

S.R. (*Suits & Petitions dismissed*).