

CHAPTER 8

Conclusion

An exchange in Parliament

Shri Dixit

(As a result of the President's rule) people feel that their good is being safeguarded by the present Governor and the present administration.

Shri Mohammad Koya

Then why dont you have Governor's rule all over India

Shri Dixit

He had done commendable work

Shri Mohammad Koya

Good government is not a substitute for self government.¹

This exchange in Parliament may be, at least, a theoretical response to the eight hypotheses discussed and formulated by Maheshwari.² These hypotheses are

- (1) President's rule is invoked only when no political party is in a position to form the government.
- (2) Law and order is maintained firmly under President's rule.
- (3) The functioning of the state government becomes more efficient under President's rule than under popular rule.
- (4) Political interference in the functioning of the administration is reduced under President's rule.
- (5) Corruption in public administration disappears under President's rule.
- (6) Developmental programmes come to receive high priority under President's rule.
- (7) The central government's bounties to the state increase significantly under President's rule.

1. 47 *L.S.D.* (Third Series), November 2, 1965, col. 416.

2. S. Maheshwari, *President's Rule in India* (1977) 153.

(8) People prefer President's rule to a popular regime.

Although no political scientist—Maheshwari included—supports the hypothesis in these propositions completely, it is important to remember that the concept of the imposition of President's rule on the failure of the constitutional machinery in the states has to be read in the context of the provisions of the Constitution as a whole. There is no doubt that the Constitution must have envisaged an efficient administrative delivery system to deliver its goals. At the same time the Constitution envisaged a system of parliamentary democracy at central and state level operating within the framework of a federal structure “with unique safeguards for enforcing national unity and growth”.³ This very uniqueness of the federal structure implies that the centralising tendencies in the Indian Constitution have been subjected to manipulative use and abuse. Such a federal structure cannot be worked if, as has been pointed out, the attitudes of the political parties who are responsible for running the federal structure “are contradictory and depend a great deal on expediency.”⁴ What is needed is what another political scientist has called “the federal spirit”.⁵ It is not possible for a normative system to work unless it is supported by an operational consensus morality by which the working aims of the system are given a decisional viability. The word “operational” needs emphasis because it is by no means suggested that any complete “consensus” on the working morality of the parliamentary and federal system is possible. What is possible is the evolution of certain ground rules in order to permit a certain element of predictability and also to ensure some measure of correspondence between the normative system and its actual working in practice. In this context, one political theorist has made a plea for a wise accommodation for a more liberal concept of federation. He argued that:

It is not unnatural to forecast that in the coming years the states will strive for greater initiative and seek an equation of fruitful partnership rather than of mere subordination.⁶

This prediction, made as early as 1967, has been marked with a certain measure of prescience. The *Rajmanner Report on Centre-State Relations* (1977) from the State of Tamil Nadu and Jyoti Basu's memorandum demanding greater political autonomy in 1977 demonstrate the need for a certain sagacious flexibility in this area. The fact that Chief Minister

3. V.G. Ramachandran, “Is the Constitution of India Federal” (1959) *S.C.J.* 97-108.

4. E.g. Bhambhri, “Political Parties and Centre-State Relationships” (1969) III *J.C.P.S.* (No. 4) 46 at 51.

5. S.P. Aiyer, “The Structure of Power in the Indian Federal System” (1969) III *J.C.P.S.* (No. 4) 55-67.

6. K.R. Bombwall, “Federalism and National Unity in India” (1967) *I.J.C.P.S.* (No. 1) 68 at 69.

Sheikh Abdullah of Kashmir has joined Basu's initiative proves both that these moves are politically motivated and that these political needs transcend ideological ethnocentricity.

A full discussion of the emerging nature of Indian federalism is beyond the scope of this book. It is enough to say that the use of article 356 for the various purposes for which it has been used violates what has been earlier referred to as "the federal spirit." There are, of course, various views on this. These are some commentators who feel that the presidential rule provisions have not been abused. In 1967, Pylee felt that these provisions

proved not only a protective device for responsible government but also a blessing in disguise to political parties who are unwilling to shoulder responsibility for a time on account of group rivalries and other unfavourable circumstances.⁷

Another political scientist has also observed: "It can be safely said that till now article 356 has not been exercised with high handedness. Its exercise has been cautious and useful."⁸

Even more startling is the comment made by another academic in 1977.

If the use of article 356 becomes unavoidable because of instability then it should be used for quite some time; may be even for three years in certain exceptional cases so that the opportunistic politicians may also feel that even in their own interests they should not change their party loyalties too frequently.⁹

Most scientists accept that there has been use and abuse of these provisions. The imposition in Kerala is a controversial example.¹⁰ There is, however, some truth in the observation that a:

Satyagraha, a civil disobedience movement, general strike, a political stir, a mass upsurge and an unified and concerted effort of a political agitation to paralyse the government to coerce the ministry to resign are not political conditions which amount to and constitutes an internal disturbance that warrants the President's emergency rule;

7. M.V. Pylee, "The States under Constitutional Emergency" in S.A.A. Haqqi (ed) *Union-State Relations in India*, 73 at 85.

8. P. Singh, *Governor's Office in Independent India* (1968) 195.

9. J.R. Siwach, *The Office of the Governor* (1977) 275.

10. See H. Austin, *Anatomy of the Kerala Coup*. (1959); K.R. Bombwall, "The Impact of the Emergency Provisions on Federalism and Democracy in India" in S.P. Aiyar and Usha Mehra (ed), *Essays on Indian Federalism* (1965) 197-8;

or justifies union intervention unless the States Government deems it so and invites union intervention, unable to cope with the situation.¹¹

The powers in article 356 were not intended to be open ended. The presidential rule provisions do not authorize its exercise either to deal with what is politically convenient or to find an expedient way out of an embarrassing imbroglio. The power was intended to be used with restraint.¹² While it is true to say that the exercise of these powers may not excite judicial interference¹³ certain political factors can be brought into play. The President does not act in this matter on his own discretion. He is bound by the advice of his Council of Ministers¹⁴ even though he may use various political mechanisms to resist and influence the advice his ministers give him. We cannot, however, rely on the President's powers to discourage and warn as sufficient political safeguards. As it happens, and this has been discussed in an earlier chapter, Parliament cannot also control the increasing incidence of the imposition of President's rule. This is partly due to the manner in which the parliamentary democratic model that the Indian Constitution has adopted works. It is also due to the fact that Parliament itself has not been given too pivotal a role by those provisions of the Indian Constitution which deal with President's rule. Parliament's role is an *ex post facto* role. Parliament acts after the event. Various political factions in Parliament have often used various methods to make their views felt, to analyse some of the root causes of President's rule and to suggest and devise

11. P. Gopalkrishnan, "The Constitutional Implications of President's Rule in Kerala" (1959) *S.C.J.* 161-176.

12. See further K.K. Koticha, "Presidential Intervention under Article 356 of the Constitution" 2 *J.I.L.J.* 125-133 (1960) generally.

13. It had been argued in the early chapters that there may be a case for judicial interference in extreme cases even after *State of Rajasthan v. Union of India*, A.I.R 1977 S.C. 1361; Note the view of K.P. Krishna Shetty "President's Power Under Article 356 of the Constitution—Theory and Practice" in A. Jacob (ed.), *Constitutional Developments Since Independence* (1975) 344-5 that although the judicative satisfaction of the executive is not justiciable "the manner in which he formed this satisfaction ... may be justiciable." It is significant that he also argues that "in most of the cases that arose since the commencement of the Constitution the power under article 356 has been used strictly in conformity with the letter and spirit of provisions of the article". This suggests that the writer had a narrow criteria of justiciability in mind.

14. K.M. Munshi, *The President under the Constitution* (1963) 10-12; c.f. M.M. Ismail, *The President and Governors in the Indian Constitution* (1972) 24 "To accept that the satisfaction of the President referred to in the articles of the Constitution means the 'satisfaction of the Council of Ministers' is to make the President merely a *benami* or alias for the Council of Ministers and certainly the Constitution does not envisage such a status for the President." It is entrusted that the workings of the parliamentary system demand that although the President may resist the advice of his Council of Ministers he is ultimately bound by their advice. Any other solution would precipitate the existence of a power without democratic accountability.

institutional methods to monitor the operation of President's rule. As it happens, Parliament has not been effective in either making its voice heard or a watching brief on the operation of President's rule.

The Governor's role is important and often crucial even though it must be remembered that article 356 does not require a gubernatorial report as a condition essential for the declaration of President's rule. The Governor has dual loyalties—to the centre which appoints him and to which he is accountable; and to the state whose head he is and whose Council of Ministers have to advise him.¹⁵ Even so, it has been rightly said that there are circumstances where: "...[t]he Governor by his own action created a ministerial vacuum in the state and then sent his report required under article 356."¹⁶

The Governor's position is not easy. This is not just because of his dual loyalties but also because his independence is curtailed by the fact that he has no security of tenure. Following the general elections of 1967, the Congress lost its hold on many of the state governments. The opposition parties who aspired to, or actually did, form ministries were often loosely held together coalitions. The instability of these coalitions, already accentuated by inter-party dissidence, was made more difficult by defections. The Governor had to decide whether or not certain ministries enjoyed, or would enjoy, a measure of stability. This could be done in two ways. The first was to leave it to the assemblies to determine this. The second was to decide these matters by gubernatorial investigation.¹⁷

Normally, the parliamentary democratic method demands a use of the assembly technique; but certain problems arise. In the first place, the state of play of assembly parties may be such that leaving these decisions in the hands of the assembly, called by the Chief Minister at a convenient time, may produce political corruption and thus make an expedient use of the democratic process by destroying the latter. Secondly, some Governors felt that to unleash uncertainty and instability in the state which they govern without a preliminary check by the Governor would be an unhappy compromise. Thirdly, Chief Ministers themselves have often avoided meeting the assembly by either postponing the exercise or asking for the

15. E.g. C.P. Bhambhri, "The Governor and Emergency" in S.A.A. Haqqi *Union-State Relations in India (1967)* 97; See generally P. Singh: *The Governor's Office in Independent India* (1966); J. Siwach, *The Office of the Governor: An Analysis (1977)*: a very informative and cogent account; H. Chand, "Governor's Powers in Appointment and Dismissal of Ministers and Convening, Proroguing and Dissolution of State Assemblies" in A. Jacob (ed), *Constitutional Developments Since Independence (1975)* 87 stressing this dual role.

16. K.P. Krishna Shetty, (*op. cit.*) at 349.

17. See generally S.C. Kashyap, *The Politics of Defections: A Study of State Politics in India* (1969)

assembly's dissolution so that they can appeal to the electorate. If the electorate reacts with a uniform ambiguity on each occasion, state politics in India would be characterized by a continuing and never ending saga of elections.

The assessment of Governors cannot become a substitute for control by an assembly. Ideally the political viability of all ministries must be tested on the floor of the assembly. But the question that arises is this: can this salutary assembly mechanism, which has been conveniently abused in so many situations by Indian state politicians be relied upon totally? Should Governors trust the assembly technique implicitly even though they are certain that politics in the state are in an incoherent state. At the same time, Governor's cannot stifle parliamentary democracy in the states. Coalition and minority ministries must be given a chance to form a government. But this is a rule-of-thumb. It would be inexpedient to treat it as anything other than a governing principle. Even so, to use it as a governing principle requires a great deal of courage and sensitivity on the part of those who are the Governors of Indian states. On a lot of occasions the Governors have not only been insensitive but even hostile to minority or coalition governments who should have been given a sporting chance to create an administration for the state.

In the end, however, the continued use of President's rule reflects on the Indian people as a whole. Inevitably, this must include India's politicians. The form of parliamentary government adopted by the Indian Constitution can only work if certain political ground rules allow for certain predictable patterns of behaviour. The ground rules of Indian political system, as they are constituted today, work on the theoretical assumption that every sectional interest in India can be politically effective if it uses the political and constitutional structure expediently, ruthlessly and without obeisance to the operational morality that the parliamentary system envisages. This theoretical assumption rests on the premise that various interests seek a quick translation of their ambitions and frustrations into political reality even if this means breaking existing conventional norms of political behaviour. This idea of a "quick translation" of aspirations into reality induces a certain speed into system. The political system begins to reflect every twist and turn of political behaviour instead of stabilizing itself. In time, the system itself, having compromised all its ground rules, begins to weaken unless some alternative rules are found to replace the previous ground rules.

In India today, we have compromised all our existing ground rules without providing an alternative. The frequent use of the President's rule provisions merely reflects the uncertain nature of Indian politics and the impatient and shortsighted manner in which our politicians plan India's future.

