

# Resurrecting federalism

The Jabalpur bench judgement questions the justiciability of the presidential order, says Uttam Gupta

**W**HEN the Jabalpur Bench of the Madhya Pradesh High Court delivered the historic judgement quashing the presidential proclamation under Article 356 of the Constitution dismissing the elected government, there was an all-round mood of buoyancy. Undoubtedly, it rejuvenated the sagging morale of BJP. But, what is far more significant is that the judiciary once again demonstrated that it was not just a watchdog, is capable of applying the much-needed brakes as and when it becomes necessary.

There has been blatant misuse of the Article 356 on numerous occasions in the past. Despite no breakdown of the constitutional machinery, no serious/unmanageable law and order problem, when democratically-elected governments were dismissed. Indeed, the government machinery and the media has been used to the hilt to impart 'legitimacy' to such actions. So much so even the Constitution was amended in the 1970s to put the President above all democratic institutions and make his action what legal pundits, would call 'non-justiciable.'

Thanks to the revolutionary judgement of the Jabalpur bench, not only has the question of the justiciability of the presidential order come to the fore, but it has even stirred the conscience of the public. On the former, one can only wait for the outcome of the protracted legal debate that has already started. But, the achievements are much more significant in respect of the latter.

The euphoria generated by the Ayodhya incidents and fuelled by the official propaganda machinery, left an impression that a communal conflagration was almost inevitable particularly in the BJP-ruled states. Even the attack on the secular character of the Constitution in one state was taken to mean that a similar situation would prevail in other BJP states. In short, the public was lured into the belief that but for the imposition of the President's rule, these states would have plunged in to a state of turmoil.

The court's verdict has awakened people from the deep slumber. Relying extensively on evaluation of the governor's report in the light of available evidence, it has concluded that there was nothing materially significant to suggest that the government could

not be run according to the Constitution, or that there was breakdown of law and order. Indeed, it could not even be proved that the state government was not gearing up to implement the Centre's notification banning specified political organisations.

In arriving at its judgement, the court has even mentioned the deteriorating law and order situation in other states following December 6 events at Ayodhya where the Centre did not deem it necessary to resort to the extraordinary action. Clearly, the actions of the executive have been out of tune with the ground reality.

It is not difficult to see the motives behind the well-orchestrated propaganda, sustained with a view to lend credibility to the contemplated actions. The court action has not only exposed these machinations, but, even demystified the much-touted theory resting on the inevitability of communal flare up at the slightest turn of events bordering on religion.

Ample light has been thrown on some of the vital issues that were skirted whenever elected governments were dismissed in the past. Can the President of India have unquestioned authority? Can he be above 'reason' which is something fundamental to the making and application of law? Does not even the judiciary, one of the essential pillars of democracy,

have a right to judge the actions of the President?

Going by the unbridled use of powers under Article 356, irrespective of the ground reality, one would tend to say 'yes' in regard to the first two questions. In this respect, we seem to be no different from Pakistan wherein the President has used the powers given to him by the Eight Amendment to their Constitution to dismiss an elected government on two occasions in less than three years. The only difference being that in India, presidential powers have been used to sack state governments. On the third

has reportedly argued that implementation of the high court order will create a serious constitutional crisis; that once the assembly is dissolved, it becomes dead and consequently cannot be revived etc. This argument lacks logic. First, a democratically-elected government is dismissed purely on the 'satisfaction' of the President that there was a crisis already notwithstanding facts to the contrary. In the next stage, the consequences of the presidential action i.e. a dead assembly, President's rule in the state, become the law of the land. And finally, any action seeking to undo the wrong is deemed as unconstitutional.

Henceforth, legal luminaries on both sides of the fence will be engaged in a protracted battle over what is constitutional. There is also no gainsaying the fact that what the full bench of the apex court decides will become the law of the land. But the issues generated by the dismissal of the four BJP-ruled governments and brought to the public attention by the judgement of the MP High Court should not be allowed to die down. This is for two basic reasons.

First, these knock at the very foundation of democratic functioning in India. While we may have some pride in ensuring stability of the government at the Centre, the situation is clearly unstable when it comes to the state governments. Indeed, in a federal set-up, the real test of an effective democracy is the stability of the state governments where we have failed miserably with Centre's arbitrary intervention being a major cause. Second, the process of electing a state assembly apart from taking the precious time of the administrative machinery, puts a heavy burden on the exchequer. Should we not avoid this particularly when maintaining fiscal discipline is a priority on the national agenda?

The issue is delicately balanced between the subjective judgement of the President and through him, the Union council of ministers on the one hand and the justiciability of the decision of the President on the other. Given the past experience of elected government having been dismissed on as many as 90 occasions, similar threats in future cannot be ruled out. Nevertheless, the verdict of the Supreme Court will certainly have a bearing in terms of minimising if not eliminating this altogether.



question, undoubtedly the decision of the Jabalpur bench has rekindled hopes regarding the possibility of the presidential decision being subject to judicial scrutiny.

The decision has since been challenged by the Union government in the Supreme Court, which has promptly stayed its implementation. All similar cases pending in different high courts have also been transferred to the apex court e.g. Rajasthan and Himachal Pradesh. This is not surprising as these involve major questions of law and, therefore, lie within its jurisdiction. For the time being thus, the central government has been saved of a major embarrassment on the judicial and the political front.

In its petition, the Union government