REPORT OF THE
LIBERHAN AYODHYA COMMISSION
OF INQUIRY

CHAPTER 11
PRESIDENT'S RULE

134. President's Rule

134.1. The role of Central Government was not referred to the commission and therefore its role with respect to Ayodhya issue is not strictly within the purview of questions referred to the commission.

134.2. However, since the commission was specifically asked to find out events, facts and the circumstances, as well as the role of chief Minister and ministers and other officials of the state of Uttar Pradesh, insofar as it related to the demolition, and to pinpoint the deficiencies in security etc., the residuary question finally posed[637], requires some discussion about the role of the Central Government as well.

134.3. It was submitted that the Central Government had contributed to the demolition through its sins of omission, inasmuch as it had failed to impose President's Rule in the state and to take over the administration thereby protecting the disputed structure. The Central Government was blamed for not deploying paramilitary forces to protect the disputed structure on the fateful day or earlier thereto.

134.4. It would therefore be appropriate to succinctly deal with the non-imposition of President's Rule in UP and the non deployment of paramilitary forces etc. by the Central Government.

[637] *"to find out any other matter concerned with it was before the commission"*

134.5. Evidence with respect to these facts was led and some witnesses were also cross-examined on this aspect. Books and articles were referred, relating to this.

134.6. During the course of the recording of evidence oral objections, though without formal permission, were raised that the subject did not fall within the purview of the enquiry by the Commission in view of the questions referred to it. Neither any such written objection was raised by the Union of India or the counsel representing the other parties appearing before the Commission, nor were the questions referred to the mandate varied or modified despite the fact that the parties making this request had been in governance for almost a decade.

135. Background

135.1. India was constituted a sovereign and secular democratic republic in order to secure justice, liberty, equality and fraternity thereby ensuring dignity of the individual and the unity and integrity of the nation.

135.2. A numerical minority in a democracy cannot succeed in securing decisions or results opposed by the majority. For this reason fundamental protections, including those of equality and the freedom to practice their religion, need to be protected. The Indian constitution assures equality in no uncertain terms. But the implementation of this equality is affected, interpreted and nuanced by a wide variety of factors. The constitutional guarantee of the fundamental rights is an unambiguous effort to secure and ensure the dignity of the individual, unity of the nation and a casteless society. Secularism provides the foundations for the governance of the nation.

135.3. In order to protect the unity of this diverse nation, the powers of the Union government and the State Governments are delineated and are enumerated in the constitution itself. The Indian system is therefore called a *loosely federal and unitary government*. The Indian federal state is a political convenience and meets the requirement for complementing national unity. The states are integrals part of the union are not independent sovereigns or autonomous units. The *Union* is indestructible while the *states* are not. The emphasis of

the constitution is on a strong Centre in order to sustain the unity of the country.

135.4. The issue before the Constituent Assembly responsible for fleshing out the constitution was of deciding those powers which were to be given to the states and those to be taken away and to be exercised instead by the Union government. Between the union and the states, who should have supreme power? Since the fundamental rights were deemed to be critical for the common man, it was important to insulate and guard these privileges by placing them in the hands of a strong, integrated and democratic Central Government. Hence the Indian union government enjoys a stronger status as compared to the State Government in the matters concerning these rights.

135.5. Even with all the expertise and wisdom at their command, the founding fathers of our constitution could possibly not envisage or foresee the twists and turns that the unrestrained and unprincipled mind is capable of.

135.6. The human mind, being a highly complex and fertile entity, has a tendency to cause men to push the boundaries of authority and to try to overreach established boundaries. The constitution diffuses the power and the might of the state. It provides adequate checks and balances which would ensure that the secularism, fundamental rights, liberty, justice, equality, fraternity, unity and integrity of the nation.

135.7. This dispersion and distribution of power between the union and the State Governments is the only way for workable governance. The various branches of the government are inter-dependent and also complementary to each

other. Executive powers are *sine qua non* for governance and essential for an orderly peaceful society governed by rule of law. For effective working of executive powers, each has inherent powers which imply incidental, plenary and emergency powers which are quite essential for governance and administration. It had been aptly said by Lincoln, "*it is possible to lose the nation and yet preserve the constitution. One does not care whether one calls it residual, inherent, moral, implied aggregate and emergency or any other power otherwise.*" For enjoying freedom or constitutional rights or secularism, executive or administrative power is a prerequisite of democracy and in democratic governance.

135.8. The President is the repository of all executive powers of the nation. Procedurally he is expected and ordained by the Constitution to act on the advice of council of ministers, or as otherwise provided by the constitution. The Governor is vested with the executive powers qua the state. Of course, subject to the powers of the President of India. He is to act on the advice of the Council of Ministers of the state, or in terms of powers vested in him by the Constitution specifically. The legislature too has executive powers which is capable of being exercised by enactment of laws etc. as provided by the constitution.

135.9. Historically and traditionally, the executive powers were exercised by the bureaucratic executive service of the state or the centre. Post independence, these functions were carried out jointly and severally by political executive and the bureaucratic executive. Immediately after the partition and at a time when there was a chaotic and tumultuous scenario, the bureaucratic executive

became overassertive as overbearing as compared to the political executive. The conduct of the District Magistrate in Ayodhya in 1949 is a fine example of this.

135.10. The bureaucratic executive started losing its independence for innumerable reasons while the political executive started undermining the bureaucratic executive's importance, effectiveness, relevance and expertise. The political executive having become a past master, used the numbers game of caste, religion etc. as well as the well known human weaknesses to arm twist the bureaucratic executive. As a necessary corollary or a sequence, they started enforcing their own whims and fancies contrary to the law against the persons they did not like or their rivals and competitors with the aid and cooperation of the bureaucratic executive to achieve their executive.

135.11. The evasion of law and its defiance has become a symbol of political importance and a means for coming to power. It is increasing in magnitude and frequency. To stay in power has become a constant and continuous goal for the political parties. In order to ensure people's support during the polls, a shelter is provided to them from the law enforcing agencies. Direct political interference at the cutting edge, aided or abetted by superior bureaucrats or the officers has decimated the concept of hierarchy of administration. The police is also in the same state of affairs. It is used by the political executive for their personal ends and to settle scores. Unfortunately the executive, the police and the other law enforcement institutions or the individuals themselves become diffident and reluctant to stick out their neck to uphold the constitution or the rule of law or to protect the rights of the people

irrespective of whether they are in the minority or the majority against the tyranny of the state.

135.12. Commissions were constituted to meet the persistent criticism of over-concentration of powers in the hands of the union and to redefine centre-state relations, including the *Administration Reforms Commission* in 1969, *Rajminnar Committee* 1969, and the *Union Territories Act 1963*. The *Sarkaria Commission* was constituted in 1987, and even thereafter, sporadic attempts continued to be made to define centre state relations.

135.13. In order to regulate and delineate the powers of the state and the union, the Indian constitution contains two lists containing the subjects on which the union and the state can each exclusively legislate; as well as a third list conferring concurrent powers on either. Residuary powers on subjects not finding mention in any of the lists are with the union. All powers, irrespective of whether they are exercised by the state or the centre or by both, are subject to the provisions of the constitution.

135.14. Political parties are an integral part of democracy and governance. One cannot conceive of a democratic form of government without political parties which are a part of the political system and constitutional scheme. In order to gain power and to form a government, the parties and their associated organizations and associations present their agenda or manifestos to the electorate. Broadly, during the regime of a particular political party, their agenda or manifesto becomes a pointer for the state's policies.

135.15. Once a particular political party forms the government it is expected to live up to its manifesto, but only as long as it does not conflict with the constitution of the country. No electoral promise or covenant can legally be allowed to be acted upon in derogation of the constitution, the principles embedded in the directive principles, fundamental rights and the various laws enacted by the parliament and the legislatures in accordance with the constitution.

135.16. The electoral system in India is however neither as robust nor going in the direction predicted by the optimistic framers of our constitution. Popular sentiment now equates electoral politics with a necessary evil rather than as a benevolent system. Politics has unfortunately come to be regarded in the people's imagination as a refuge for the more undesirable elements of society and even the truly selfless are painted with the same brush. Leaders commanding muscle power, money power, caste or criminal loyalties or those having a religious following have come to the forefront and manage to achieve success at the polls to protect their own economic and personal interests. Paradoxically, a sizeable number of those who bemoan the degradation of the system do not get themselves registered as voters, or do not vote nor take any interest nor lead nor take a stand against injustice in the system. The end result for any reason is vote bank policies and not idealism in the multicultural society's interest.

135.17. The right to religious freedom, subject of course to due regulation and restraints in the interests of public morality and health has been provided in the constitution specifically. Everyone is expected to promote harmony, spirit

of common brotherhood transcending religious, linguistic, regional, sectarian diversities.

136. Emergency powers of the President of India

136.1. The state is charged with the duty to maintain peace, tranquillity, law and order. To maintain the unity and integrity of the nation, emergency powers are provided in the constitution, which are meant to be exercised only in an emergency. The powers have been conferred on the President of India to manage the affairs of the country or any specific part during such an emergency as envisaged by the constitution. However, the constitution does not define the concept of emergency. At the same time, the situations in which emergency powers can be exercised by the president have been spelt out in the chapter XVIII of the Constitution.

136.2. Under the constitutional scheme, Article 352 envisages that on the President's satisfaction of the existence of a grave emergency whereby the security of India, or any part of it is threatened, a proclamation to that effect may be made by him. This proclamation can be made either on the actual occurrence or there being an imminent danger. The question of threat to the security is a question of fact depending on innumerable factors and perceptions. A proclamation has multiple consequences, which are however not relevant for the purpose of this enquiry.

136.3. The powers of Union of India in the situation of external aggression against the state or armed rebellion are referable to article 352. In case of internal disturbance or a state's governance not being carried out in accordance with the constitution or otherwise, the President on receipt of a report from

Governor, being satisfied that State Government cannot be carried out in accordance with the constitution, a proclamation to that effect would be issued by the President. He would assume to himself the functions of the state and the powers vested in it or powers exercisable by Governor or any other authority in the state. The powers of legislators of state cannot be assumed by him though the same shall be exercisable by or under the authority of the Parliament. Proclamation is required to be placed and approved by both the houses of Parliament, otherwise it expires on the lapse of two months. The proclamation of emergency can be extended or made operative for the maximum period of three years.

136.4. Another fact which may be noticed at this stage is that while providing for the administrative relationship between the state and union, article 257-A was added to the Constitution to the effect: "*the government of India may deploy any armed forces of union or any other force subject to the control of union for dealing with any grave situation of law and order in any state. (2) any armed force or other force or any contingent unit thereof deployed under clause 1 in any state shall act in accordance with such direction that the government of India may issue and shall not save otherwise provided in such directions is subject to the superintendence or control of the State Government or any other officer or authority subordinate to State Government. (3) Parliament made by law specified the powers, functions, privileges and liabilities of a member of any force or any contingent all units thereof deployed under clause 1 during the period of such deployment.*" The Article was however repealed by the 44th constitutional amendment with effect from 20th of June 1979.

137. An emergency in Ayodhya

137.1. The Union of India took an intransigent stand before the Commission that article 356 does not provide for taking preventive measures by issuing a proclamation and imposing President's Rule in the State. It was stated by PV Narasimha Rao that factually there was no material available with the Union of India to come to a conclusion of external aggression or internal disturbance or the apprehension that State Government either could not be carried out or was not being carried out in accordance with the constitution. It was stated that in the absence of this first step, a determination of failure by the State Government to govern in accordance with the constitution could not be made by the President, nor could any such advise be rendered by the cabinet to him.

137.2. In the context of the duty of the Union to protect the state against external aggression or internal disturbance and ensure that State Government is carried out in accordance with the constitution, the Union could deploy the central forces only with the consent and concurrence of the state. In the eventuality of the state neither giving its consent for deployment of central forces nor seeking assistance of the armed forces, the Central Government could only issue formal direction for the same effect under article 257.

137.3. The power to deploy armed forces in a state when public disorder escalates to a very high magnitude making such deployment necessary, the determination

of the conditions precedent depends on the objective satisfaction of the union or the state.

137.4. The powers to proclaim President's Rule could only be exercised by the President upon being satisfied by the state Governor's report or otherwise that the situation had developed where governance could not be carried out in accordance with the constitution in the state.

138. The perception of the Union Government

138.1. Lala Ram Gupta, the senior counsel for the Union of India admitted before the Commission that he had been the counsel for the VHP, during the examination of Narasimha Rao the late prime minister of India and had cross examined him on behalf of the VHP and the Union of India.

138.2. On the commission's specific query on the stand of the Central Government on the White Paper issued by the Government of India, Lala Ram Gupta categorically stated that the government's stand was that Central Government did whatever it could do in the situation in December 1992. It is pertinent to mention also, that at the time this question was posed, the Central Government was led by the BJP and LK Advani was the Home Minister of India; while Lala Ram Gupta was appearing as the counsel for the Central Government or the Union of India.

138.3. Narasimha Rao stated that the Sarkaria commission had, after referring to the imposition of President's Rule in 1951 in Punjab and in 1973 in Andhra Pradesh, opined that the use of this constitutional power for sorting out intra-party disputes was not the correct. He pointed out that Sarkaria Commission had suggested guidelines for imposing President's Rule whereby it was said that any abuse or misuse of this drastic power damages the fabric of constitution whereas the object of this article was to enable the Union of

India to take remedial action consequent upon breaking down of the constitutional machinery so that the governance of states is carried out in accordance with the constitution and constitution is restored. Narasimha Rao opined that since the words "remedial" and "restore" were used, it clearly showed that this article could not be used preventively or as a pre-emptive move.

138.4. After enumerating the circumstances and facts of December 1992 at Ayodhya, Narasimha Rao testified that the State Government of UP run by the BJP had claimed that it had the people's mandate to construct the Ram temple and it fully expected the karseva to be conducted within the parameters laid down by the Supreme Court. In addition to it, the Governor had warned the Union government against imposing President's Rule. A letter was sent by the Governor which stated *inter alia* that "*there are reports that a large number of Karsevaks are reaching Ayodhya and they are peaceful. The State Government has given a categorical assurance to the Hon Supreme Court who has accepted the government assurance. The State Government has also assured the full protection to disputed structure and adequate arrangements have been made to protect the disputed structure*".

138.5. Narasimha Rao stated that other inputs available to the Central Government from its own agencies, the general expectation of the common people as assessed from the media and the public, as well as the opinion expressed by members of NIC and other similar bodies, taken along with a detailed consideration of logistics and practical considerations, did not warrant imposition of President's Rule. He also stated that mere rumours and

imaginations, prejudices or hearsay were not enough for such a drastic step in democracy. Governments could not run on subjective mistrust of each other be it a BJP government in U. P.

138.6. Narasimha Rao pointed out that there were no charges attributed to the Central Government i.e. doing and permitting construction in violence of courts order and failure to protect the structure. Since the karseva was to be symbolic and peaceful it did not require imposition of President's Rule. So far violation of courts order was concerned, the remedy was initiation of contempt proceedings and not the imposition of President's Rule. He opined that the time was not right for taking any drastic steps like dismissal of government or dissolution of the state assembly or the imposition of the President's Rule in the State.

138.7. Narasimha Rao expressed the apprehension that such an imposition of President's Rule would have far-reaching consequences and could also lead to large-scale violence spreading to other parts of the country as well. The possibility of damage to disputed structure itself could not be ruled out. Therefore in his opinion there was a need to be very cautious on the issue and to weigh the various alternatives. He stressed on the need to avoid a hasty decision. He stated that in his opinion factors, neither individually nor jointly led to an inference that the government of the state could not be carried on in accordance with the Constitution of India. On the other hand, in view of the governor's report and his warning against the imposition of President's Rule, it could not have been invoked. There is another factor i.e. change in view of

the Supreme Court about judicial review of imposition of President's Rule, an inbuilt inhibition on the part of executive was introduced.

138.8. Rao also pointed out the distinction between stationing central forces and their deployment. He stated, "*We can station them, but their deployment can be only when the Chief Minister wants.*"

138.9. He stated that "*an election manifesto is a question of political reading. A manifesto has certain limitations. It is to be understood in the context of the elections*". On a query that would it not be correct to say that ordinary voters will gather the impression that the BJP intended to destroy the structure and construct temple right at the very spot, he stated that, "*I would say that ordinarily voter would expect temple. How the temple would be built, what would be done in order to build the temple, and ordinarily voter will not go into it. There will be some voters who also will read the idea of demolition in this but not all voters.*"

138.10. Narasimha Rao stated that he perceived two basic problems of Ayodhya issue i.e. that in 1992 election to Lok Sabha BJP and Congress made different commitments with respect to Ayodhya, which were irreconcilable. They could only be reconciled through negotiation and consultation with religious leaders. The other dimension to the problem was that the disputed *Ram Janambhoomi Babri Masjid* structure became a hostage in the hands of the government of BJP. The Central Government did not have even a toehold in UP. The logistics of the situation ruled out a long drawn operation and the Governor's advice against the imposition of President's Rule left the Central

Government with no option but to repeatedly request the State Government to make use of central forces stationed in the state. The state took no effective steps beyond procrastination without outright refusal.

138.11. Madhav Godbole in his book *Unfinished Innings* stated that, "*the contingency plan for July and November 1992 contemplated the government of India stepping into the shoes of State Government and taking over the administration. It was the considered view of the home Minister that such action would have to be implemented without advance warning. The greatest worry was about the damage that might be done to the disputed structure during the transition period, till the central forces firmly established their presence on the ground. Since the formalities of issuing notification under article 356 are time-consuming, it was felt advisable that action should be taken under article 355 at midnight of the selected day, to be followed immediately by the imposition of President's Rule under article 356*". It was considered that recourse to article 355 which also requires Presidential approval should be followed by proclamation under article 356. Narasimha Rao pointed out the difficulty in doing so.

138.12. It was submitted that as late as just 22 days before the 6th of December 1992 not even a single person had gone to Ayodhya and in the circumstances, one could not have inferred a constitutional breakdown. It would have been a case of clear *mala-fide*. The news of a midnight meeting held for the purpose, without an agenda and even with the highest level of secrecy would not have taken 10 minutes to reach the farthest part of the globe. Next day many speculations and rumours would have been there in media.

138.13. Other ministers also did not feel confident about holding midnight meetings as advised by the Home Secretary. Even other senior officer did not agree with the Home Secretary's views. Inderjit Gupta expressed his dissent by saying that his party was opposed to the imposition of President's Rule.

139. The proceedings before the Supreme Court

139.1. During the proceedings before the Supreme Court, the court declined to appoint Central Government as the receiver for the disputed site and instead granted time to KK Venugopal, the counsel for the state of UP, to spell out what convincing assurance the state could hold out to prevent the apprehended violence. It was pointed out that the matter symbolized a weakening of constitutional institutions. The State Government, after pointing out the possible consequences of the use of force resulting in a grave situation, stated that, "*State of UP would therefore be seeking direct negotiations with the leaders of VHP and Dharam Sansad for the purpose, so that the solution for achieving the religious aspirations should be achieved without violating the orders of the court -state would be needing one week time for this*". The Supreme Court granted this time with the caution that if it appeared that no assurance of an effective implementation of the court's orders was forthcoming from the State Government, it would be the court's constitutional duty not merely to expect but to exact obedience in an appropriate manner. The order also said that "*…this step we believe would become necessary to preserve the meaning and integrity of the constitutional institutions and their interrelationships essential to the preservation of the chosen way of life of Indian people under the constitution*". Finally the case was adjourned so that State Government could pursue the negotiations with an implicit assurance that in the meanwhile the ground realities would not be altered to the detriment of courts order. This order was made by the court on the 28th of November 1992.

139.2. It was also recorded in the order that the Special Secretary of Home had placed the progress made by the State Government in regard to the negotiations with the religious groups which had given the call for karseva on the record. The State Government pretentiously expressed that as long as the writ petitions regarding acquisitions were pending and the interim orders of the High Court were in force, no construction, permanent or temporary would be allowed. However it was stated that in order to satisfy the religious aspirations of *Ram Bhagats, karseva* other than by way of construction might take place. The State Government assured the Court that it will ensure that no construction machinery or construction material would move into the acquired land and no construction activity would take place or be carried out as long as the High Court interim orders were in force. The UP government also agreed that the character of the acquired land would not be allowed to be altered. In this context the State Government explained, that *Karseva* would be merely symbolic.

139.3. The district judge was appointed to observe and monitor the situation and to report to the Hon'ble Supreme Court vide its order dated 28.11.1992.

> *"[...] We request the Chief Justice of Allahabad High Court to spare the services of any District Judge in the State Judicial Service for a period of 2 weeks in the first instance to observe and monitor the situation and submit a report to this court whenever, in his opinion, developments tending to be detrimental to the effectuation of this order take place [...]"*

140. The *handicap* of the Central Government

140.1. Narasimha Rao stated his conclusion that vide its order dated the 28th of November 1992, the Supreme Court had in fact asked the government of India to keep out while taking effective steps to appoint an observer instead, keeping its request for receivership pending.

140.2. Narasimha Rao categorically stated that article 355 could not be invoked as a preventive measure; it could only be employed as a remedial measure. So was the case with article 356. It could be invoked when a situation had arisen and not when the situation had yet to arise; it could not be invoked in anticipation of a situation.

140.3. He stated that even according to the Sarkaria Commission's report, article 356 could be invoked on the failure of the constitutional machinery. He agreed with the opinion of Home Secretary Godbole that promulgation of article 356 is a time-consuming process.

140.4. He stated that what he really wanted on 4th or 6th of December 1992 or earlier, was to secure for the forces, proper access from the point where the forces were stationed to the point where they were to defend or protect the Babri Masjid structure. The access could be obtained in two ways, first by cooperation of State Government which was not granted, though not expressly denied, the other was a lawful entry which could be through receivership which too was denied by the court. The forces were resultantly

stationed with the intention that they would be available to the chief Minister and were at the behest of the chief Minister and were to be deployed by him at his behest as and when he so decided.

140.5. Narasimha Rao after making reference to article 257, 365 and 355 of the constitution concluded that the Union of India could only issue appropriate directions to the state and then grant it time to comply with them. This time could not be measured in hours and had to be reasonable time. He concluded that the only operative article in the constitution dealing with these situations is article 356. However, in addition to article 356, article 257A had earlier been added to meet such a situation, by empowering the Central Government to deploy forces subject to the control of Union of India in the state to deal with law and order situation. However article 257A had been deleted by the 44th amendment of the constitution.

140.6. He admitted that permitting the Shilanyas on the disputed site was a grave mistake.

140.7. He stated that the question of construction of temple did not figure before Supreme Court and the matter only centred on or around the Karseva.

140.8. He explained the contingency plan put to him by Godbole in his book, by stating that from the oral explanation given by the Home Secretary about the plan, it was not a contingency plan because Godbole wanted to start before the first *Karsevaks* arrived, which could not be a contingency. Therefore in Rao's view while preparedness was to be continued as was done by stationing forces, they could be used only by the State Government.

140.9. In answer to the question referring to the conclusion drawn by the Sarkaria Commission[638] that central forces could be deployed *suo motu* even against the consent of the state in exceptional situations, Rao stated that it was possible, but in the absence of any positive power given to the Central Government in the constitution, inferential powers were not generally resorted to.

140.10. A reference was made to the Sarkaria Commission's report, which runs thus, "*this, in short, is the legal position. Nevertheless, it must be remembered that what is legally permissible may not be politically proper. Situation of internal disturbance can effectively be tackled only through concerted and coordinate action of the union forces and the state instrumentalities concerned. In practice before deploying its force in a state, the union should sound the State Government and seeks its cooperation* …"

140.11. The governor of the state, as already discussed, is the president's man in the state. He is the official emissary of the Union and is charged with the duty of providing a continuous source of information between the state and the Union. The governor bears the heavy onerous duty of advising the president about the necessity of direct intervention, as and when required.

140.12. The entire schema of the Indian constitution is thus dependent upon the governor to gather, collate and pass on to the president, any and all information depicting the political, social and public scenario. A governor who fails to understand the responsibility of his office, or who fails in

[638] *in chapter 6 and 7*

discharging this onerous responsibility is the first crack in the federal system and ultimately responsible for the collapse of the entire edifice.

140.13. In Uttar Pradesh, the Central Government could not have proceeded to intervene directly unless it had sufficient cause or had actionable information. Such cause or information could have been provided by the governor – and this was admittedly not done in this case.

140.14. By failing to report the ground realities, the governor has at best demonstrated a lack of awareness of his responsibilities and a failure to discharge his functions; and at worst a dismal, unacceptable connivance knowingly or unknowingly or consciously or unconsciously with the State Government.

141. The Sarkaria Commission's recommendations

141.1. The Sarkaria commission recommended in para 7.2.10 that the " (i)*the use of Naval, military or air force or any other armed force of the union in aid of civil power can be made either at the instance of the State Government or suo Motu by the centre;* (ii) *the centre may exercise its discretion to locate such forces in the states and to deploy them for maintaining public order for the purpose of centre, such as protection of central property, central staff, and works in which the Centre has an interest.*

141.2. Narasimha Rao stated that in the instance at hand, there was no question of the "*state being unwilling or unable to suppress its serious breakdown of law and order.*" Indeed the State Government was asserting to it that it was in a position to control the situation and in fact there was no breakdown till the 6th of December 1992. He pointed out that "*in aid of civil power in the state*" as brought out in *Naga people movement of human rights vs. Union of India (1998) Supreme Court Cases 109* was the rationale followed by the Union government in Ayodhya matter although the judgement in the case came later. He opined that the matter has become quite clear that when central forces are so sent, they had to operate in cooperation with state authorities. In the situation of Ayodhya in the days before December 6 what all the Central Government could do was the stationing of union armed forces in aid of the civil power, for deployment with its cooperation.

141.3. After referring to the observations of the Supreme Court majority judgment he stated that it can hardly be argued that there was any material before him to come to the conclusion that the governments in three states could not be carried on in accordance with the constitution. Constitution cannot be measured only by what happens *in praesenti.* A reasonable prognosis of events to come and of their multifarious effects to follow can always be made on the basis of the events occurring, and if on such prognosis it had led to the conclusion that in the circumstances the government of the state could not be carried on in accordance with the provision of constitution, the inference could hardly be faulted. Narasimha Rao said that his submission was not contrary to the legal provisions as set out in the opinion of Sawant, J. The observations of Sawant, J were made while upholding the constitutional validity of the proclamation issued on 15th of December 1992 in respect of the states of Himachal Pradesh, Madhya Pradesh and Rajasthan. Relevant paragraphs of the judgment are as follows:

> *40. In view of the content of secularism adopted by our Constitution as discussed above, the question that poses itself for our consideration in these matters is whether the three Governments when they had to their credit the acts discussed above, could be trusted to carry on the governance of the State in accordance with the provisions of the Constitution and the President's satisfaction based on the said acts could be challenged in law. To recapitulate, the acts were [i] the BJP manifesto on the basis of which the elections were contested and pursuant to which elections the three Ministries came to power stated as follows:*

BJP firmly believes that construction of Shri Ram Mandir at Janamsthan is a symbol of the indication of our cultural heritage and national self-respect. For BJP it is purely a national issue and it not allow any vested interest to give it a sectarian and communal colour. Hence party is committed to build Shri Ram Mandir at Janamsthan by relocating superimposed Babri structure with due respect.

[Emphasis supplied]

[ii] Leaders of the BJP had consistently made speeches thereafter to the same effect. [iii] Some of the Chief Ministers and Ministers belonged to RSS which was a banned organisation at the relevant time. [iv] The Ministers in the Ministries concerned exhorted people to join karseva in Ayodhya on 6th December, 1992. One MLA belonging to the ruling BJP in Himachal Pradesh made a public statement that he had actually participated in the destruction of the mosque. [v] Ministers had given public send-off to the karsevaks and had also welcomed them on their return after the destruction of the mosque. [vi] The implementation of the policy pursuant to the ban or the RSS was to be executed by the Ministers who were themselves members of the said organisation. [vii] At least in two States, viz., Madhya Pradesh & Rajasthan there were atrocities against the Muslims and loss of lives and destruction of property.

As stated above, religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our Constitution.

We have accepted the said goal not only because it is our historical legacy and a need of our national unity and integrity but also as a creed of universal brotherhood and humanism. It is our cardinal faith. Any profession and action which go counter to the aforesaid creed are a prima facie proof of the conduct in defiance of the provisions of our Constitution. If, therefore, the President had acted on the aforesaid "credentials" of the Ministries in these States which had unforeseen and imponderable cascading consequences, it can hardly be argued that there was no material before him to come to the conclusion that the Governments in the three States could not be carried on in accordance with the provisions of the Constitution. The consequences of such professions and acts which are evidently against the provisions of the Constitution cannot be measured only by what happens in praesentie. A reasonable prognosis of events to come and of their multifarious effects to follow can always be made on the basis of the events occurring, and if such prognosis and led to the conclusion that in the circumstances, the governments of the States could not be carried on in accordance with the provisions of the Constitution, the inference could hardly be faulted. We are, therefore, of the view that the president had enough material in the form of the aforesaid professions and acts of the responsible section in the political set up of the three States including the Ministries to form his satisfaction that the Governments of the three States could not be carried on in accordance with the provisions of the Constitution. Hence the Proclamations issued could not be said to be invalid.[639]

[639] *(1994)3SCC pages 147 - 148.*

141.4. Thus the opinion of Sawant, J., supported the basis on which the aforesaid proclamation under article 356 was issued. What emerges from the above is (i) that the comments referred to, pertain to verdict in respect of the three states of Himachal Pradesh, Madhya Pradesh and Rajasthan, and (ii) they were subsequent to the demolition of the Babri structure and the demolition was the most important factor in arriving at the formulation.

141.5. Narasimha Rao further stated that a situation very similar to one on December 6, 1992, had arisen in July 1992 and had been successfully tackled by persuasion, without taking recourse to the action under the said article. Therefore, based on that experience, if the President had thought it fit to avoid such action again in December 1992 in the same hope, he submitted that it could not be faulted either. There was no glaring difference in his opinion, between the situation of July 1992 and December 1992 so as to warrant a diametrically opposite perception on the later date. He stated that the President had to decide on the basis of the material than available with him, and also the letter of the Governor of UP dated 1st of December 1992; he had also to deal with an extraordinary situation wherein the disputed structure was a helpless hostage and any precipitate action was, as per the governor's report, likely to result in the demolition of the very structure, which the Central Government wanted to save. It was in the light of these circumstances that the President's decision in UP needed to be viewed. However in view of the happenings of the 6th of December 1992, the president took a stringent view of the happenings in the other three states and ordered action under article 356. It was this later action that formed the

backdrop of the Bommai's judgement, in his understanding. The rationale of this difference in the situation as between pre-and post-sixth of December 1992, deserved to be taken note of. Rao quoted Sarkaria commission's own observations contained in para 6.3.23:

> "*in article 356 the expression* "the government of the state cannot be carried on in accordance with the provisions of the Constitution" *is couched in wide terms. It is therefore necessary to understand its true import and ambit. In the day to day administration of the state, its various functionaries in the discharge of their multifarious responsibilities takes decisions or actions which may not, in some particular or the other, being strictly in accord with the provisions of the constitution. Should every such breach or infraction of a constitutional provision, irrespective of its insignificance, be taken to constitute a failure of the constitutional machinery within the contemplation of article 356? In our opinion the answer to the question must be in the negative. We have already noted that by virtue of article 355 it is the duty of the union to ensure that the government of every state is carried on in accordance with the constitution. Article 356, on the other hand, provides a remedy when there has been an actual breakdown of the constitutional machinery of the state. Any abuse or misuse of this drastic power damages the fabric of constitution, whereas the object of this article is to enable the union to take a remedial action consequent upon the breakdown of the constitutional machinery, so that the governance of the state in accordance with the constitution, is restored. A wide literal construction of article 356 (1) will reduce the constitutional*

distribution of powers between the union and the state to a license dependent on the pleasure of the union executive. Further, it will enable the union executive to cut at the root of the democratic parliamentary form of government in the State. It must therefore be rejected in favour of construction which will preserve that form of government. Hence the exercise of the power under section 356 must be limited to rectifying the "failure of the constitutional machinery of the state" and the marginal adding of article 356 also points to the same construction."

141.6. Narasimha Rao in answer to the question of how far his decision not to impose the President's Rule in Uttar Pradesh before December 6, 1992 was a political decision and how far was it a legal decision, replied that "*my decision was dictated by legal considerations that arise under article 356 of the Constitution. It was the assessment of my government that any action under article 356 in December 1992 would not be wanted keeping in view of the categorical assurance given by the State Government and its Chief Minister to the Union of India, National Integration Council and even the Supreme Court of India to the effect that the State Government was committed to the safety of the disputed structure and that it would ensure that no harm comes to it. This was the factor that mainly weighed with my government. We had no intention to take any political advantage of the situation by actions that would be unwarranted. I was fully conscious of the grave responsibility of the union government while invoking article 356. These Parameters are found in the observations of Jeevan Reddy, J, in SR Bommai's case. It was observed that the Central Government was sceptical of these assurances. But suppose it had taken action under article 356, dismissed the government of Uttar*

Pradesh sometime prior to December 6, 1992 on the ground that he did not have any faith in those assurances, the court could well have found fault with the action. The court would have said that there was no basis for the apprehension when the State Government was represented by the Chief Minister and other high officials was repeatedly ensuring everyone including the Supreme Court that they will protect the structure. There was no reason not to believe them and the action taken at article 356 is therefore unjustified based on mere suspicion"

141.7. He further pointed out the findings of the Supreme Court in the contempt petition against Kalyan Singh, to the effect, "*there had been flagrant breach of that undertaking. They has been veiled for the sweetness of the order – but there is no indication that the government bestirred itself to take any steps, a reasonable or otherwise to prevent large-scale building material getting in to site – reasonable presumption is that government itself was not too anxious to prevent the activity. It is not merely positive acts of violence but also of surreptitious and indirect aids to the circumvention and violation of orders that are equally impermissible – the presumption is that government intended not to take such preventive steps. In the facts and circumstances of the case it is not possible to subscribe to the view that the government was helpless and the situation that had developed was inspite of all reasonable steps taken by the government – it must be held that government failed to take steps to prevent the loss of violation of the orders of Supreme Court.*" It was further observed "*indeed the act of demolition of Ram Janam Bhoomi-Babri Masjid structure at the hands of religious fanatics was an act of "national shame". The perpetrators of this deed struck not only against the place of worship, but also the principle of secularism, democracy and the rule of law enshrined in our*

constitution - what was demolished was not merely an ancient structure; but the faith of the majority in the sense of justice and fair play of majority. It shows gate and the rule of law and constitutional process."

141.8. He opined that law operates on the moral presumption that all acts of the government are rightly done. The presumption is that the government which owes its existence to the constitution would honour its own maker and mother the constitution. But no law or constitution can anticipate all those covert methods of subversion resorted to, by those wielding government power for time being, if they are determined to do so. It appears that wilful sabotage of the constitution by a government formed according to constitution was perhaps not envisaged by the founding fathers of the constitution. While open violation or defiance could be detected and dealt with, covert sabotage with the wilful face is by its nature undetectable.

141.9. The Home Minister pointed out that centre was within its rights to send force to any part of country. The Centre could easily resort to article 355 but centre had not done so in keeping with the view and spirit of interpretation of the words "*internal disturbance*"

141.10. All the statements of the Sangh Parivar leaders or the organisers of the Karseva, government and political executive seemed to be designed not to give cause to the Central Government for action against the State Government.

142. The article of last resort

142.1. Ambedkar said, "*in fact I share the sentiments expressed -- the proper thing we ought to expect that such article will never be called in to operation and they will remain a dead letter -- hope president -- would take proper precautions before actually suspending the administration of provinces -- first thing would be to issue a clear warning to the province that has erred that things were not happening in the way in which they were intended to happen in constitution.*"

142.2. It is too obvious that constitutional philosophy of a democratic free country is quite distinct from that of any other way of governance. The motivating factor for imposing President's Rule should never be political gain for the party in power at the Centre.

142.3. The election manifesto of political parties should be consistent with fundamental and basic features of constitution, secularism, socio-economic and political justice, fraternity, unity and national integrity, as the constitution envisages promotion of tolerance, harmony and spirit of commonness amongst people of India transcending religious, linguistic or regional or sectional diversities and to preserve the rich heritage of our composite culture to develop humanism, spirit of reformation and to abstain from violence.

142.4. It was observed in SR Bommai's case that one stark fact that emerged was that due to the sustained campaign by BJP and other organizations, *Ram*

Janambhoomi - Babri Masjid disputed structure was destroyed. Thus they breached the basic feature of the constitution namely secularism. It was further observed that the BJP governments cannot disassociate themselves from the action and its consequences and these governments controlled by one and the same party, whose leading lights were campaigning for the construction of the Ram temple at the disputed structure which implicitly included demolition of the disputed structure, cannot be disassociated from the acts and deeds of the leaders of BJP. The President was satisfied that the commitment of these BJP governments to the concept of secularism was suspect, in view of the actions and conduct of the party controlling these governments. The governments which had already acted contrary to one of the basic features of the constitution, viz. secularism, could not be trusted not to do so in the future. Impliedly the Supreme Court held that the BJP governments had pursued an unsecular policy or an unsecular course of action and had acted contrary to the constitutional mandate. It was observed that under the constitution no party or organisation could simultaneously be a political and religious party and had to act as only one of the two. Similarly, if a party or organisation acted or behaved in any other manner to bring about the said effect, it would equally be guilty of an unconstitutional act and would have no right to function as a political party.

143. The vital questions

143.1. The vital questions posed for consideration in the context of December 6th 1992, are

143.1.1. *Could articles 355 and 356 be invoked?*

143.1.2. *Could the forces of the Union have been deployed in the state by the Union of India unilaterally?*

143.1.3. *Could President's Rule have been imposed?*

143.2. The State Government acquired power through the emotional ploy of the construction of the Ram Temple. They intended to retain power as well as retain the ploy for use from time to time, in perpetuity. The stability of the government as well as its returning to power in future polls depended on it. Disbelief and mistrust in governance was institutionalised which was invoked against the Central Government. In the process the governance, premised on honesty, faith, transparency or the interest of the general public, irrespective of the political party in power, was lost. It further accomplished governance by reaction to rumours.

143.3. The whole affair was based on mistrust of political parties, leaders and even the system. All the acts of the UP government, BJP, VHP, Bajrang Dal, Shiv Sena and Sangh Parivar as emerging from the events post demolition, the speeches of leaders etc., were in order to avoid the deployment of paramilitary forces or imposition of President's Rule. All acts and speeches were so

articulated as to ensure that no cause was made available to the Central Government to invoke articles 355 or 356 of constitution.

143.4. The dice was irredeemably loaded in favour of the State Government. The then Prime Minister Narasimha Rao was heading a minority government at the centre.

143.5. He rightly concluded that neither the central forces could neither be deployed by the Union in the totality of facts and circumstances then prevailing; nor could President's Rule could be imposed on the basis of the rumours or media reports. Taking such a step would have created bad precedent for future damaging the federal structure of the constitution and would have amounted to interference in the state administration.

143.6. The onus for the campaign of disinformation must rest solely with the State Government who deliberately and consciously understated the risk to the disputed structure and general law and order. This obfuscation of the ground reality deprived the Central Government of the basic prerequisites for imposing President's Rule.

143.7. The Central Government's agent, the Governor of the state, could possibly have played a better role in alerting the government to the factual situation and provided the basis for central intervention, even without the State Government's concurrence. However, as it turned out, the Governor's assessment of the situation was either badly flawed or overly optimistic and was thus a major impediment for the Central Government.

143.8. Once the State Government and the Governor had made similar optimistic and, with the benefit of hindsight, fallacious reports to the government, the Central Government was bound to believe them, as was done by the Supreme Court, and stay its hand.

143.9. The repeated communications and parlays from the Central Government to the State Government, imploring the latter to utilize the paramilitary forces are a clear pointer to the intention of the Central Government to avoid the catastrophe which took place. On the other hand, the systematic campaign of untrue assurances and assertions of self sufficiency by the State Government placed the centre in an impossible situation where it was reduced to the position of a helpless bystander.

143.10. President's Rule ought to have been imposed in the state – that is beyond any doubt, as evidenced by the events of December 1992 and later. However, the constitutional restraints imposed on the Central Government were cleverly utilized by the State Government at the time to deprive it of this option.

144. A strong centre for a strong country

144.1. The State Government of Uttar Pradesh in 1992 made intelligent and deliberate use of the constitutional restraints on the Central Government. Knowing full well that its facetious undertakings before the Supreme Court had bought it sufficient breathing space, it proceeded with the planning for the destruction of the disputed structure.

144.2. The Supreme Court's own observer failed to alert it to the sinister undercurrents. The Governor and the intelligence agencies, charged with acting as the eyes and ears of the Central Government also failed in their task. Without substantive procedural prerequisites, neither the Supreme Court, nor the Union of India was able to take any meaningful steps but to scream hoarse from the sidelines.

144.3. The year 1992 was witness to deliberate subversion of the constitutional safeguards by a recalcitrant state regime. Unfortunately this travesty of democracy is still possible in today's time.

144.4. Urgent attention needs to be paid by the sentinels of democracy to remove the procedural restraints which tie the hands of the Central Government and make it a hapless bystander in the pursuit of power by vested interests.

144.5. The divisive tendencies of malcontent regional leaders and their attempts to wrest power harm the country. The country is in need of statesmen who can think for the nation as a whole, rising above insular confines. The strong

centre envisaged by the founding fathers of the constitution did not envisage that the benign verbiage they selected would be used in the not so distant future to allow free rein to those who think of India as a chance aggregation of nation-states rather than a unified nation.

144.6. Mahatma Gandhi put it most aptly, when he said

> *What difference does it make to the dead, the orphans, and the homeless, whether the mad destruction is wrought under the name of totalitarianism or the holy name of liberty and democracy?*

144.7. It is not just the demands for Khalistan, Bodoland, Telangana and other ethnic ghettos which draw artificial wedges between Indians. When the politicos are not busy trying to carve out bloody political boundaries on the body of the nation, they are busy trying to throw out undesirables from existing states. An undesirable could be just about anyone – someone who does not speak the same language as the average Marathi Manoos or someone who was not fortunate enough to be born in the Devabhoomi of Himachal Pradesh and thus according to them has no right to own a home in the entire state.

144.8. Condeleeza Rice best summed up the thinking of these petty leaders, "*we need a common enemy to unite us.*" The mischievous leader only needs to find that one commonality – that one thread that connects him with his chosen audience – and he has a readymade target for directing his ire and violent vituperative slogans against. The common enemy is a most convenient device

for artificially uniting people under one banner and to prey on fear, mistrust and mischief to declare war on them.

144.9. History shows these shameful patterns and trends in all ages. Hitler managed to create a wedge between his superior race and the Jewish people, gypsies, homosexuals and all others he deemed unacceptable. He stoked the flames of fear and hatred to turn neighbour against neighbour and friend against friend. The genocide in Rwanda resulted from the artificial distinction between a Hutu and a Tutsi although they were the one and the same people not too far ago.

144.10. The people who had been living in peace days before the tragic days of the partition of the country were herded into baying for each other's blood by similar leaders. Even after 1992, and in the not too distant past, India has already seen many sporadic episodes verging on ethnic cleansing and genocide. The Central Government – of whichever party or parties it is composed – has to be empowered and unshackled to be able to deal with this imminent threat that faces the nation. It is far too easy for a street vagabond to undo the historic efforts of a Patel to unite this great land. It will require a resolve of steel to pre-empt it.

144.11. What unfortunately remains unsaid by the mass media and the politicians today is that the need of the hour is a strong centre which can resist these divisive tendencies of leaders with blinkered vision. The founding fathers could not have anticipated that their restrained approach would prevent the

centre from taking action to prevent genocide or ethnic cleansing within the country.

144.12. Riots or disturbances in any part of the country, especially when they are sponsored, facilitated or tolerated by a State Government, require the Central Government's urgent intervention. Whether the intervention takes place via President's Rule or using a national investigative agency, the need for concerted and focused action is writ large.

144.13. In 1992, the Central Government had been blinded and handicapped – by the inaction of its own agent in the state and by the unfathomable trust the Supreme Court placed in the paper declarations of the Sangh Parivar. It is necessary however that such a tragedy is not allowed to take place in the future.