clerical or arithmatical mistake because the learned Judges definitely stated that their reliefs shall be with reference to the claims in the appeals and it could not be more than what they have asked for in the appeal. If the applicants were aggrieved by that direction, they should have preferred an appeal as has been done in the decision reported in AIR 1985 S.C. 1576 (1985 PLJ 496). Therefore, we are unable to agree that we can invoke the principles enunciated in the judgment of the Supreme Court and grant the relief in this case."

(5) As regards the Single Bench judgment, the benefit was being claimed under the amending Act and it has nothing to do with the facts of the present case where amendment is sought of the memorandum of appeal after 10 years. Moreover, before the learned Single Judge, the State never opposed the application, as it was observed that, "the application is not being opposed seriously." In any case, it was wrong to say that the abovesaid judgment of the Supreme Court overruled the Full Bench judgment as observed by the learned Single Judge.

(6) Reference may also be made to the Division Bench judgment of this Court in C.M. No. 2001-CI of 1987 in R.F.A. No. 2671 of 1981, decided on September 19, 1988, wherein similar matter was considered and reliance was placed on the Full Bench judgment of this Court in *Banta Singh's* case (supra).

(7) Viewed from any angle, the application is not maintainable and that too after ten years and is, thus, liable to be dismissed in limine.

R.N.R.

FULL BENCH

Before : J. V. Gupta, C.J., M. S. Liberhan & R. S. Mongia, JJ.

KANWALJIT SINGH,—*Petitioner.*

versus

UNION OF INDIA,—*Respondent.*

Civil Writ Petition No. 2886 *of* 1989.

10th September, 1990

Constitution of India, 1950—*Art.* 356—*State of emergency in Punjab—Imposition of President's rule—64th amendment—Amendment is* intra-vires *the Constitution—Amendment not violative of basic structure and democracy.*

Held, that temporary absence of State Legislative Assembly does not violate or intrude into the basic federal structure. In view of the facts and circumstances when the State Executive or State Legislative wing cannot run the Administration or discharge their Constitutional functions, the Union is bound to protect Constitutional rights of the citizens and ensure that the Government in a State is carried on in accordance with the provisions of the Constitution. Enlargement of the maximum period from three years to three years six months for imposition of the President Rule, by 64th amendment of the Constitution does not in any manner make any substantial inroads into the basic structure of the federal system of democratic process provided by the Constitution. This marginal change brought about in the period is in complete harmony with the basic structure of the Constitution. It is of insignificant consequence so far as the federal system or the democracy is concerned. Even during this tenure of the President Rule, the people i.e. the electorate are governed by their representatives elected by a democratic process. The governance by the political reign by duly elected representatives in the democratic form to the Parliament is not materially affected. The State Assembly is kept in suspended animation for a temporary period extendable upto a maximum period of 3½ years.

(Para 47)

Held, that mere eclipsing one of the two institutions of Government, i.e. the Centre and the State for a temporary period in view of the Emergency of failure on the part of the State Government to govern according to the Constitution does not wipe out or abridge the basic structure of the Constitution. Rule by the Centre is also a rule by the elected representatives. In our considered view 64th amendment neither effects the federal structure of the Constitution nor destroys the democratic process. Even while the State Assembly is kept in abeyance, the State is run by democratically elected representatives of the people *viz.* the members of Parliament. We fail to understand how democracy has been alienated by imposition of the President Rule. Deferment of the election does not obliterate the democracy. Sixty fourth amendment does not violate the basic structure of the Constitution so as to be declared *ultra vires* of the Constitution.

(Para 48)

Constitution of India, 1950—64th amendment, Arts. 2, 3, 4, 73 and 241—Extension of President's rule—Ratification by one-half members of the assembly, not necessary—Certificate from Election Commission that elections cannot be held—Whether necessary for extention of President's rule.

Held, that we find no force in the argument of the counsel for the petitioner that 64th amendment of the Constitution required ratification by at least one-half of the Legislative Assemblies as it

affected Articles 73, 241, Chapter I of Part II, Articles 2, 3 and 4. The object of the ratification stated at the Bar is that since it affected the federal structure by disturbing the balance between the States and the Union, the ratification is required. Nothing has been pointed out in the course of arguments that 64th amendment has directly brought about any change as contended above. In our considered view, the indirect or remote effect would not make it incumbent for the said amendment to be ratified by one-half members of the Assemblies. The position has been accepted though half heartedly.

(Para 49)

Held, that even otherwise, when the alleged inbuilt safeguards for extension of the President rule to the effect that emergency has to be declared and a certificate from the Election Commission has to be obtained that elections cannot be held, can be dispensed with for initial imposition of the President rule and its continuance for one year, we find no ground to hold that the amendment would be rendered *ultra vires* solely on the ground that the period for the extension of the President rule for which the above requirements are not required to be complied with, was extended for a little longer period keeping in view the peculiar circumstances as prevailing in the State of Punjab. The only effect of the amendment is the enlargement of period for dispensing with the declaration of emergency and obtaining of certificate. It is not a wanton discrimination in any way nor it amounts to taking away any right much less a fundamental or a basic right. It does not in any manner adversely affect the basic structure of the Constitution or the mechanism for the governance provided for by the Constitution. Proclamation of President Rule for such a long period cannot be called unreasonable particularly in view of the peculiar circumstances of the situation in Punjab. A very wide complaint of the people of the State that they have been deprived of governing themselves through the State Legislative Assembly by imposition of the President Rule would not be radically inconsistent with the basic structure of the Constitution inasmuch as this situation is reviewable by the Parliament which is none else but the representatives of the political sovereign i.e. the citizens after every six months.

(Paras 50 and 51)

Constitution of India, 1950—Arts. 74(2), 174 and 356—Notification dated May 11, 1987 imposing President's rule in the State—Governor's report—Subjective satisfaction of the President—Proclamation of President's rule justiciable—Material forming basis of proclamation—Sufficiency cannot be gone into by Courts—Material not disclosed is not justiciable—Courts cannot compel disclosure of material—Subjective satisfaction of President necessary—Legal malafides of Governor or President with respect to satisfaction—In the absence of material showing malafides *plea cannot be sustained.*

Held, that the Proclamation of President rule under Article 356 of the Constitution is justiciable. The Courts on the basis of the facts disclosed can go into the question whether there are reasons for the President's satisfaction 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 Court can further go into the facts disclosed and see as to whether there is failure of the State Government to govern in accordance with the provisions of the Constitution and are not extraneous or whether they bear any malice in law, or there is any perversity in coming to the satisfaction envisaged by Art. 356.

(Para 88)

Held, that it would be obvious from the facts and contents of the Governor's letter referred above in brevity, that it is, in fact, Governor's report on facts to the President. Drawing a conclusion from the facts referred in the letter or forming an opinion and reproducing it in the letter addressed particularly when the conclusion or the opinion is severable from the facts disclosed in the letter would not deprive the letter or report of its character or being a report. The report has to be read as a whole, the intent, contents and purpose are obvious, i.e. to report the prevailing facts to the President. We are of the opinion that facts reported and reproduced above do bear a nexus to the object of Article 356. Law and order situation alone may by itself, be not a ground for imposition of President rule but as disclosed by the facts reported by the Governor to the President and his being satisfied, whose satisfaction is material, that a situation has arisen that the governance of the state in accordance with the provisions of the Constitution was not feasible, is sufficient to impose the President rule. Keeping in view Article 355, it is the incumbent duty of the Union to see that the Government of every State is carried on in accordance with the provisions of the Constitution. In our considered opinion, in view of the situation depicted by the report of the Governor and admitted failure of the State Government to control the law and order situation, it cannot be said that satisfaction of the President was arbitrary or was for extraneous consideration.

(Paras 90 & 91)

Held, that the Courts would not enter into political thicket with respect to the sufficiency of the material in Governor's satisfaction.

(Para 94)

Held, that in view of Article 74(2), the Courts are debarred from compelling the respondents for disclosure of the other material or to judge its justification. The material which has not been disclosed is not justiciable in Courts, in view of Article 74(2) of the Constitution.

(Para 95)

Held, that the bald assertion of the petitioner that the report was made for extraneous consideration, *mala-fide* or dehors the constitution cannot be accepted. There is no material placed on record to *infer* so. Rather *bona fides* of the Governor are writ large for his impartial conduct to the effect that at the initial stages only the imposition of the President rule was sought and the Assembly was kept under suspension. It is only after almost a year that dissolution of the Assembly was recommended. Merely the reports carrying the opinion along with the facts, though the opinion and the facts are severable, would not be sufficient to infer legal *mala fide* or any other *mala fide*, either of the Governor with respect to report or of the President with respect to his satisfaction. Hence, it has to be held that the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution was just and it does not suffer from *mala fides*, legal or otherwise.

(Paras 96 & 97)

Held, that the Courts in view of Article 74(2) are debarred from questioning whether any, if so, what advice was tendered by the ministers to the President.

(Para 103)

Constitution of India, 1950—*Art.* 356—*Continuance of imposition of President's rule periodically—Extension—In the absence of material to the contrary, such continuation not* ultra vires *the Constitution.*

Held, that there is no gainsaying that there is nothing on the record to show that the situation ever improved after the imposition of President rule. There was no change of circumstances which came into exitence. which could have necessitated the revocation of the President rule. There is no material on the record or otherwise shown that in the eventuality of revocation of President rule, the machinery for governance provided by the constitution would have prevailed. Once a finding with respect to a particular situation has been returned, it would be presumed to have continued unless shown that there was any change. The Parliament before passing the resolution for extension of President rule did take note of the situation.

(Para 98)

Constitution of India, 1950—*Article* 174—*Dissolution of assembly—Revival thereafter not Constitutionally permissible.*

Held, that there is no power with the respondents in the Constitution to revive the assembly once dissolved and its life cannot be extended. The life of the assembly has been constitutionally fixed. No provision of the Constitution has been pointed out under which

the life of the Assembly could be extended. As one has to look as what is clearly said, there is neither room for intentment, nor equity, nor presumption. Once can look at the language alone.

(Para 102)

Held, that the intention of the Constitution for not providing any power or authority for reviving the Assembly would be obvious and implied in view of the fact that the Constitution has specifically provided for revocation of the President Rule or emergency on the charge of the situation but while enacting Article 174, no such power has been provided for the revival of the dissolved Assembly. The power to dissolve the Assembly has been expressly conferred on the Governor but there is no power with the Governor to revoke the order of dissolution under any circumstances. Resultantly, it should be impliedly deemed that the Governor has intentionally not been clothed with a jurisdiction to revoke the order of dissolution of the Assembly or to revive the Assembly. The Courts cannot assume the jurisdiction for issuing a direction to restore the dissolved Assembly to the Governor or the President.

(Para 110)

Held, that in our opinion the Courts should not undertake to decide an issue unless it is a living issue between the parties. The right of the petitioners, if any, semblance with the right, they have as a members of the Legislative Assembly, even in the ordinary course would be terminated, with the efflux of time, on the completion of five years' tenure. The disputed period left is in days. To grant a declaration that the dissolution of the Assembly was void, illegal would be futile.

(Para 108)

Held, finally that in view of our observations above to the effect that—

(i) 64th amendment of the Constitution is valid.

(ii) the imposition of President Rule and its continuance from time to time is valid.

(iii) no writ in the facts and circumstances of this case can be issued for restoration of the Assembly and resultantly no finding with respect to validity of its dissolution is called for ; and

(iv) no directions can be issued to the Election Commission and the Union of India to hold elections to the Legislative Assembly in the facts and circumstances of this case; these writ petitions fail and are dismissed with no order as to costs. (Para 115)

Civil Writ Petition under Articles 226/227 of Constitution of India, praying that:—

(*i*) *a writ in the nature of certiorari be issued and Notification-Annexure P. 2 dated 11th May, 1987, whereby President Rule has been imposed upon the State of Punjab be quashed ;*

(*ii*) *a writ in the nature of certiorari be issued and order dated 6th March, 1988 Annexure P. 3 whereby the Punjab Legislative Assembly has been dissolved be quashed ;*

(*iii*) *a writ in the nature of certiorari be issued and 59th Amendment of the Constitution of India-Annexure P. 4 passed by the Parliament of India be quashed ;*

(*iv*) *a writ in the nature of mandamus be issued and the respondent be directed to restore the Punjab Legislative Assembly ;*

(*v*) *requirement of Rule 20(2) of the writ jurisdiction rules may kindly be dispensed with ;*

(*vi*) *this Court may also issue any other appropriate writ, Order or direction which it deems fit under the circumstances of the case ;*

(*vii*) *filing of certified copies of the Annexures be dispensed with ;*

(*viii*) *costs of this writ petition be awarded to the petitioner.*

M. S. Khaira, Sr. Advocate with K. S. Ahluwalia, Advocate, *for the Petitioner.*

Arun Jaitley, Addl. Solicitor General of India with Maninder Singh, Advocate and H. S. Brar, Sr. Central Government Standing Counsel with P. S. Teji, and Manjit Singh, Advocates, *for the Respondent.*

JUDGMENT

(1) In this bunch of writ petitions broadly the challenge is to the 64th amendment of the constitution; imposition of President Rule in Punjab in May, 1987 and extension thereof; dissolution of the Punjab Legislative Assembly in March, 1988.

(2) Legal issues raised and posed by these writ petitions are not free from difficulty. The importance of the issues raised gave rise to numerous opinions, and approach to them which need balancing by the judicial mind.

(3) Though there are some differences and variations in facts, still the material facts are largely common to the writ petitions. Various questions raised in the petitions are so interwoven that their answers depend on each other. It can fairly be stated that the petitions raise common questions of law and fact.

(4) It would be expedient to succinctly collate the facts from Civil Writ Petition No. 2886 of 1989 filed by Captain Kanwaljit Singh, former Minister (hereinafter referred to as the petitioner).

(5) The petitioner impugned the imposition of President Rule,—*vide* Notification dated May 11, 1987 and dissolution of the Punjab Legislative Assembly,—*vide* Notification dated March 6, 1988. The vires of 59th amendment of the Constitution of India were Challenged *inter alia* on the ground that it destroys and abrogates the basic structure of the Constitution. A direction for restoration of the Punjab Legislative Assembly was sought.

(6) A brief reference to the skeletal facts to seek the above reliefs made by the petitioner would be appropriate at this stage. The petitioner was elected as a member of the Punjab Legislative Assembly on the Shiromani Akali Dal Ticket, in the elections held on September 25, 1985. He was inducted as a Minister in the Ministry headed by Shri Surjit Singh Barnala, Chief Minister. Initially 73 members were elected on the Ticket of Shiromani Akali Dal led by Shri Surjit Singh Barnala in a House constituted of 117 members. Later some members died. One of them belonged to Shiromani Akali Dal. 3 members of the Punjab Legislative Assembly from Shiromani Akali Dal were expelled. 23 members were disqualified by the Speaker of the Punjab Legislative Assembly for having voluntarily given up the membership of Shiromani Akali Dal. Thus, the petitioner's party was left with an effective strength of 46 M.L.As in the Punjab Legislative Assembly having strength of 91 members. The petitioner claimed that his party sought the man-
te of the electorate in the democratic popularity on the basis of
Accord known as 'Rajiv Longowal Accord" and his party was
majority. The petitioner's party formed the Government
Surjit Singh Barnala. The President of India on

February, 23, 1987, Union Home Minister on February 24, 1987, the then Prime Minister on March 3, 1987 and again on March 30, 1987 at Karnal and April 14, 1987, Shri P. V. Narsimharao, the then Union Cabinet Minister hailed the working of the Ministry led by Shri Surjit Singh Barnala in upholding the democracy and integrity of the Nation. Further tributes were paid for the effectiveness of the Ministry. Inspite of this the President of India on receipt of a report from the Governor of Punjab and otherwise being satisfied that a situation and arisen in Punjab in which the Government of the State could not be carried on in accordance with the provisions of the Constitution, proclaimed President Rule on May 11, 1987 under Article 356 of the Constitution. It was approved by both the Houses of Parliament on May 12, 1987. Thus Punjab came under President Rule for six months with effect from May 11, 1987. The President Rule was extended from time to time just before the expiry of six months, each time for a period of six months. Lastly, it was extended up to November 11, 1990. The extensions were approved by both the Houses of Parliament from time to time. Meanwhile, the President on March 6, 1988 also dissolved the Punjab Legislative Assembly with immediate effect.

(7) The petitioner broadly challenged the imposition of President Rule, dissolution of the Punjab Legistative Assembly and 59th amendment of the Constitution of India on three aspects:— President Rule was imposed *mala fide* with an ulterior motive for extraneous consideration for granting political mileage in the elections to the State Legislative Assembly of Haryana which was scheduled to be held on May 18, 1987. It was claimed that Congress Party which was the rulling Political Party at the Centre, had procured the report of the Governor of Punjab for imposition of President Rule and dismissing the majority Government of Punjab and the Governor of Punjab have yielded to their designs. The grounds or the material on the basis of which President Rule was imposed were not germance to and have no nexus with the object to be achieved.

(8) The dissolution of the Assembly,—*vide* Notification dated March 6, 1988 was imposed *inter alia* on the ground that as there was no change in the circumstances between the date of imposition of President Rule and dissolution of the Assembly warranting the dissolution, it could not have been dissolved. The dissolution of the Assembly was with an ulterior motive to deprive the petitioner's party to sent their three representatives to Rajya Sabha for the

vacancies falling due on the retirement of three members of Rajya Sabha from Punjab. The three persons were to be elected by the Punjab Legislative Assembly. In view of their party strength, mentioned above the petitioner's party expected to succeed in electing at least two members to Rajya Sabha, thus, the dissolution was *mala fide* and for extraneous considerations.

(9) According to the petitioner, the Assembly could be dissolved only when fresh mandate from the electorate is required or when the Assembly stands dissolved by office of time of expiry of its tenure of five years. The Assembly could only be dissolved if the President or Governor was satisfied that the Assembly did not represent the will of the people and fresh mandate of the people was immediately called for. The reasons for dissolution of the Punjab Legislative Assembly as disclosed in the Parliament were political interference by the members of the Punjab Legislative Assembly with the day-to-day administration resulting in affecting the morale of the security forces in effective functioning. The reasons disclosed were claimed to have no nexus with the power and object of the dissolution of the Assembly and were extraneous.

(10) Though, intially, 59th amendment of the Constitution was challenged but in view of its withdrawal and 64th amendment of the Constitution having been brought in, the latter was challenged being violative of the basic structure of the Constitution, viz., democracy and the federal structure of the Constitution. It was claimed that the right of the people of Punjab to govern themselves had been defeated and the process allows governance by Union of India and keeps democratic process of governance by the elected representatives of the State in abeyance. The members are accountable for their lapses, if any, to the people of the State who are sovereigns and in whom the Constitutional right to govern themselves through elected representatives vests.

(11) In Civil Writ Petition No. 5674 of 1988, an ex-Member challenged the imposition of President Rule on the same grounds as narrated in Civil Writ Petition No. 2886 of 1989.

(12) The Petitioner in Civil Writ Petition No. 6853 of 1990 challenged the vires of 64th amendment of the Constitution by way of public interest litigation. The only additional factor averred is that the resultant effect of the amendment of the Constitution is negation and erosion of the concept of federal structure of the Constitution and the people of Punjab have been treated discriminately.

(13) In Civil Writ Petition No. 2470 of 1990, the petitioner claimed that President Rule could only be extended beyond one year if there was a declaration of Emergency in any part of the State and further President Rule could not continue after January 6, 1990, because 59th amendment of the Constitution had been repealed and 64th amendment of the Constitution had not been brought in. Thus, the continuance of proclamation of President Rule after November 10, 1989 was illegal as proclamation of President Rule was not approved by the Ninth Lok Sabha till May 2, 1990.

(14) 64th amendment was also challenged on the same grounds as in Civil Writ Petition No. 2886 of 1989. It was claimed that the resolution for extension of President Rule cannot be passed by the Parliament a month before its expiry as the Parliament was bound to consider the material placed before it at the time of passing the resolution, for continuance of President Rule, situation can be reviewed on the eve of the expiry of President Rule and not in advance by a month or so.

(15) 64th amendment of the Constitution was challenged additionally on the ground viz., that since the 64th amendment brings about a change in or affects Articles 73, 162, 245 to 255 (Chapter I, Part XI), legislative relations between the Union and the States, legislative powers to make laws, conferment of powers to make rules with respect to the State List, the amendment could only be effected if ratified by at least half of the State Assemblies as required under proviso to Article 368(2). A direction to the respondents to hold elections to the Punjab Legislative Assembly was sought. Denial of right to the people of Punjab to govern themselves through their elected representatives amounts to destroying federal structure of the Constitution as well as the democracy. 64th amendment was claimed to be arbitrary as the inbuilt safeguards and counter-checks provided for proclamation of President Rule beyond one year under Article 356 (5) were done away with i.e. proclaimation of Emergency and a certificate from the Election Commission to the effect of no possibility of holding elections in case of extension of President Rule after one year was obliterated in case of Punjab.

(16) A direction was also sought restraining the respondents from reviving the Assembly *inter alia* on the ground that the original Shiromani Akali Dal Party elected to the Legislative Assembly has suffered a split in the party resulting in formation of two Groups known as Longowal Group and the Badal Group. The imposition of

President Rule as well as the dissolution of the Assembly was not challenged by the leader of either Group; that the candidates of either of the Groups could not secure even a single seat in the parliamentary Elections held in 1989. Rather they had lost their security deposits; a totally new party had emerged as successful in the Parliamentary Elections held in 1989. It was averred that since the elections to Parliament in 1989 were free and fair, there are no grounds not to hold Assembly Elections in the State of Punjab. Minor incidents of violence during the Lok Sabha Elections were not of such a nature that no elections could be held. Violence took place in the other States also where the Parliamentary Elections were held along with the State of Punjab and still the people of the other States were not denied their right to elect their State Assemblies. The people of Punjab were treated differently and discriminately denying them the right of self governance effecting federal structure of the Constitution. It is a political injustice with the people of Punjab not to permit them to be governed by their elected representatives. It was claimed that in view of amendment of Article 326 by which the voting age was reduced from 21 to 18 years, it is in the fitness of things to have fresh mandate from the sovereign, i.e. the electorate instead of reviving the Assembly of those members who were elected without the participation of the electorate between the age group of 18 to 21 years, which is the youth and future of the nation and were entitled to participate in the governance of the State. It was averred be revived, there is no statutory provision either in the Constitution or otherwise, conferring any jurisdiction on the respondents or the Courts to revive a dissolved Assembly or to issue a Mandamus to the respondents to revive it. It could have been revived only if it was prorogued. It was also pleaded that in view of the intervening facts stated above and the fact that the period for which the members of the Legislative Assembly were elected is almost over and only an insignificant period of a month or so is left the prayer for revival of the assembly deserves to be rejected. It was claimed that since the members have no legal right to continue as such, the Assembly cannot be revived by the Court in exercise of Writ Jurisdiction.

(17) Terrafirma of the factual matrix in Civil Writ Petition No. 2767 of 1990 is in parity with Civil Writ Petition No. 2475 of 1990 except an additional averment of fact that Shiromani Akali Dal polled, 38.1 per cent valid votes and totally a new party had been elected to the Lok Sabha. Ulterior motive was attributed to the bureacrats in continuing President Rule in the State of Punjab.

An additional ground was made out viz. since the imposition of President Rule was invalid from its inception, there could not be any valid extension of an invalid act.

(18) The petitioners further spelled out the supremacy of the Constitution, rule of law, separation of powers, secularism, sovereign democratic republican structure, freedom and dignity of individuals unity and integrity of the Nation, principles of equality, essence of Fundamental Rights, concept of social and common justice belonging to the welfare State, Part IV of the Constitution, the balance between Fundamental Rights and Directive Principles, Parliamentary system of Government, free and fair elections, independence of judiciary, access to justice, federalism of the Constitution etc., though not exhaustive as being the broad basic features or structure of the Constitution.

(19) The respondents combated the respective contentions made in the Writ Petitions. The conspectus of the defence raised was the 64th amendment of the Constitution is valid; it does not violate the basic structure of the Constitution; imposition and coninuation of President Rule is valid, it had been approved by both the Houses; dissolution of the Assembly is valid, there are no provisions under the Constitution authorising any person or the respondents to revive the Assembly, no ratification was necessary for the 64th Amendment. Making a reference to the chequered history of the Writ Petitions, it was claimed that it is futille to revive the Assembly for a short period. The decision for holding the elections will be taken in accordance with law.

(20) The counsel for the petitioners formulated the following propositions during the course of arguments and later submitted them in writing also;

(1) Whether 64th amendment of the Constitution is *ultra vires* the Constitution ?

(2) Whether President's satisfaction under Article 356 of the Constitution of India for issuance of proclamation of imposition of President Rule is justiciable ?

(3) Were there any facts before the President for his satisfaction for proclamation of President Rule or the same has

been imposed merely on the opinion of the Governor ? Was that by itself sufficient ?

(4) Are the grounds disclosed for the imposition of President Rule relevant or extraneous and are not germane to and have no nexus with the power and object to be achieved? Whether the action is *mala fide* ?

(5) Was President's conclusion that no Government can run in accordance with the Constitution arbitrary and for extraneous considerations particularly in view of the fact that the Minister of the Central Government were consistently and persistently praising the sucessful handling of the situation by the leader of the majority group ?

(6) Is the imposition of President Rule from its very inception illegal, void and the subsequent extensions are also void as no fresh proclamation was issued ?

(7) Are the grounds for dissolving the Assembly *pari materia* to the grounds for proclamation of President Rule under Article 356 of the Constitution ?

(8) Whether the grounds envisaged by Article 356 can be read into Article 174 ?

(9) Is the dissolution of the Assembly and the grounds therefore having been made public, justiciable ? If so, whether the grounds disclosed by the Minister in the Parliament the valid, legal and not extraneous ?

(10) Whether the respondents can claim protection under Article 74(2) of the Constitution from judicial review and is it the opinion alone which is protected and not the facts and the material on the basis of which such an opinion emansted ?

(11) Could the President in the absence of internal disturbance suspend or dissolve the Assembly and whether mere law and order problems are sufficient for imposition of President Rule ? Does it amount to setting a bad precedent?

(21) We were taken through the pleadings of the parties as well as Annexures on the record and case law cited at the bar. In order to determine the vires of 64th amendment of the Constitution, it would be expedient to reproduce the relevant part of it. It runs;

"2. In Article 356 of the Constitution—

(a) in clause (iv) after the second proviso the following proviso shall be inserted; namely :—

"Provided also that in case of the proclamation issued under clause (i) on the 11th day of May, 1987 with respect to the State of Punjab, reference in the First Proviso under this clause to "three years" shall be construed as a reference to "three years six months".

(b) in clause (v) the following proviso shall be inserted at the end ;

"Provided that nothing in this clause shall apply to the proclamation issued under clause (i) on the 11th day of May, 1987 with respect to the State of Punjab."

(22) The scheme and working mechanism of the Constitution is preparatory necessity to determine the issue raised. The scheme for governance during Emergency has been provided by Part XVIII of the Constitution. This part deals with the emergent situation arising during the course of governance requiring an urgent action. Powers have been conferred on the President to manage the affairs of the country in a situation whereby security of India or any part thereof is threatened by war, external aggression, armed rebellion or such similar situations. It further confers powers on the President to govern in emergent situation arising out of the economic, financial or failure of the State to run the Government in accordance with the Constitution. This Chapter, apart from conferring powers, lays the procedure for their exercise in each particular situation arising during the administration of the country. The President of India being an Executive Head of the country has been required to deal with the Emergencies and various situations arising thereunder and needing immediate measures. Article 352 provides for proclamation of Emergency on the President's satisfaction that grave Emergency exists whereby the Government of India or any part of the territory is threatened by war, external aggression, armed

rebellion etc. The President is required to make a declaration to that effect either with respect to the whole of the country or any such part of the territory thereof as may be specified in the proclamation. The proclamation can be made either on actual occurrence of the eventualities or there being an imminent danger thereof. The proclamation may be varied or revoked subsequently. The provision envisages that the President can issue proclamation or vary the same only on the decision of the Union Cabinet for issuance of such proclamation and communicated in writing to him. It further enjoins a duty that such proclamation has to be laid before each House of the Parliament except in case of its revocation or coming to an end of the same by efflux of time i.e. on expiration of one month from the date of issuance. The Parliament may approve the proclamation before its expiration. The provision further envisages that if the proclamation is not approved by the Lok Sabha or the Council of States, it shall cease to operate after the expiry of thirty days from the date on which the House of People sits after its re-constitution, unless it is approved by a resolution before the expiration of thirty days and the Parliament could approve the proclamation by resolution for six months only at a time. It may be extended periodically for a period of six months from time to time. To approve the proclamation, simple majority of the total members of the House and two-third majority of the members of the House present and voting is required. In case of disapproval of the proclamation or its variance, the President shall vary or revoke the proclamation accordingly. It has been provided that on notice being given by one-tenth members of the House of People of their intention of disapproving the proclamation or the continuance or for varying the proclamation to the Speaker of the House, it is incumbent to hold a sitting of the House within fourteen days of the notice for the purpose of considering such a resolution. The President has been authorised to issue different proclamations on different grounds at different times.

(23) The consequences of declaration proclamation of Emergency are provided by Article 353 whereby the executive power of the Union gets extended for giving 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 with respect to any matter shall include power to make laws conferring powers or imposing duties or authorising the conferring of powers or imposition of duties upon

the Union or its Officers with respect to that matter, notwithstanding that such power is not enumerated in the Union List. It further authorises, in case the proclamation of Emergency is in operation with respect to any part of the territory of India, the same powers can be exercised with respect to any State other than the State in which or any part of which the proclamation of Emergency is in operation.

(24) Article 354 deals with the provisions relating to distribution of revenues during the proclamation of Emergency.

(25) Failure of the Constitutional machinery or the State Government not running in its letter and spirit, or in accordance with the provisions of the Constitution has been deemed to be an emergent situation with respect to which Articles 355, 356 and 357 provide for dealing with the situation. It is Articles 355 to 357 which are under consideration as these deal with such a situation where the governance of a State cannot be carried on in accordance with the provisions of the Constitution. It would be expedient to reproduce Articles 355, 356 and 357 which run as under :—

> 355. Duty of the Union to protect States against external aggression and internal disturbance.—"It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution."
>
> 356. Provisions in case of failure of constitutional machinery in States,—"(1) If the President, on receipt of report from the Governor 28*** 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 Governor or any body or authority in the State other than the Legislature of the State;
>
> (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State.

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Court.

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

(3) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament :

Provided that if any such Proclamation revoking a previous Proclamation is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation:

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by

both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of (six months) from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of (six months) and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

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

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab."

357. Exercise of legislative powers under Proclamation issued under Article 355.—(1) Where by a Proclamation issued under clause (1) of Article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

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

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

(c) for the President of 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 on the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority."

(26) The learned counsel for the petitioners challenged the 64th amendment of the Constitution on the grounds referred in the earlier part of the judgment reproducing the facts. It was strenuously argued that 64th amendment is un-constitutional being violative of the basic structure of the Constitution, as it has obliterated the democratic rights of the petitioners to govern themselves by and through their elected representatives; it has impaired

the federal structure of the Constitution; it has made inroads into the democracy at State level. It was argued that before 42nd amendment of the Constitution, the trend of the amendments of the Constitution was for decentralisation of powers in favour of States in order to strengthen the democracy at State level and by 64th amendment the process had been reversed.

(27) The learned counsel relied on *His Holiness Kesavananda Bharati Sripadagalvaru and others* v. *The State of Kerala and another,* (1); *Minerva Mills Ltd. and others* v. *Union of India and others,* (2) *Babhutmal Raichand Oswal* v. *Laxmibai R. Tarte and another,* (3), *A. K. Roy* v. *Union of India and another,* (4) and *Parkash Singh Badal and others* v. *Union of India and others,* (5). As submitted by the counsel for the petitioners the conspectus of the precedents relied is that the power to amend the Constitution envisaged by Article 368 is ultimated with exception of Articles effecting the basic structure. The Indian people have built the Union on the concept of sovereignty of the people. Every provision of the Constitution is basically essential and forms the basic foundations of the structure of the Constitution. It consists of features like supermacy of Constitution, republican and democratic form of Government, secular character of Constitution; separation of powers between Legislative, Executive, Judiciary and the federal character of the Constitution as they emerge from the Scheme and the preamble of the Constitution. The integrity of the country, dignity and freedom of individuals are of supreme importance. It is in the interest of the integrity and security of the country that certain rights can be suspended, though the Fundamental Rights are inalienable and incapable of being vague and violated. Further the Constitution follows the preamble as Preamble came into force on November 26, 1949 and the Constitution on January 26, 1950. The Preamble is a part of the Constitution. It assures the people of a polity whose basic structure as described is sovereign, democratic republican. The Parliament can amend the Constitution but cannot destroy it. India's sovereignty and its democratic republic character and other essential attributes of the concept of Constitution have been described in the Preamble.

(1) A.I.R. 1973 S.C. 1461.
(2) A.I.R. 1980 S.C. 1789.
(3) A.I.R. 1975 S.C. 1297
(4) A.I.R. 1982 S.C. 710.
(5) A.I.R. 1987 P. & H. 263

It assures fraternity and dignity of the individual and the unity of the Nation. The Parliament cannot abrogate democracy. It cannot deprive people of free democracy and lay foundation of the authoritarian State. It was pointed out that basic structrues, essential features of the Constitution referred to in *Kesavananda Bharati's case* (supra) are merely illustrative and not exhaustive. Democracy was declared to be an essential feature forming part of the basic structure of the Constitution. It has been laid down that in every case where the question arises as to whether a particular feature of the Constitution is part of the basic structure or not. It has to be determined by taking into consideration various factors such as the basic scheme of the Constitution, its object and purposee. consequential denial of integrity of the Constitution or any fundamental institution of the country etc.

(28) It was fairliy laid down that any provision of any Constitutional amendment which damages, abrogates or destroys the basic structure of the Constitution would be invalid to that extent. In *Parkash Singh Badal's case* (supra). it was observed that free and fair voting is a minimum basis and essential attribute of democracy, thus a component part of the basic structure of the Constitution.

(29) There can be no dispute with the law laid down by the judgments cited by the counsel for the petitioners. The principle discernible from them and Sanguinenly pressed is that 'democracy' and 'federal structure' are part of the basic structure and essential features of our written Constitution.

(30) The counsel for the respondents did not dispute the said proposition. rather the counsel for the parties proceeded with the arguments on the assumption that democracy and federal structure are part of the basic structure of the Constitution.

(31) Contentions of the petitioners with respect to vires of 64th amendment have also been noticed in the earlier part of the judgment.

(32) Violation of basic structure of the Constitution by 64th amendment was refuted. It was urged that neither it abrogates nor destroys the basic structure of the Constitution. It was urged that power of imposition of President Rule under Article 356 was part of the Constitution as originally framed and enlarging its duration would not effect its basic structure.

(33) There was no challenge either in the petitions or during the course of arguments with respect to the change in the period provided for the imposition of President Rule from six months to three years. The challenge was confined to extension from three years to three and a half year.

(34) It was not canvassed that providing through various amendments for proclamation of the imposition of President Rule from six months to three years violated the basic structure.

(35) With human fralities in conceiving all eventualities of future it was appropriate that Constitution must be left elastic to meet the changing situation in the society of the people who are sovereigns. One has to approach the Constitution taking it to be enough while interpreting it to answer any situation as and when it arises. In order to determine the validity of amendment one is required to determine whether the amendment crosses the line of permissible limit without touching the basic structure of the Constitution. The object of the amendment and the conditions prevailing or the situation for meeting of which the amendment has been made has to be kept in mind. The interpretation resulting in draconian rule of law has to be scrupulously avoided.

(36) The governance by the President during President Rule being the Executive Head of the Nation is in conformity with the democratic principle as the President acts on the aid and advice of the Council of Ministers who are answerable to the House of People as well as their political Sovereigns i.e. the voters. They are the representatives of the citizens of India. State Assembly for each area is not a basic feature of the Constitution nor the absence of the Assembly for any area, much less being temporarily dissolved, would violate the basic feature of democracy and federalism. The respondents are legally empowered to covert the States into Union Territories and *vice verse* though the Union Territories unlike the States are not governed through Legislative Assemblies and their laws are made by the Parliament with respect to all the three lists in the Constitution. Mere absence of the Assembly or it being eclipsed during its suspension or temporarily being obliterated on imposition of President Rule cannot be a basic to say that the citizens are deprived of their rights to be governed by their duly elected representatives or their right of franchise is in any manner effected.

(37) It is well settled that the provisions of the Constitution should be construed liberally keeping in view the spirit, sense and philosophy of the Constitution. Reference may be made to *K. C. Vasanth Kumar and another* v. *State of Karnataka* (6). It was observed in *Waman Rao and others* v. *Union of India and others* (7), that Parliament has a right to amend the Constitution without disturbing the basic structure of the Constitution or the frame work of the Constitution. The power to amend the Constitution was plenary. In order to judge the constitutionality of the amendment, one has to keep in mind the basic postulates of the Indian Constitution when it was enacted and find out whether the amendment does violence to those postulates? Would the amendment not endure in harmony with them or are the two so incongruous that to seek to harmonise them will be like trying to fit a square peg into a round hole.

(38) It is also well established that the provisions of law including any amendment of the Constitution are presumed to be *intra vires* of the Constitution of India, unless shown to be violative of the provisions of the Constitution of India or it is beyond the jurisdiction of the authority. It is undisputed that democracy federal structure and unity and integrity are the basic features of the Constitution. There is no gainsaying that though our Constitution is basically federal in character, but certain exceptions have been made in the federal structure, in order to maintain the unity and integrity of the country keeping in view the peculiar situation geographically, economically, politically, educationally and linguistically of the federal States. It can be safely said that our Constitution is neither entirely federal in nature nor unitary. It is a blend of the two systems. The federal nature of the Constitution has been tampered with by the framers of the Constitution wherever it was found to be necessary in order to keep the unity and integrity of the country or for the development of the nation as a whole. The unity and integrity of the country cannot be sacrified at the alter of federalism. The Constitution itself authorises the Union of India to give directions to the States in a particular situation envisaged by it. Reference may be made to Articles 73(1), 248, 256, 257 and 265 etc. The union of India has been further authorised to give directions when it considers that the political situation or any other situation or the circumstances so envisage in order to protect

(6) 1985 S.C.C. 714.

(7) (1981) 2 S.C.C. 362.

the rights of the citizens; to protect the State from external or internal aggression; disturbance in the State or to keep the State Government working in accordance with the Constitution. Strong Centre is a must which is essential for safeguarding the integrity of the country. Our Constitution in order to provide efficacious governance; provided three different independent wings within the democratic concepts i.e. executive, legislative and judicial. Through these wings, the administration is run and the governance by the Government takes place at various levels. It is the sum total of these wings that provides an instrument to preserve the orderly society and a mechanism for their own governance.

(39) Presumption in favour of the constitutionality of the provisions is taken a step further when the power is vested in the high office or higher echelons in its governance. All executive powers of the Union vest in the President and in case of States in the Governor. They are expected to act without arbitrariness or caprice and in the manner expected from the persons occupying such high office and presumed to be of integrity and calibre etc.

(40) It is normally expected that the power conferred shall be exercised reasonably and fairly and without bias. While interpreting the Constitution as a whole, its scheme and working has to be kept in view. No compartment lisation can be made.

(41) Article 355 of the Constitution makes it incumbent on the Union to protect the States from external aggression, internal disturbances and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. It is this duty which the President is discharging by invoking the provisions of Article 356 of the Constitution of India. The change in mechanism of governance is not of substantial character. The political sovereign continue to govern themselves through the members elected through democratic process *viz.* the Parliament. Powers exercisable by the Governor vest in the President who acts on the advice of the council of Ministers.

(42) The Constituent Assembly Debate Volume IX may be referred to in order to unveil the object of the provisions of Articles 355 and 356. It was put to Dr. B. R. Ambedkar that these provisions are likely to be abused. In reply, Dr. Ambedkar said that "the charge of the Articles likely to be abused applies to all other

Articles of the Constitution as well". He expressed the hope, that such powers will never be called into operation and they would be brought into operation by the President who is endowed with powers with proper care and caution before actually suspending the Administration. The Articles in themselves contain the guidelines under what set of circumstances the provisions can be invoked. In the original as well as amended Article 356, President's Rule can be imposed only when the President feels satisfied that the State Government is not being carried on in accordance with the provisions of the Constitution or there are internal disturbances in the State. A further rider has been put that the proclamation of the imposition of the President Rule has to be put in both the Houses within two months of its proclamation and it is the Parliament who has been conferred with the jurisdiction to impose the President Rule initially for six months and later extend if for one year and thereafter review of the situation every six months. The outer limit for imposition of the President Rule was fixed as three years with a further safeguard that, if the President Rule is to continue beyond one year, the President would proclaim the Emergency in whole of the State or part of it and further there would be a certificate from the Election Commission that the Elections in the State are not possible.

(43) During the course of arguments, the learned counsel did not challenge the imposition of President Rule for three years reviewable every six monthly. It has been observed in *Waman Rao and others* v. *Union of India and others etc. etc.* (8) as under:—

> "In the work-a-day civil law, it is said that the measure of the permissibility of an amendment of a pleading is how far it is consistent with the original: you cannot by an amendment transform the original into the opposite of what it is. For that purpose, a comparison is undertaken to match the amendment with the original. Such a comparison can yield fruitful results even in the rarefied sphere of constitutional law. What were the basic postulates of the Indian Constitution when it was enacted? And does the Ist Amendment do violence to those postulates? Can the Constitution as originally conceived and the amendment introduced by the Ist Amendment Act not endure in harmony or are they so incongruous that to seek

(8) (1981) 2 S.C.C. 362.

to harmonise them will be like trying to fit square peg into a round hole? Is the concept underlying Section 4 of the Ist Amendment an alien in the House of democracy? Its invader and destroyer? Does it damage or destroy the republican framework of the Constitution as originally devised and designed"?

(44) It has been observed in *Minerva Mills Ltd's case* (supra) as under :

"Sikri C.J. held that the fundamental importance of the freedom of the individual has to be preserved for all times to come and that it could not be amended out of existence. According to the learned Chief Justice, fundamental rights conferred by Part III of the Constitution cannot be abrogated, though a reasonable abridgment of those rights could be effected in public interest. There is a limitation on the power of amendment by necessary implication which was apparent from a reading of the preamble and, therefore, according to the learned Chief Justice, the expression "amendment of this Constitution" in Article 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the preamble, made in order to carry out the basic objectives of the Constitution. Accordingly, every provision of the Constitution was open to amendment provided the basic foundation or structure of the Constitution was not damaged or destroyed".

(45) Shelat and Grover, JJ. observed that the preamble to the Constitution contains the clue to the fundamentals of the Constitution. According to the learned Judges, Part III and IV of the Constitution which respectively embody the fundamental rights and the directive principles have to be balanced and harmonised. This balance and harmony between two integral parts of the Constitution forms a basic element of the Constitution which cannot be altered. The word 'amendment' occurring in Article 368 must, therefore, be construed in such a manner as to preserve the power of the Parliament to amend the Constitution, but not so as to result in damaging or destroying the structure and identity of the Constitution. There was thus an implied limitation on the amending power which precluded Parliament from abrogating or changing the identity of the Constitution or any of its basic features.

Hegde and Mukherjea, JJ. observed that the Constitution of India which is essentially a social rather than a political document, is founded on a social philosophy and as such has two main features basic and circumstantial. The basic constituent remained constant, the circumstantial was subject to change. According to the learned Judges, the broad contours of the basic elements and the fundamental features of the Constitution are delineated in the preamble and the Parliament has no power to abrogate or emasculate those basic elements or fundamental features. The building of a welfare State, the learned Judges said, is the ultimate goal of every Government but that does not mean that in order to build a welfare State, human freedoms have to suffer a total destruction. Applying these tests, the learned Judges invalidated Article 31C even in its unamended form".

(46) It was further observed as follows :

> "The learned Attorney General then contends that Article 31C should be upheld for the same reasons for which Article 31 A(1) was upheld. Article 31A(1) was considered as a contemporaneous practical exposition of the Constitution since it was inserted by the very First Amendment which was passed in 1951 by the same body of persons who were members of the Constituent Assembly. We can understand that Article 31 A can be looked upon as a contemporaneous practical exposition of the intendment of the Constitution, but the same cannot be said of Article 31 C. Besides, there is a "significant qualitative difference between the two Articles. Article 31 A, the validity of which has been recognised over the years, excludes the challenge under Articles 14 and 19 in regard to a specified category of laws. If by a constitutional amendment, the application of Articles 14 and 19 is withdrawn from a defined field of legislative activity, which is reasonably in public interest, the basic framework of the Constitution may remain unimpaired. But if the protection of those articles is withdrawn in respect of an uncatalogued variety of laws, fundamental freedom will become a 'parchment in a glass case' to be viewed as a matter of historical curiosity".

(47) Temporary absence of State Legislative Assembly does not violate or intrude into the basic federal structure. In view of the

facts and circumstances when the State Executive or State Legislative wing cannot run the Administration or discharge their Constitutional functions, the Union is bound to protect Constitutional rights of the citizens and ensure that the Government in a State is carried on in accordance with the provisions of the Constitution. Enlargement of the maximum period from three years to three years six months for imposition of the President Rule, by 64th amendment of the Constitution does not in any manner make any substantial in roads into the basic structure of the federal system of democratic process provided by the Constitution. This marginal change brought about in the period is in complete harmony with the basic structure of the Constitution. It is of insignificant consequence so far as the federal system or the democracy is concerned. Even during this tenure of the President Rule, the people i.e. the electorate are governed by their representatives elected by a democratic process. The governance by the political sovereigns by duly elected representatives in the democratic form to the Parliament is not materially affected. The State Assembly is kept in suspended animation for a temporary period extendable upto a maximum period of 3½ years.

(48) As it was observed in *Mrs. Sajida Begum's case* (supra) that right to be a member of an Assembly is not a Fundamental Right. Similarly, mechanism for electing Legislative Assembly or Parliament for governing themselves is a statutory process which can be varied according to the situation, time and circumstances by a statute. Every change brought about in the statutory rights would not interfere with the basic structure of the Constitution. It is well established that right to vote, to be a Member of Assembly or Parliament is neither a Fundamental Right nor a natural right nor common law right, nor it is an action at law or suit in equity but is purely a statutory proceedings unknown to common law and Court possesses no common law power. In a democratic polity election to Assemblies or the Parliament is a mechanism devised to reflect the true wishes and the will of the people in the matter of choosing persons as their political managers for governance. The representatives either to the State Assembly or to the Parliament are to echo the view of their sovereigns whom they represent. Our Constitution ensures that the people govern themselves in accordance with the Constitution given by them to themselves. Mere eclipsing one of the two institutions of Government, i.e. the Centre and the State for a temporary period in view of the Emergency of failure on the

part of the State Government to govern according to the Constitution does not wipe out or abridge the basic structure of the Constitution. Rule by the Centre is also a rule by the elected representatives. In our considered view 64th amendment neither effects the federal structure of the Constitution nor destroys the democratic process. Even while the State Assembly is kept in abeyance, the State is run by democratically elected representatives of the people *viz.* the members of Parliament. "The Parliament while discharging the functions of making laws provided in the State list in fact discharges the functions of State Legislature. The Parliament is conferred with dual character during the President Rule". We fail to understand how democracy has been alienated by imposition of the President Rule. Deferment of the election does not obliterate the democracy. Sixty-fourth amendment does not violate the basic structure of the Constitution so as to be declared *ultra vires* of the Constitution".

(49) We find no force in the argument of the counsel for the petitioner that 64th amendment of the Constitution required ratification by at least one-half of the Legislative Assemblies as it affected Articles 73, 241, Chapter I of Part II, Articles 2, 3 and 4 as well as the representations in Parliament i.e. 7 seats in the Rajya Sabha. The object of the ratification stated at the Bar is that since it affected the federal structure by disturbing the balance between the States and the Union, the ratification is required. Nothing has been pointed out in the course of arguments that 64th amendment has directly brought about any change as contended above. In our considered view, the indirect or remote effect would not make it incumbent for the said amendment to be ratified by one-half members of the Assemblies. The position has been accepted though half-heartedly.

(50) The learned counsel for the petitioner further urged that since the inbuilt safeguards in Article 356 of the Constitution have been obliterated in case of Punjab, consequently 64th amendment is *ultra vires*. No substantial reason has been pointed out to hold so. The contention is noted to be rejected. Even otherwise, when the alleged inbuilt safeguards for extension of the President rule to the effect that emergency has to be declared and a certificate from the Election Commission has to be obtained that elections cannot be held, can be dispensed with for

initial imposition of the President rule and its continuance for one year, we find no ground to hold that the amendment would be rendered *ultra vires* solely on the ground that the period for the extension of the President rule for which the above requirements are not required to be complied with, was extended for a little longer period keeping in view the peculiar circumstances as prevailing in the State of Punjab the only effect of the amendment is the enlargement of period for dispensing with the declaration of emergency and obtaining of certificate. It is not a wanton discrimination in any way nor it amounts to taking away any right much less a fundamental or a basic right. It does not in any manner adversely affect the basic structure of the Constitution or the mechanism for the governance provided for by the Constitution.

(51) Proclamation of President Rule for such a long period cannot be called unreasonable particularly in view of the peculiar circumstances of the situation in Punjab. A very wide complaint of the people of the State that they have been deprived of governing themselves through the State Legislative Assembly by imposition of the President Rule would not be radically inconsistent with the basic structure of the Constitution inasmuch as this situation is reviewable by the Parliament which is none else but the representatives of the political sovereign i.e. the citizens after every six months.

(52) The contention of the counsel for the petitioners that in this manner and on these reasoning the President rule can be imposed for an indefinite period is a hypothetical question which need not be answered at this stage. The Court will not be foreclosed from taking appropriate action if the situation so warrants.

(53) Thus in our considered view, the 64th amendment of the Constitution is *intra-vires*. No ground has been made out to declare it *ultra vires*.

(54) Now coming to the Notification, dated May 11, 1987 imposing President Rule in the State, it has been disclosed by the respondents that proclamation for the imposition of the President Rule on May 11, 1987 was issued on the satisfaction of the President from the Governor's report and other reasons that a situation has arisen in the State of Punjab in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. It is undisputed that a report was sent to the President. In order to answer the question raised by the counsel for the parties, it

would be expedient to succinctly refer the report sent by the Governor to the President of India. The report refers to the discussion which took place between the Governor and the President with respect to gravity and the seriousness of the situation existing in the State of Punjab and tremendous terror and fear prevailing there. The contents of the oral discussion by the Governor with the President have not been disclosed but it is reasonable to infer that the discussion was with respect to the failure of the governance in the State of Punjab in conformity with the constitution as the later part of the report, which is in continuation of the factum of oral discussion, reveals. It is not disputed at the Bar or even otherwise that the report of the Governor does refer to the gravity and seriousness of the situation existing in the Punjab State. It is quoted in the report, "That there is tremendous terror-fear prevailing due to the fundamentalists movement which had started getting out of the hand since middle of April 1987. There was not only parallel authority working in the State by the fundamentalists but it has resulted in migration by the terror stricken people. The Chief Minister did take some hard and bold steps but the general tension terrorism, lawlessness, bank robberies, burning of shops and *khokhas* killing of innocent persons had commenced with vigour. Ministers in the Cabinet have their relations with the terrorists and there is unwarranted interference with Police activities. All manners of wild allegations are floating against the Executive, Police Force in particular with respect to corruption result in illegal orders including the transfers and postings for money considerations. There is a demoralising effect and it has shaken the confidence of the public. The Ruling party and its Government have no political will to combat truly and seriously either the fundamentalist movement or growing terrorism. State Government has failed and has become quite incapable of ensuring effectively the basic Fundamental Rights of the people in the State. In facts, its writ has ceased to run in the large area of the State particularly the rural area. The people cannot carry out their ordinary avocation, there is a total chaos and anarchy, visiting of Gurdwaras, Temples, Courts of law for getting justice, visiting hospitals going to public places of entertainment and amusement, shopping and marketing in commercial area, attending colleges and Universities for educational purposes have been threatened and intimidated. The Government stands helpless". After referring to the killing of terrorists in encounters, it was reported that the Legislature carries no appeal to the masses and killings had increased. After enumerating the facts in the report as stated above, the Governor opined

that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Resultantly he solicited the imposition of President Rule.

(55) The learned counsel for the petitioners relied upon *State of Rajasthan and others* v. *Union of India* and *Mrs. Sajinda Begum and others* v. *Union of India and others* (9), and *S. R. Bommai and others* v. *Union of India and others* (10), in order to support his contention that issuance of proclamation for the President rule is justiciable in Courts of law. Judicial review is not only feasible but is a must so as to check the use of wanton executive powers for imposing the President rule and dissolution on extraneous consideration and to ensure that the same is not imposed for the reason dehors the contemplation by the Constitution.

(56) Learned counsel for the respondents candidly and rightly conceded that in case the respondents chose to disclose the reasons for imposition of the President rule either in the notification or otherwise, the reasons are justiciable in Courts of law. The satisfaction of the President would be justiciable in Courts of law. The Courts would be at liberty to scrutinise whether the grounds for imposition of the President rule are extreneous or not germane to the grounds provided by the Constitution for its imposition. However, the Courts would not go into the sufficiency of the grounds. The Courts cannot substitute their opinion with respect to the sufficiency of the grounds or satisfaction of the President. The satisfaction of the President is subjective. It is his satisfaction that Government cannot be carried on in accordance with the provisions of the Constitution, that President rule is the demand of the situation in the conditions prevailing in the State. It is the President who is to be satisfied, of course, on the advice of the Council of Ministers; that the Government in the State cannot govern in accordance with the provisions of the Constitution.

(57) Learned counsel for the respondents urged that in case the respondent does not disclose the reasons for imposition of the President rule and decides in its discretion not to disclose the advice rendered by the Cabinet to the President or any other reason on the basis of which the President felt satisfied that the Government cannot be run in the State in accordance with the provisions of the

(9) A.I.R. 1977 S.C. 1361.

(10) A.I.R. 1990 Karnataka 5.

Constitution, the Courts in view of Article 74(2) of the Constitution are debarred from going into them. The second proposition put forth by the counsel for the respondents should not detain us. We need not answer the second proposition at this stage inasmuch as here the reasons for imposition of the President rule as a matter of fact have been stated. The question which falls for determination in the present case is whether the reasons disclosed are extraneous and not germane to the grounds envisaged by the Constitution. It would be opposite to notice the law laid down by Hon'ble the Supreme Court *in State of Rajasthan's case* (supra). It would be expedient at this stage to refer to the facts on the basis of which constitutional questions were raised and answered by Hon'ble the Supreme Court.

(58) It was in the peculiar facts and circumstances which came into being in 1977, after the elections to the Lok Sabha. Prior to the elections there was majority of Congress-I in the Lok Sabha. Thus, the Government of the country was in the hands of the Congress-I which imposed emergency before the elections and extended the life of the Assembly as well as the Parliament from 5 years to 6 years. The emergency was revoked before the eve of the elections. At polls the Congress-I was routed in the Parliament. Nine States were still being ruled by the duly elected representatives who owed their allegiance to Congress-I meaning thereby that Government in 9 States was of Congress-I Party. Then 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. All that the Court can do is to consider whether an action proposed on such 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 would be observed that it should be resorted to under Art. 356(1) of the Constitution only when 'a critical situation' has arisen.

(59) It has also been observed :

"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 was still time left for dissolution of the Assemblies by afflux of time. On these peculiar circumstances, the then Home Minister wrote a letter to the 9 Chief Ministers of the State ruled by Congress-I thereby suggesting to them that they should advise the Governors to dissolve the Assemblies. The relevant portion of the letter runs as under:—

"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 and continuance in power of a party which has been unmistakable rejected by the electorate. The climate of uncertainty diffidence and disrespect has already given rise to serious threats to law and order.

Eminent constitutional experts have long been of the opinion that when a Legislature no longer reflects the wishes or view 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 States a fresh appeal to the political soverign would not only be permissible but also necessary obligatory."

To the similar effect was the statement given by the Law Minister in the programme on the All India Radio.

(60) The States filed suits under Article 131 of the Constitution of India and writ petitions under Article 32 of the Constitution of

India were also filed in the Hon'ble Supreme Court, *inter-alia,* seeking the relief of injunction restraining the President of India from dissolving the Assemblies for the proposed reasons discussed in the letter and in the statement of the Law Minister.

(61) It was held that the Courts can determine the validity of the action under Article 356(1) of the Constitution on the grounds disclosed or admitted on behalf of the President to be the grounds for Presidential satisfaction. It was observed that:—

> "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 necesarily be left to the executive branch of Government. It cannot by its very nature, be a fit subject matter for judicial determination and hence it is left to the subjective satisfaction of the Central Government which is best in a position to decide it. The Court cannot in the circumstances go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based. That would be dangerous exercise for the Court, both because it is not a fit instrument for determining a question of this kind and also because the Court would thereby usurp the function of the Central Government and in doing so, enter the political thicket which it must avoid if it is to retain its legitimacy with the people".

(62) It was further observed 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 in which he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Article 356(1) and if it can be shown there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid".

(63) It was still further observed that:—

"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 fedral. In a sense, the Indian Union is fedral. 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 uplifted. In such a system, the States cannot stand in the way of ligitimate and comprehensively planned development of the country in the manner directed by the Central Government. The question of the legitimacy of particular actions of the Central Government taking us in particular directions can often be tested and determined only by the verdicts of the people at appropriate times rather than by decisions of Courts. For this reasons, they become, properly speaking, matters for political debates rather than for legal discussion. If the special needs of our country, to have political coherence, national integration, and planned economic development of all parts of the country so as to build a welfare States 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 invitable".

(64) It was also observed:—

"It could, therefore, be argued that although the Constitution itself does not lay down specifically when the power of dissolution should be exercised by the Governor on the advice of a Council of Ministers in the State, yet if a direction on that matter was properly given by the Union Government to a State Government there is a duty to carry it out".

(65) It was further stated that:—

"The time for the dissolution of a State Assembly is not covered by any specific provisions 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. 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. If the view of the Union Government and the State Government differ on the subject, there is no reason why the Union Government should not adieu 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. All that the Court can do is to consider whether an action proposed on such 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."

(66) It was further observed:—

"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".

(67) It was also held that:—

"Article 17(4) (b) 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). 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."

(68) It was observed by Hon'ble the Chief Justice, that:—

"As the question of the proper time for a dissolution of the 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."

(69) The Hon'ble Supreme Court further laid down that:—

"If 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 collateral purpose is sought to be achieved by a proclamation under Art. 356, 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 allegations made in the plaints and in the petitions before the Court relate, in substance, only to the sufficiency of the grounds of action under Art. 356(1) of the Constitution and go no further, the Courts cannot proceed

further with the consideration of the plaints under Art. 131 or the Petitions under Art. 32".

(70) Lastly, but not leastly, it was observed by Hon'ble Bhagwati and A. C. Gupta, JJ. that:—

"The defeat of the ruling party in a State at the Lok Sabha elections can not 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. But where there has been a total rout of candidates belonging to the ruling party, and in some of the plaintiff-State, the ruling party has not been able to secure a single seat, it is symptomatice 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 part, 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 conquences can never ensure 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). 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)."

(71) It was further observed that :—

"One purpose of our Constitution and laws is certainly to give electors a periodic opportunity of choosing their State's legislature and, thereby, of determining the character of their State's Government also. It is the object of every democratic constitution of given such opportunities. Hence, a policy devised to serve that end 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 prohibition against the dissolution of a legislative assembly before a certain period has expired. If there had been a Constitutional prohibition, so that the proposed action of the Union Government could have contravened that constitutional interdict, we would have been obliged to interfere, but, can we do so when there is no Constitutional provision which gives the legislature of a State the right to continue undissolved despite certain supervening circumstances which may, according to one view, make its dissolution necessary"?.

(72) The Hon'ble Supreme Court further laid down that :—

"The choice between a dissolution and re-election or a retention of the same membership of the legislature or the Government for a certain period could be matters of

political expediency and strategy under a democratic system. Under our system quest of political power through formation of several political parties, with different socio-economic policies and programmes and ideologies, is legal. Hence, it cannot be said that a mere attempt to get more political power for a party as a means of pursuing the programme of that party, as opposed to that of other parties, is constitutionally prohibited or *per se* illegal."

(73) The power to dissolve the State Assembly vests in the Governor, who had exercised the same under Article 174 of the Constitution of failure of the Constitutional machinery in the State.

(74) Mr. Setalved in his Tagore Law Lectures, 1974 on "Union and State Relations", as noticed by the Hon'ble Supreme Court pointed out :—

"The Constitutional machinery in a State may fail to function in numerous ways. There may be political deed lock; 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."

(75) The Hon'ble Supreme Court noticed that it is for the Union Government, in exercise of its executive powers to consider it fit, when it is satisfied that political situation is such that a fresh election is necessary in the interest of public to establish confidence of the People in the Government of a State.

(76) The Hon'ble Supreme Court also laid down that :—

> "Though the action of imposition of President rule under Article 356(1) of the Constitution is justiciable, if the grounds which are disclosed, were sufficient or the imposition of President rule under Art. 356 of the Constitution is quite another matter and that cannot be gone into."

(77) Hon'ble Justice Chandrachud, while dealing with the powers under Article 356 of the Constitution observed :—

> "Mr. Garg expressed a grave concern for the future of democracy, 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 the country resolved to Constitute India into a Sovereign Democratic Republic, gave to it a law or laws containing empowerment to detain its citizens, to pass ordinances and to declare emergencies. A declaration of emergency brings in its trail a host of consequences calculated to impair both the democratic foundation and the federal structure of our Constitution. The executive power of the Union then extends to giving the 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 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, approval or no approval. The reason of this rule is that there may be situations in which it is imperative to act expeditiously and recourse to the parliamentary process may, by reason of the delay involved, impair rather than strengthen the functioning of democracy. The Constitution has, therefore, provided

safety-valves to meet extraordinary situations. They have an imperious garb and a repressive content but they are designed to save, not destroy, democracy. The fault, if any, is not in the making of the Constitution but in the working of it."

(78) As a necessary corollary to what has been observed above, the Hon'ble Judge, came to the conclusion that :—

"The *sine qua* non of the exercise of that power is the satisfaction of the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The reasons contained in the Home Minister's letter may not be such as to necessarily lead to the conclusion that there is a break down of constitutional machinery in the nine States. But the test of proof by preponderance of probabilities leave alone the test of circumstances being consistent with a sole hypothesis, is entirely out of place in considering the constitutional validity of a Presidential proclamation. It is for the President to judge whether a situation of the particular description has arisen necessitation the issuance of proclamation for assumption, of all or any of the powers conferred by Article 356(1). He is expected and ought to judge fairly but we cannot sit in judgment over his satisfaction for determining whether any other view of the situation is not reasonably possible. So long as the reason if any are disclosed, given for the action proposed or taken, bear a reasonable nexus with the exercise of the particular power, the satisfaction of the President must be treated as conclusive. It will then not be open to judicial scrutiny. If, however, the reasons given are wholly extraneous to the formation of the satisfaction, the proclamation would be open to the attack that it is vitiated by legal malafides".

(79) The Hon'ble Judge came to the conclusion that the climate of uncertainty, diffidence and disrespect, had given rise to serious threats to law and order and observed that :—

"There does not bear rational nexus with the necessity for issuing a proclamation with a view to dissolving the Legislative Assemblies of the States."

The Hon'ble Judge laid down after noticing various treaties that Courts are not the only agency of the Government that must have assumed a capacity to go on. It is sooner or later that ever political question becomes a judicial question. The Hon'ble Judge noticed from the Privy Council in *Stenhen Kalong Ningka* v. *Government of Malaysia,* 1970 A.C. 379 at page 392 as under :—

> "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, remain unsettled and debatable".

(80) Hon'ble Justice Bhagwati, after noticing various provisions of Constitution and mechanism provided for came to the conclusion 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.———Is it not the right of the State under the Constitution that its executive power shall be exercisable by the Governor except when any function of the State Government or any power of the Governor are assumed by the President by valid exercise of power under Art. 356".

(81) There is no legal right in State to be governed by a particular Council of Ministers.

(82) In answer to a question, what is the scope and ambit of powers under Art. 356(1) and can the President in exercise of power dissolve the Assembly or is there any limitation of this power. Hon'ble the Supreme Court observed :—

> "It would be clear from this discussion that when a proclamation is validly issued by the President under Art. 356 Cl. (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 consequences 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 ensue which would be beyond repair. When any power of the Governor is assumed by the President under the Proclamation, the President can, during the two months when the Proclamation is in force, do whatever the Governor could in exercise of such power, and it would be immaterial whether the consequence of exercise of such power is final and irrevocable or not. To hold otherwise would be to refuse to give full effect to the proclamation which, as pointed out above, continues to operate with full force and vigour during the period of two months. It would be rewriting Art. 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 President in exercise of the power assumed by him under the proclamation, it would be impossible to restore the status *quo ante* if the proclamation is not approved by both Houses of Parliament, but that is the inevitable, consequence flowing from the exercise of the power which the President undoubtedly possesses during the time that the proclamation is in force. This is clearly a necessary power because there may conceivably be cases where the exercise of the power of dissolution of the Legislative Assembly may become imperative in order to remedy the situation arising on account of break down of the constitutional machinery in the State and failure to exercise this power promptly may frustrate the basic object and purpose of a proclamation under Art. 356, Cl. (1). It is, therefore, not possible to accede to the argument of the petitioners, in the writ petitions that during the period of two months before approval of the proclamation by the two Houses of Parliament, no irreversible action, such as dissolution of the Legislative Assembly of the State, can be taken by the President. The power to dissolve the Legislative Assembly of the State cannot also be denied to the President on the ground that the proclamation may not be approved by one or the other House of Parliament. In the first place, the existence of a constitutional power or the validity of its exercise cannot be determined by reference to a possible contingency. The Court cannot enter the realm of conjecture and surmise the apeculate as to what would be the position at the expiration of two months whether the proclamation will be approved by both Houses of Parliament or not. Secondly, it is entirely immaterial whether or not the proclamation is approved by both Houses of Parliament because even if it is not so approved it would continue to be in full force and effect for a period of two months, unless sooner revoked. It is also difficult to appreciate how Art. 357 Cl. (1), sub-cl. (c) can possibly assist the argument of the petitioners. That sub-clause provides that when the House of the People is not in session, the President can authorise expenditure out of the Consolidated Fund of the State pending receipt of sanction of such expenditure by the

Parliament and consequently, it is possible that if Parliament does not sanction such expenditure, serious difficulty might arise. But that is merely a theoretical possibility which is practical reality of politics would hardly arise and it need not deflect us from placing on the language of Art. 356 the only correct interpretation which its language bears. When the President issues a proclamation on the advice of the Central Government, it stands to reason that the House of the People in which the Central Government enjoys majority would sanction expenditure out of the Consolidated Fund of the State. We are, therefore of the view that even during the period of two months, without the approval of the proclamation by both Houses of Parliament, the President can dissolve the Legislative Assembly of the State in exercise of the power of the Governor under Art. 174(2) (b) assumed by him under the proclamation."

(83) Further in paragraph 141 of the judgment, the Hon'ble Judge observed that :—

"This is the correct constitutional, interpretation of Cls. (1) and (3) of Art. 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 Parliamentary control over the issue of proclamation and exercise of powers under it and the Central Government would be free to take over the administration of the State and paralyse or even dissolve the Legislative Assembly, even if it should appear that one or the other House of Parliament might not approve it. But this apprehension need not cause an undue anxiety, for it is based primarily on the possibility of abuse the power conferred under Art. 356 Cl. (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 incharge of administration and the existence of enlightened

and alert public opinion. Moreover, it is apparent that a piquent situation of considerable complexity and extraordinary 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 Art. 356, Cl. (1). Furthermore, 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 exercisable by Parliament would always be a salutary check against improper exercise of power or its misuse or abuse by the executive. And lastly, the power 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 reviewability. These are the safeguards which must allay the apprehension that the Central Government may act want only or capriciously in issuing a proclamation under Art. 356, Cl. (1) by passing and ignoring the two Houses of Parliament".

(84) The Hon'ble Judge wanted the Courts only to consider the reasons given on principle laid by the Supreme Court of the United States, described as "Judicially discoverable and manageable standards" and not to enter the political thicket.

(85) The Full Bench of the Karnataka High Court in *S. R. Bommai's case* (supra) came to the conclusion that proclamation made under Article 356 is justiciable Courts could look into the material or the reasons disclosed for issuing the proclamation to find out whether those materials or reasons were wholly extraneous. Under Art. 356 (1) the President has to be satisfied on the basis of the report received from the Governor or otherwise, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The satisfaction of the President

should be the result of comprehending in his own way the facts and circumstances relevant to the subjective satisfaction. Satisfaction is to be of the President and the President alone. President means the Council of Ministers.

(86) On facts their Lordships came to the conclusion that the report submitted by the Governor conveyed to the President of the essential and relevant facts which bore close nexus and proximities of all the requirements of Article 356. This finding of fact was given keeping in view the fact that the Governor's report to the President to the effect that there are serious dissentions cropping up in the Janta Party on the resignation of the leader of the ruling party. The dissensions have come up to the surface in the elections held to the Legislative Council and the Rajya Sabha. A new leader was elected to form the Government. Reference to a letter withdrawing support to the leader of the party was referred to. From the said facts, the Governor came to the conclusion that a situation has arisen in the State in which the Government cannot be carried on in accordance with the provisions of the Constitution.

(87) Their Lordships noticed the following propositions in coming to the above referred conclusion:—

> "(8) That in law the legal *mala fides* which vitiate the impugned proclamation should be attributed to the President or the Union Council of Ministers who in reality exercise the power under Art. 356(1). Hence, in our view, sending up a report by the Governor to the President invoking exercise of his power under Art. 356(1) cannot be a ground for holding that the impugned proclamation is one which is tainted with legal *mala fides*.
>
> (9) That in the view we have taken on the material disclosed that the same is relevant and the subjective satisfaction arrived at by the President is conclusive and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356 (1), we do not think that it is necessary for us to go into the respective contentions as to the scope of Art. 74 (2). So far as the scope of judicial scrutiny is concerned, presuming that the satisfaction rested on relevant and irrelevant grounds, our approach is to be guided and controlled solely by the decision of the Supreme Court in *Rajasthan's* case.

As we read the decision, especially the observations of Chandrachud, J. and Bhagwati, J. excerpted earlier, we find no escape from the conclusion that the Courts should base their decision on the disclosed material and probing at any greater depth would be to enter a field from which Judges must scrupulously keep away.

(10) That the basic fact to be determined is the relevancy of the grounds disclosed, and if the same are found to be relevant, then no exception can be taken to the exercise of power under Art. 356(1). In the instant case, as already held, the facts disclosed are relevant and bear a rational nexus to the impugned Presidential Proclamation. We find no escape from the conclusion that the grounds stated and material supplied in the reports of the Governor are neither irrelevant nor vague, that the reasons disclosed bear a reasonable nexus with the exercise of the particular power and hence the satisfaction of the President must be treated as conclusive, and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356(1)".

(88) Learned counsel for the parties are one at the proposition of law to the extent that the Proclamation of President rule under Article 356 of the Constitution is justiciable. The Courts on the basis of the facts disclosed can go into the question whether there are reasons for the President's satisfaction 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 Court can further go into the facts disclosed and see as to whether those facts are germane to the object to see whether there is failure of the State Government to govern in accordance with the provisions of the Constitution and are not extraneous or whether they bear any malice in law, or there is any preversity in coming to the satisfaction envisaged by Art. 356.

(89) The contention of the learned counsel for the petitioners that the report as referred to above, in fact, is not the report but only an opinion of the Governor and the satisfaction of the President on the opinion of the Governor is no satisfaction. It would be an extraneous consideration. The reference made by the Governor with respect to his satisfaction on the report and other information cannot be sustained, as other information was not disclosed and alleged report of the

Governor is merely the Governor's opinion. Thus, there are no grounds or basic material before the Governor to arrive at a satisfaction that the Government cannot be carried on in accordance with the provisions of the Constitution.

(90) We find no force in the contention raised by the learned counsel for the petitioners. It would be obvious from the facts and contents of the Governor's letter referred above in brevity, that it is, in fact, Governor's report on facts to the President. Drawing a conclusion from the facts referred in the letter or forming an opinion and reproducing it in the letter addressed particularly when the conclusion or the opinion is severable from the facts disclosed in the letter would not deprive the letter or report of its character of being a report. The report has to be read as a whole, the intent, contents and purpose are obvious, i.e. to report the prevailing facts to the President.

(91) We are of the opinion that facts reported and reproduced above do bear a nexus to the object of Article 356. Law and order situation alone may by itself, be not a ground for imposition of President rule but as disclosed by the facts reported by the Governor to the President and his being satisfied, whose satisfaction is material, that a situation has arisen that the governance of the State in accordance with the provisions of the Constitution was not feasible, is sufficient to impose the President rule. Keeping in view Article 355, it is the incumbent duty of the Union to see that the Government of every State is carried on in accordance with the provisions of the Constitution. In our consideration opinion, in view of the situation depicted by the report of the Governor and admitted failure of the State Government to control the law and order situation, it cannot be said that satisfaction of the President was arbitrary or was for extraneous consideration.

(92) It is not disputed that the Governor's report does mention the facts on which President felt satisfied with respect to the failure of the Constitutional governance in the State of Punjab.

(93) The validity of the imposition of the President rule was not seriously questioned by the learned counsel for the parties. The thrust of the arguments was directed towards its illegal continuance. Still the contentions of the parties with respect to the invalidity of the imposition of President rule are dealt with.

(94) The contention that the alleged Governor's report was his opinion and satisfaction of the President was, on the opinion of the Governor and further satisfaction on other reasons having not been disclosed, it would be deemed that there are no other reasons and the satisfaction of the Governor is no satisfaction, is noted to be rejected. The satisfaction of the President is subjective. Satisfaction is to be judged as has been precedently described as not 'judicially discoverable by manageable standards' and Courts are not to enter 'political thicket'. The Courts cannot and would not substitute their satisfaction for the satisfaction of the President. The Courts would not enter into political thicket with respect to the sufficiency of the material in Governor's satisfaction.

(95) We are of the opinion that other reasons have not been disclosed for coming to the satisfaction of the failure of constitutional machinery in the State, which the President arrived at on the recommendations of the Cabinet. In view of Article 74(2), the Courts are debarred from compelling the respondents for disclosure of the other material or to judge its justification. The material which has not been disclosed is not justiciable in Courts, in view of Article 74(2) of the Constitution.

(96) The claim of the petitioner that the report of the Governor was secured *mala fidly* and for the extraneous considerations in order to deprive the Akali party of its representation in the Rajya Sabha, cannot be sustained. The fact of *mala fide* has been denied. There is no allegation of personal *mala fide* against the President or the Governor. The bald assertion of the petitioner that the report was made for extraneous consideration, *mala fide* or dehors the constitution cannot be accepted. There is no material placed on record to infer so. Rather *bona fides* of the Governor are writ large for his impartial conduct to the effect that at the initial stages only the imposition of the President rule was sought and the Assembly was kept under suspension. It is only after almost a year that dissolution of the Assembly was recommended. Merely the reports carrying the opinion along with the facts, though the opinion and the facts are severable, would not be sufficient to infer legal *mala fide* or any other *mala fide,* either of the Governor with respect to report or of the President with respect to his satisfaction.

(97) For the reasons recorded above, the proclamation of the imposition of President rule and the satisfaction of the President

that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution was just and it does not suffer from *mala fides*, legal or otherwise. The claim that the President rule was imposed in order to deprive the Akali Dal of their representation in the Rajya Sabha and to gain political mileage for the Haryana elections or that the report was procured or it does not contain the material facts, cannot be sustained.

(98) The contention of the learned counsel for the petitioner that continuance of the imposition of President rule periodically was *ultra vires* cannot be sustained for the reasons given for rejecting challenge to the validity of the President rule. The contention has no substance in itself. There is no gain saying that there is nothing on the record to show that the situation ever improved after the imposition of President rule. There was no change of circumstances which came into existence, which could have necessitated the revocation of the President rule. There is no material on the record or otherwise shown that in the eventuality or revocation of President rule. the machinery for governance provided by the constitution would have prevailed. Once a finding with respect to a particular situation has been returned, it would be presumed to have continued unless shown that there was any change. The Parliament before passing the resolution for extension of President rule did take note of the situation. Thus no error can be found with the extension of the President rule which is to come to an end in November, 1990, if not revoked earlier.

(99) Much water has flown from the time of imposition of the President rule and dissolution of the Assembly and in view of our finding that no relief for restoring the Assembly can be granted to the petitioners, it would be merely academic to pronounce upon hypothetical questions *viz.* whether the grounds for proclamation of imposition of President Rule, i.e. the grounds envisaged by Article 356 can be read into Article 174 for dissolution of the Assembly, whether the ground thereof would be justiciable or whether the dissolution was extraneous? Does the dissolution amounts to setting up of a bad convention? What is the true interpretation of Article 74(2) and its legal effects? Under what conditions or on which grounds the President of India in the absence of internal disturbance can dissolve the Assembly or can he do so merely on the law and

order ground? These all would be hypothetical questions and in view of our finding returned, need not be answered in the facts and circumstances of this case.

(100) It is well established that when plain meaning are ascertainable from the language of the Constitution in which it has expressed itself, we cannot interpret them by taking into consideration the intention of the Legislatures. No aid can be taken from the motive or the constitutional debates to ascertain its meaning. It is well established that when a question arises, whether the prescribed limits have been exceeded, that question must necessarily be determined in the only way in which it can properly be answered by looking to the terms of the instruments by which affirmatively the Legislatures' powers were created and by which negatively they are restricted. It is not for any Court of Justice to enquire into the objects or motive and construe the laws constructively to find its intention when it has been expressly provided by the instrument itself. It would be expedient to refer to Article 172 of the Constitution which runs as under :

"172. Duration of State Legislature.—

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly;

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law."

(101) Mr. Khoji, learned counsel for the petitioners argued that the Assembly cannot be revived *inter-alia*, for the reasons : (1) Its

tenure is fixed by Article 172 of the Constitution and the same cannot be extended; (2) It would be futile to restore the Assembly inasmuch as the imposition of the President rule shall continue upto 11th November, 1990; (3) Power of the Governor to dissolve or to prorogue are untravelled and unlimited; (4) By imposing the President rule, the President of India has vested powers of the Government in himself. It is further contended that once the Assembly is dissolved for all intents and purposes it is dead and it is not possible to revive it under any circumstances except by amendment of the Constitution.

(102) The life of the Assembly can be varied only by the constitutional amendment. The Parliament or the Courts cannot enlarge its life. It was urged that in view of *State of Rajasthan* v. *Union of India* (11), where the Hon'ble Supreme Court found that the rejection and routing out of the ruling party in the elections of the Parliament is a sufficient ground to be invoked for dissolution of the Assembly ruled by the majority party, after it is rejected by the electorates in the Parliament elections, it would not be appropriate or justified to revive the Punjab Assembly in view of the admitted facts. In 1989 Parliament Elections, the majority party in the dissolved Assembly has been out rightly rejected and out of 13 seats to Parliament only one person has been elected. It being an obvious defeat of the ruling party of the dissolved Assembly, it is in itself a sufficient ground to decline the relief of reviving the Assembly. Even if not conceded, it is assumed that the dissolution of the assembly suffered from any infirmity, still then no provisions under the Constitution or in an statute empowering the respondents to revive it has been pointed out. By reading Article 172, it is obvious that the life of the Assembly has been constitutionally fixed as five years and it has provided the automatic dissolution of the Assembly. The only power conferred on the Parliament by carving out an exception is that in case of Proclamation of emergency is in operation, the Parliament may extend the life of the Assembly for a maximum period of one year and not exceeding six months of the Proclamation of the Proclamation of emergency has ceased to operate. There is no power with the respondents in the Constitution to revive the Assembly once dissolved. It is not disputed at the Bar that the Assembly once dissolved cannot be revived by the respondents under any circumstances. The term of the Assembly is due to expire in the second week of October, 1990, which means

(11) A.I.R. 1977 S.C. 1361.

just a few days are left for the dissolution of the Assembly by efflux of time, the life of the Assembly has been constitutionally fixed. No provision of the Constitution has been pointed out under which the life of the Assembly could be extended. As one has to look as what is clearly said, there is neither room for intentment, nor equity, nor presumption. One can look at the language alone. To be a member of the Assembly and the mechanism constituting the same, is a statutory right vested by the Statute. It cannot be stretched beyond the four corner of the Statute on any equitable ground. No action can be taken unless supported by the Legislative intent.

(103) Learned counsel for the Union of India concedes that but for the amendment in the Constitution the respondent has no jurisdiction to revive the Assembly once dissolved. He contends that the President after imposition of the President rule, has assumed the powers of the Governor and the power of the Legislative Assembly is vested in the Parliament. The President acts on the advice tendered by the Council of Ministers. The Assembly, admittedly was dissolved on the advice of the Ministers tendered to the President. The Courts in view of Article 74(2) are debarred from questioning whether any, if so, what advice was tendered by the Ministers to the President.

(104) The learned counsel for the Union of India further stated that on the instructions of his clients the grounds as stated in the Parliament for proclamation of dissolution of Assembly may not *prima-facie*, sufficient grounds for dissolution, and does not establish a healthy democratic convention. He contends that though the dissolution of the Assembly is not justiciable but if the grounds are disclosed, it would be subject to the judicial review that the grounds for dissolution are not extraneous and it is not a colourable exercise of jurisdiction. The ground for dissolution is in conformity protecting the federal structure of the Constitution.

(105) The undisputed facts which emerged from the petitions as well as the written statement which were not controverted in the course of arguments, are that the elections took place in 1985 and the results were declared on 26th September, 1985. The first meeting was held on 14th October, 1985. The proclamation for the imposition of the President rule was made on 11th May, 1987. The powers of the Legislation exerciseable by the State Legislature were conferred on the Parliament. The Assembly was dissolved on 6th March, 1988. The Home Minister in his statement in the Rajya Sabha

on 7th March 1988 brought out that in view of the notification dated 11th May, 1987 under Article 356, the Legislative Assembly was kept under suspended animation. The President rule was extended from time to time. He made a statement in the House pointing out that the imposition of the President rule brought about distinct improvement in the situation in the Punjab State inspite of the spurt and considerable rise in the number of extremists incidents. Major hindrance in the efficient and effective working of the President rule was pointed out to be the hindrance by the Legislature in the working of police and paramilitary forces who are a part of the executive wing of the State and necessary part of the Government for administration. The Home Minister claimed that there were terrorist activities; there was an attempt to create a gulf between various communities, though in spite of their efforts they stood together. An incident in Sahari village was specifically mentioned. It was reported that as the situation exists, as assessed by the Governor, there is no likelihood of any effective, stable or respectable Government committed to the cause of removing terrorism in view of the President rule, the continuance of Assembly was considered to be futile. The President under Art. 174(b) dissolved the Assembly. Thus, the dissolution of the Assembly was approved.

(106) The learned counsel for the petitioners vehemently contended that reasons for the dissolution of the Assembly pointed out in both the houses of the Parliament are extraneous to the constitutional provisions. It was argued that by the act of dissolution of the Assembly the autonomy of the State has been practically destroyed. The learned counsel urged that the Constitution is to be liaberally construed in order to keep a balance between the autonomy of the States and the Parliament. It was contended that the Assembly can only be dissolved earlier than its term of five years, in the exceptional circumstances. It was contended that the grounds envisaged by Articles 355 and 356 are the sole grounds for dissolving the Assembly and they have to be read with Article 174(b) of the Constitution.

(107) The learned counsel for the petitioners referred to Volume I of 'Debates on Constitutioanl Assembly' page 420. He further referred to paragraph 29.22 at page 2628 of Seervai's Constitution of India, and *State of Rajasthan's case* (supra).

(108) In our opinion the Courts should not undertake to decide an issue unless it is a living issue between the parties. The right of

the petitioners, if any, semblance with the right, they have as a members of the Legislative Assembly, even in the ordinary course would be terminated, with the efflux of time, on the completion of five years' tenure. The disputed period left is in days. To grant a declaration that the dissolution of the Assembly was void, illegal would be futile. Such a declaration would lead to confusion and chaos in the affairs of the Assembly particularly when only few more days are left for the completion of its tenure. Grant of such a declaration would virtually amount to unscramble a scramble egg.

(109) It may be noticed that the President Rule is to expire in November 1990 while the tenure of the Assembly would expire in October 1990. No useful purpose would be achieved by ordering the revival of the State Legislative Assembly. No other consequential relief can be granted in the facts and circumstances of this case. It would be a futile exercise to revive the Assembly during the President Rule.

(110) The intention of the Constitution for not providing any power or authority for reviving the Assembly would be obvious and implied in view of the fact that the constitution has specifically provided for revocation of the President Rule or emergency on the charge of the situation but while enacting Article 174, no such power has been provided for the revival of the dissolved Assembly. The power to dissolve the Assembly has been expressly conferred on the Governor but there is no power with the Governor to revoke the order of dissolution under any circumstances. Resultantly, it would be implidely deemed that the Governor has intentionally not been clothed with a jurisdiction to revoke the order of dissolution of the Assembly or to revive the Assembly. The Courts cannot assume the jurisdiction for issuing a direction to restore the dissolved Assembly to the Governor or the President.

(111) In view of the observations made above, the fact that the respondents have no jurisdiction to restore or revive the Assembly no direction can be given to the respondents to revive the Assembly

in exercise of writ jurisdiction as it would amount to giving a futile direction or a direction to act in a manner not permissible under the Constitution.

(112) Further it is not a fit case for the issuance of any writ in view of the reasons and events which have happened subsequent to the election to the Legislative Assembly sought to be revived. There were internal dissensions in the Shiromani Akali Dal. The Parliamentary elections were held in 1989 and there was total rejection of the petitioners' party. The results show that not only seats to the Parliament have been lost by the petitioners' party, but its candidates have lost their security deposits. This factor alone was sufficient a ground for dissolution of the State Legislative Assembly as observed by Hon'ble the Supreme Court.

(113) Further it would be impossible to ascertain whether the members still carries the confidence of the majority of the electorate. Thus, the restoration of the Assembly would result in chaos.

(114) Granting of a relief of reviving the Assembly would be a contradiction in itself particularly in view of the finding arrived at in the earlier part of the judgment confirming the satisfaction of the President as valid and legal to the effect that the Punjab Government in the situation, had failed to govern in accrodance with the Constitution and thus imposing the President Rule. Keeping in view the pre-emptory dictate of the Constitution being democracy and giving a chance to the electorates to elect their representatives after regular interval which is a policy also, reviving the Assembly would take away the vested rights of the electorate which the Court should shun. The settled matter should not be unsettled. Reviving the Assembly would amount to trenching into the independent fields of the other instrumentalities and wings of the State. It would be unjust to revive the dissolved Assembly in violation of the objective realities and fiat established and particularly in view of the democratic history that no dissolved Assembly has ever been restored by

any judicial process. It would not be fair for the Courts to settle Parliamentary practices and conventions. It has to be kept in view the giving of any direction to the respondents particularly the Election Commission, who is not even a party in this writ petition, and the other authorities or organs under the Constitution, to hold the elections would amount to denuding the Election Commission and the other organs and authorities of their jurisdiction to decide when the elections are to be held.

(115) In view of our observations above to the effect that—

(i) 64th amendment of the Constitution is valid ;

(ii) the imposition of President Rule and its continuance from time to time is valid ;

(iii) no writ in the facts and circumstances of this case can be issued for restoration of the Assembly and resultantly no finding with respect to validity of its dissolution is called for ; and

(iv) no directions can be issued to the Election Commission and the Union of India to hold elections to the Legislative Assembly in the facts and circumstances of this case;

these writ petitions fail and are dismissed with no order as to costs.

R.N.R.

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