6.1 **Meaning of Discretion:**

Discretion means freedom to act according to one’s own judgement. According to Law Laxicon, Discretion means a power or right conferred upon them by law and discretionary power means a term which involves an alternative power i.e. power to do or refrain from doing a certain thing or power of free decision or choice with in certain legal bounds.\(^1\)

According to the New International Webster’s Dictionary, discretion means the act or liberty of deciding according to justice and propriety and one’s idea of what is right and proper under the circumstances, without willfulness or favor.\(^2\)

According to Concise Oxford English Dictionary, discretion means the freedom to decide on a course of action.\(^3\) So, different dictionaries defined discretion as the liberty for doing an action without causing any embarrassment.

6.2 **Discretionary Powers of the Governor:**

Discretionary powers of the Governor means the powers of the Governor which he exercises as per his own individual judgement or without the aid and advice of the Council of Ministers. In the discharge of his responsibilities as the Head of the State, the Governor exercises his powers similar to that of the

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President as the Head of the Union. Our Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions.

The entire administration of the State is carried out in the name of the Governor but practically the real authority is exercised by the Council of Ministers. During the normal circumstances, Governor acts according to the advice of his Council of Ministers. However, Constitution has also vested the Governor with certain discretionary powers, which he can use without the aid and advice of the Council of Ministers or in other words, in the discharge of these functions the Governor concerned is not bound to seek or accept the advice of his Council of Ministers.

About the discretionary powers granted to the Governors, Dr. B. R. Ambedkar, the Chairman of Constituent Assembly expressed his views that,

“Because the Provincial Governments are required to work in subordination to the Central Government and therefore, the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the Provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.”

But the occasions to exercise such discretionary powers are few and far. Madras High Court in the case of *S. Dharmalingam vs Governor of Tamil Nadu* held that certain powers are available to the Governor under Article 163.

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4 Article 163 (1), Constitution of India.
5 Vol. VIII, CAD at 502.
6 AIR 1989 Mad. 48.
which he would exercise in his sole discretion. The immunity of the Governor is absolute, when he acts in his own discretion. In *Pratap Singh Raojirao Rane vs Governor of Goa*,\(^8\) court held that the Governor is not answerable to the court even in respect of charge of malafide. Discretionary powers of the Governor may be divided into two parts:

i) Specific discretionary powers,

ii) Circumstantial discretionary power.

### 6.2.1 Specific Discretionary Powers:

Circumstances, which are mentioned in the Constitution, under which the Governor may use his discretion, are called specific discretionary powers. By specific Articles in the Constitution certain responsibilities are conferred on the Governor and to fulfill these responsibilities Governor acts in his discretion. In discharging these responsibilities, he is not bound to seek or accept the advice of his Council of Ministers. In the case of *Ganamani vs Governor of Andhra*\(^9\) the court observed that “All the powers exercisable by the Governor can be exercised on the advice of the Council of Ministers except insofar as the Constitution expressly or perhaps by necessary implication says that he can exercise those powers in his individual discretion”

The Articles which give specific discretionary powers to the Governor are as under:

#### 6.2.1.1 Article 239:

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\(^7\) Constitution of India.

\(^8\) AIR 1999 Bom. 53.

Article 239 provides that a Union Territory shall be administered by the President through an Administrator with such designation as he may specify or a Governor of a State, adjoining Union Territory, may be appointed as the Administrator of that Union Territory. Where the Governor of a State is appointed as the Administrator of an adjoining Union Territory, he shall exercise his functions as the Administrator without the aid and advice of his Council of Ministers. Or in other words Governor as an Administrator can act independently without his Council of Ministers.

6.2.1.2 Para Nine of Sixth Schedule:

Para nine of 6th schedule is related to the licences or leases for the purpose of prospecting for or extraction of minerals. Part-1 of para nine of 6th schedule provides that “such share of the royalties accruing each year from licences or leases for the purpose of prospecting for or extraction of minerals guaranteed by the government of the State in respect of any area within an autonomous District as may be agreed upon between the government of the State and the District Council of such District shall be made over to that District Council.

Part-2 of para nine of 6th schedule provides that if any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to the amount payable under part-1 of para 9 of 6th schedule to the District Council and the decision of the Governor shall be final.

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10 Constitution of India.
6.2.1.3 Article 371:

Article 371 of the Constitution provides that the President may confer special responsibilities upon the Governor with respect to the State of Maharashtra and Gujarat for the establishment of separate Development Boards for Vidarbha, Marathwada, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these Boards will be placed each year before the State Legislative Assembly.

Article 371 A of the Constitution has conferred special responsibilities on the Governor of Nagaland for certain purposes. For discharging these responsibilities the Governor shall after consulting his Council of Ministers, exercise his individual judgement as to the action to be taken. These responsibilities are as follows:

i) with respect to law and order so long as internal disturbances occur in some areas of that State.

ii) to establish a Regional Council for Tuensang District.

iii) to arrange for equitable allocation of money between Tuensang District and the rest of Nagaland.11

Article 371 C of the Constitution12 confers special responsibilities upon the Governor of Manipur to secure the proper functioning of a Committee of the Members of the Legislative Assembly consisting of the members representing the Hill Area.

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12 Inserted in the Constitution by the (Constitution 27th Amendment) Act, 1971
Article 371 F (g) of the Constitution confers special responsibilities upon the Governor of Sikkim for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim.

Article 371H (a) of the Constitution confers special responsibilities upon the Governor of Arunachal Pradesh with respect to law and order in the State of Arunachal Pradesh.

So, in discharging the obligations mentioned above the Governor is not bound to seek the advice of the Council of Ministers and his role is not controversial, when he acts in his discretion to fulfill his obligations. However, the Sarkaria Commission recommended that “before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible consult his Ministers even in such matters, which relate essentially to the administration of a State”. Such a practice will be conducive to the maintenance of healthy relations between the Governor and his Council of Ministers. ¹³

6.2.2 Circumstantial Discretionary Powers:

Circumstantial discretionary powers are not defined by the Constitution. These powers are implied powers, which are exercised according to the situations which may vary. When Governor acts in such circumstances, his role becomes controversial many a times. This raises a question that whether the Governor is merely a figure head, who is to exercise his powers in accordance with the advice of his ministers, responsible to the Lower House or he has some real

¹³ Sarkaria Commission Report on Centre-State relations, para 4.14.05.
power. If any question arises as to whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of any thing done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.\textsuperscript{14}

Report of Administrative Reforms Commission, which was set up in 1960 to review the Centre-State relations, pointed out that the Governor has to face situations in which he has to take decisions in view of his oath of his office to preserve, protect and defend the Constitution and the law of the land.

This report insists that the Governor must be impartial and must have a sense of fair play and he should command the respect of all parties in his State. He must have firm faith in the constitutional set up and the democratic institution. The circumstances, in which the he may use his discretionary powers, arise in the following matters;

i) Appointment of the Chief Minister;

ii) Governor’s Assent to Bills;

iii) Dissolution of State Assembly;

iv) Dismissal of Ministry;

v) Summon and Prorogue the State Assembly;

vi) Recommendation of President’s Rule;

vii) Pardoning Power;

viii) Appointment of the Vice-Chancellor;

\textsuperscript{14} Article 163 (2), Constitution of India.
6.2.2.1 Appointment of the Chief Minister:

There is a Council of Ministers in a State with the Chief Minister at its head. Governor appoints the Chief Minister and other Ministers are appointed by the Governor on the advice of the Chief Minister. Chief Minister holds office during the pleasure of the Governor. The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen percent of the total number of Members of the Legislative Assembly of that State and the number of ministers including the Chief Minister shall not be less than twelve in case of smaller States.

Our Constitution is silent about the person who should be appointed as the Chief Minister. It does also not prescribe any qualification for the person to be appointed by the Governor as the Chief Minister. A person who is not a Member of any House may be appointed as the Chief Minister for six months. After the completion of six months if he wants to be continued as Chief Minister, then he has to be the Member of the House. There have been cases when non-members have been appointed as Chief Ministers. In 1954 Kamraj Nadar was appointed as the Chief Minister of Madras. Shri T.N. Singh was appointed as the Chief Minister of Uttar Pradesh on October 18, 1970.

15 Article 164 (1), Constitution of India.
16 Article 164 (1-A) inserted by the (Constitution 91st Amendment) Act, 2003.
17 Harsharan Verma vs Tribhuvan Narain Singh, AIR 1971(1) SCC 616.
18 Article 164(4), Constitution of India.
When his appointment was challenged, the Supreme Court\textsuperscript{19} ruled that “a non-member can be appointed as Chief Minister for a period of six consecutive months.”

In \textit{S.R. Chaudhuri vs State of Punjab}\textsuperscript{20} the Court held that the absence of the expression ‘from amongst the Members of the Legislature’ in Article 164(1), is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister, but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or Chief Minister as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months.”

While appointing the Chief Minister the Governor imposes the condition that he should have to seek a vote of confidence of the State Assembly within a stipulated period. But there is no specific provision in the Constitution enabling the Governor to require the Chief Minister to prove his majority on the floor of the House. The question has been raised whether in the absence of any such constitutional provision, can the Governor impose such a condition on Chief Minister. The Patna High Court ruled that the Governor can impose such a condition in his discretion.\textsuperscript{21} Sarkaria Commission also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of

\textsuperscript{19} Harsharan Verma vs Tribhuvan Narain Singh, AIR 1971 SC 1331. The Supreme Court also reiterated the ruling in Harsharan Verma vs UOI, AIR 1987 SC 1969, that a non-member can be appointed as the Chief Minister.

\textsuperscript{20} AIR 2001 SC 2707.

taking over.\textsuperscript{22} In the appointment of the Chief Minister of a State, generally Governor adopts such convention which is prevalent in India for the appointment of the Prime Minister. The Governor shall perform the constitutional duty of appointing the Chief Minister in the following circumstances:

a) After the General Assembly Elections.

b) When the Chief Minister resigns after losing confidence motion in the House.

c) When the Chief Minister dies or resigns on any personal or political ground.

d) When the Governor dismisses the ministry due to any reason.

6.2.2.1.1 Discretion of the Governor in the Appointment the Chief Minister:

In the appointment of the Chief Minister, the Governor can use his discretion. The extent of use of discretion in the appointment of the Chief Minister depends upon the situation that arises. When a single party or group has the majority, the leader of the majority party is invited to form the government. At this time, Governor has not much say in the appointment of the Chief Minister. But he can use his discretion in this situation also and refuse to appoint the leader of the majority party as the Chief Minister, if the majority party in the Legislature asks to appoint such a person as the Chief Minister, who is not qualified to be a member of the Legislature or who is disqualified to be such.\textsuperscript{23}

\textsuperscript{22} Supra note 13 para 4.16.10 (c).

\textsuperscript{23} B.R Kapur vs State of Tamil Nadu, AIR 2001 SC 3435.
In the appointment of the Chief Minister, the problem arises, when no party has a clear-cut majority in the Legislature and in such situation the role of the Governor becomes very important. Governor uses his discretion in the appointment of the Chief Minister, where after the General Assembly elections, no single party or group commands absolute majority. In such circumstances, the Governor plays a very important role and uses his discretion. He may call such person to form the government to whom he thinks fit to form the government. Similarly, if after the death or resignation of the Chief Minister on any political ground or after the defeat of the Chief Minister in the House, any party or group is not in majority, the Governor may appoint such person as the Chief Minister to whom he thinks fit.

Constitution does not provide any specific guidelines to the Governor for the appointment of Chief Minister in such circumstances. That’s why the Governors are not using any uniform practice in such circumstances. Some times Governors have invited the leader of single largest party to form the government and some times he invited the leader of the United Front, whether it was formed prior to election or after the election. About the discretion of the Governor in the appointment of the Chief Minister, Justice Mitra\textsuperscript{24} observed that “the Governor in making the appointment of the Chief Minister under Article 164 (1) of the Constitution gets in his sole discretion. The exercise of this discretion by the Governor cannot be called in question in High Court. There is no warrant in the Constitution itself to read in Article 164 (1), a condition or restriction that the Governor must act on the advice of Council of Ministers as provided in Article 163.

\textsuperscript{24} Mahabir Prasad vs Prafulla Chandra, AIR 1969 Cal 198.
(1), in the matter of appointment of Chief Minister. It is for him to make such enquiries as he thinks proper, to ascertain who among the Members of the Legislature ought to be appointed as the Chief Minister and would be in a position to enjoy the confidence of the majority in the Legislative Assembly of the State.”

By using his discretion, the role of the Governor comes many a times in controversy. A.K. Sarkar former Chief Justice of India says that “the Governor should make endeavors to appoint a person who has been found by him as result of his soundings to be most likely to command a stable majority in the Legislature”. On the Governor’s discretion, the Committee of the Governors observed that right from the commencement of the Constitution, it has been recognized that in the choice of the Chief Minister, the Governor’s decision under Article 164 (1) is final and based entirely on his unfettered judgement

6.2.2.1.2 Judicial use of Discretion in the Appointment of the Chief Minister:

It is judicious use of the discretion in the appointment of the Chief Minister, if Governor makes all attempts to form a stable government in the State and appoints the Chief Minister in accordance with the following order:

   i) The leader of the majority party in the Legislature;
   
   ii) In case there is no majority party in the Legislature, then the leader of the pre-poll alliance parties, who is in a position to form the government;

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iii) In case there is no majority of the pre-poll alliance in the Legislature then the leader of the single largest party having position to form the government;

iv) In case, single largest party is not in a position to form the government, then the leader of the post-poll alliance parties may be called to form the government.

v) In case the leader of the post-poll alliance parties is not in a position to form the government, then he should invite another who is in the position to form the government and this process may go on till the formation of the government.

vi) Re-poll or the imposition of the President’s rule should be the last attempt.

There are many examples when the Governor used his discretion in judicious manner. In 1952, in Madras all the opposition parties formed United Democratic Front under the leadership of Shri T. Prakasham had the strength of 166 members and the Congress had the strength of 155 members out of 321 members, the Governor Shri Sri Prakasa appointed Mr. C. Rajagopalachari, the leader of Congress Party as a Chief Minister.

In 1967, in Kerala and in 1969, in West Bengal after the mid-term elections the Governors judiciously appointed the Chief Ministers.\textsuperscript{27} On November 22, 1967 the Governor of West Bengal Mr. Dharam Vira appointed Dr. P.C. Ghose

as the Chief Minister\textsuperscript{28}, when the then Chief Minister Mr. Ajoy Mukherjee refused to face the Assembly.

In Rajasthan, in Fourth General Assembly Elections in 1967, the Congress Party won 88 seats and became single largest party. There were also non-congress parties who claimed majority support of 93 members in the House of 183 members but the Governor, Dr. Sampurnanand invited the leader of Congress Party, Mr. M.L. Sukhadia to form the government\textsuperscript{29}.

After the General Assembly Elections in May 1982 in Kerala, the Governor called the leader of United Democratic Front (pre-electoral group of Non-Communist Parties) to form the ministry. It was the judicious use of discretionary power by the Governor, Sh. Syed Sibte Razi to appoint Sh. Arjun Munda, leader of the BJP-JDU alliance, as the Chief Minister of Jharkhand on March 12, 2005, when Shibu Soren failed to prove his majority on the floor of the House on March 11, 2005.

After the sudden demise of Andhra Pradesh Chief Minister, Sh. Y.S. Rajasekhara, Governor appointed Sh. K. Rosaiah as caretaker Chief Minister of Andhra Pradesh on 3.09.2009\textsuperscript{30}.

After the Vidhan Sabha Elections, 2009 in Haryana, Congress Party got 40 seats and Indian National Lok Dal got 31 seats out of 90 seats\textsuperscript{31}. Being the head of the largest single party, Sh. Bhupinder Singh Hooda was administered oath.

\textsuperscript{28} The Hindustan Times, Nov. 23, 1967, p. 1.
\textsuperscript{29} The Statesman, March 5, 1967.
as the Chief Minister of Haryana by the Governor, Sh. Jagannath Pahadia on October 25, 2009.\textsuperscript{32}

After the Vidhan Sabha Elections, 2009 in Maharashtra, Congress Party and Nationalists Congress Party alliance got 144 seats and Bharatiya Janta Party and Shiv Sena alliance got 90 seats in a 288 members Assembly.\textsuperscript{33} Governor of Maharashtra invited, Sh. Ashok Chauhan on November 7, 2009 to swear-in as the Chief Minister.

After the Vidhan Sabha Elections, 2009 in Arunachal Pradesh, Congress Party got 42 seats in a 60 members Assembly.\textsuperscript{34} Being the head of the largest single party, Sh. Dorjee Khandu was sworn-in as the Chief Minister of Arunachal Pradesh by the Governor, Lieutenant General Retd. JJ Singh on October 25, 2009.\textsuperscript{35} After the Vidhan Sabha Election in the Jharkhand, result delivered a fractured mandate. Since, no single party or the pre-poll alliance group got majority in the House, the Governor, K. Sankaranarayanan, called Shibu Soren of Jharkhand Mukti Morcha (JMM) to form the government on December 27, 2009. He was supported after poll by Bharatiya Janta Party (BJP) and All-Jharkhand Students’ Union (AJSU).\textsuperscript{36}

\begin{footnotesize}
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\item[32] Id. Oct. 26, 2009, p. 3.
\item[33] Supra note 31.
\item[34] Ibid.
\item[35] Supra note 32 at 2.
\item[36] India News Online, Dec. 28, 2009.
\end{itemize}
\end{footnotesize}
6.2.2.1.3 Misuse of Discretion in the Appointment of the Chief Minister:

Many a times Governors misuse their discretionary power in appointing a Chief Minister. In some instances, he did not give a chance to form the government to the claimant. Even guidelines are provided time to time by different endeavors but the Governors continue to misuse their discretion and the check on this power could not be imposed. Sometimes the Governors do not even follow the report of the Governors’ Committee according to which the majority of the party must be tested on the floor of the House.

In Orissa, Nandini Satpathi formed the government on June 14, 1974. Since she had no political base in the State and certain members of the House were also opposing her, on March 1, 1973, she lost majority in the House and resigned. Biju Patnaik, who formed Pragati Front, claimed to form the government with strength of 72 members. But the Governor did not give him a chance to form the government without assigning any reason.

In 1982, in General Assembly Elections in Haryana, Lok Dal – BJP pre-electoral alliance got 36 seats and Congress got 35 seats out of 90 seats. The Governor, Mr. G.D. Tappasse invited the leader of Lok Dal – BJP group to form the government but suddenly he changed his decision and invited the leader of Congress Party to form the government by saying that Congress is the single largest party. This manner of the Governor that he first invited the leader of alliance and then suddenly changed his decision, created a lot of controversy because Governor did it on the direction of the Centre.
On May 11, 1984, Shri Homi Taleyar Khan, the Governor of Sikkim appointed Shri B.B. Gurung as new Chief Minister after dismissing Shri Nar Bahadur Bhandari in spite of the fact that he enjoyed the majority support. The Governor dismissed him because of the difference between him and the Governor. This was the misuse of discretionary power.

When 12 MLA’s of National Conference Party withdrew their support to it and joined Real National Conference, the Chief Minister Dr. Farooq Abdullah requested the Governor of Jammu & Kashmir, Shri Jagmohan to summon the Assembly to test the majority on the floor of the House. But the Governor on the evening of 2nd July, 1984 dismissed Dr. Farooq Abdullah and appointed Shri G.M. Shah as the new Chief Minister on the same evening. This action of the Governor was the misuse of his power in the appointment of the Chief Minister because he acted arbitrarily and in haste. The opposition parties criticized the dismissal of Dr. Farooq Abdullah’s ministry and the installation of G.M. Shah’s government with in few hours.

In 1984, in Andhra Pradesh, when N.T. Rama Rao was the Chief Minister of Andhra Pradesh, Shri Bhaskara Rao, the Finance Minister revolted against him. Shri Bhaskara Rao with some defected members joined hand with Congress-I and claimed to form the government. The Governor, Shri Ram Lal without verifying the strength of Shri Bhaskara Rao asked the Chief Minister N.T. Rama Rao to tender his resignation by saying that he had lost the majority. Shri N.T Rama Rao refused to resign and advised the Governor to convene the emergency session of the House and to give him a chance to prove his majority on the floor of
the House. But on August 16, 1984, the Governor dismissed the Chief Minister N.T. Rama Rao and appointed Shri Bhaskara Rao as the Chief Minister in spite of the fact that N.T. Rama Rao paraded with his supporters before the Governor. The Governor should have accepted the advice of Shri N.T. Rama Rao to give him a chance to prove his majority on the floor of the House. The Governor exercised his discretionary power in an arbitrary and dictatorial manner.

In General Assembly Elections of October 1997, in UP, in a 425 members House, no party got majority. BJP got 176 seats, Samajwadi Party got 134 seats and BSP and its combine got 100 seats. In such circumstance, the Governor, Mr. Romesh Bhandari did not call any leader of any party to form the government, which was not reasonable. Governor should have tried his best to form the government. He should call the leader of the single largest party i.e. B.J.P. to form the government.

On Feb. 21, 1998, in U.P., the Governor dismissed the Kalyan Singh Government without giving him an opportunity to face the confidence motion and invited the leader of Loktantrik Party, Mr. Jagdamba Pal to form the ministry at 10.30 P.M. It shows the malafide intention of the Governor. The then President of India, Mr. K.R. Narayanan had also advised the Governor not to act in haste. Allahabad High Court restored the Kalyan Singh Government and quashed the appointment of Jagdambika Pal. Jagdambika Pal moved the Supreme Court against the Allahabad High Court order reinstating the Kalyan Singh Government.\(^{37}\)

On May 14, 2001 the Governor of Tamil Nadu, Fatima Beevi vowed Jayalalitha as Chief Minister in spite of the fact that she stood convicted by the judiciary for corruption. It was the misuse of discretionary power in the appointment of the Chief Minister. The Governor should have refused to vow Jayalalitha as the Chief Minister. The Supreme Court\(^\text{38}\) ordered for dismissal of convicted Tamil Nadu Chief Minister, Ms. Jayalalitha and ruled that it was beyond the discretion of Governor to appoint as Chief Minister an ineligible person disqualified to contest election or a lunatic or a foreigner.\(^\text{39}\)

In General Assembly Election of October 2002, in Jammu & Kashmir in 87 members House, National Conference Party got 28 seats, Congress Party got 21 seats and People Democratic Party got 15 seats. Hence, National Conference Party was the single largest party. But the Governor, Mr. G.C. Sexena invited the leader of PDP to form the government.

After the General Assembly Elections in Jharkhand, in Jan. 2005, BJP-JDU pre-poll alliance got 36 seats and JMM-Congress alliance got 26 seats out of 81 members Assembly. BJP-JDU alliance claimed to form the government but Governor, Mr. Sibte Razi ignored their claim and appointed Mr. Shibu Soren as the Chief Minister. This was the clear misuse of the discretionary power of in the appointment of the Chief Minister.

\(^{38}\) Supra note 23.

\(^{39}\) Times of India, Sept. 21, 2001.
6.2.2.1.4 Guidelines Suggested by the Committee of Governors:

Committee of Governors suggested the following guidelines to the Governors for the appointment of the Chief Minister:\(^{40}\)

i) Where a single party commands a majority in the assembly, the Governor is to call upon its leader to form the government.

ii) It is not incumbent on the Governor to invite the leader of the largest party (not in majority) to form the government. The ultimate test for the purpose is not the size of a party but its ability to command a majority in the House.

iii) If before the election, some parties combine and produce an agreed programme and the combination gets a majority after the election, the commonly chosen leader of the combination should be invited to form the government.

iv) If no party is returned in a majority at the election and thereafter two or more parties come together to form the government, the leader of the combination may be invited to form the government.

v) The leader of the minority party may be invited to form the government, if the Governor is satisfied that the leader will be able to muster majority support in the House.

vi) Ordinarily, an elected member of the Legislature should be chosen as the Chief Minister. A non-member or a nominated member of the Legislature

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\(^{40}\) President appointed a Committee of Governors on November 26, 1970 to study the role of Governors.
ought not to be appointed as the Chief Minister except in exceptional circumstances. In any case, he should become an elected member of the Legislature as soon as possible.⁴¹

6.2.2.1.5 Recommendations of Sarkaria Commission for the Appointment of the Chief Minister:

In the appointment of the Chief Minister the Commission provides the following guidelines.⁴²

i) The leader of the single largest party having absolute majority in the Assembly should be asked to form the Government.

ii) If no party has the majority, then the leader of an alliance of parties that was formed prior to the elections should be called to form the Government.

iii) In case there is no coalition prior to the elections, then the leader of single largest party who claims to form the Government with others should be called to form the Government.

iv) In case no Government is formed, then the leader of the post electoral coalition parties should be called to form the Government.

6.2.2.1.6 Guidelines provided by the M.M. Punchhi Commission regarding Appointment of the Chief Minister:

Punchhi Commission laid down significant guidelines for the appointment of Chief Ministers.⁴³ And uphold the view that a pre-poll alliance

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⁴¹ Supra note 21 at 409.
⁴² Supra note 13 para 4.16.10.
should be treated as one political party; it lays down the order of precedence that ought to be followed by the Governor in case of a hung House:

i) Call the group with the largest pre-poll alliance commanding the largest number;

ii) the single largest party with support of others;

iii) the post-electoral coalition with all parties joining the government; and last

iv) the post-electoral alliance with some parties joining the government and remaining including Independents supporting from outside.

6.2.2.2 Governor’s Assent to Bills:

Governor is the part of the State Legislature. Article 168 (1) of the Constitution itself provides that for every State there shall be a Legislature, which shall consist of the Governor and the Houses one or two as the case may be. According to the Article 200, when a Bill has been passed by the Legislative Assembly of the State or in the case of a State having a Legislative Council too, has been passed by both Houses, it shall be presented to Governor for his assent. This Article is the reproduction of Section 75 of the Government of India Act, 1935 with two small modifications. First, Article 200 of the Constitution does not fix any time limit for granting the assent to the Bill and second is that, he is withholding his assent or that he is reserving it for the assent of the President. When a Bill is

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43 www.civil services times. com. Punchhi Commission was set up in April 2007 under the chairmanship of the Justice Madan Mohan Punchhi, to take a fresh look at the relative roles and responsibilities of the various levels of government and their inter-relations. The members of the Commission are Dhirendra Singh, V. K. Duggal, Dr. N. R. Madhava Menon and Vijay Shankar. Commission submitted its report on April 19, 2010.
produced for the assent of the Governor, he may take any one of the following actions:

i) He may assent to the Bill,

ii) He may withhold his assent,

iii) He may reserve the Bill for the consideration of the President,

iv) He may return the Bill to the House for re-consideration, if it is not a Money Bill, with a request that the Bill or any specified provision of it may be considered again and emphasize, in particular, the desirability of introducing any such amendments as he may recommend.

First Proviso to Article 200 of the Constitution provides that when a Bill is returned by the Governor to the House for its re-consideration and the House or Houses passed it again after the re-consideration with or without amendments and presented to the Governor for his assent, he shall not withhold the assent therefrom. He must either give his assent or reserve the Bill for the sanction of the President. Article 200 does not contemplate the Governor giving his assent and thereafter, when the Bill has become a full fledged law, reserving it for the consideration of the President. Only Bills passed by the House or Houses of Legislature may be reserved for the consideration of the President and not laws to which the Governor or the President, if reserved for his consideration, has already given his assent.\(^{44}\) Except second proviso\(^ {45}\) to Article 200 of the Constitution, it


\(^{45}\) The Governor has been directed by this proviso not to assent to, but to reserve for consideration by the President, any Bill which would, in the opinion of the Governor, if passed into law, so derogate from the powers of the High Court as to endanger the role which it is designed to fulfill under the Constitution.
does not lay down any guidelines in which matters should the Governor reserve the Bill for the consideration of the President. The Supreme Court held that the Governor’s power to reserve the Bill for the consideration of the President cannot be questioned in court.\textsuperscript{46} So, the Governor may use his discretion by reserving the Bills for the consideration of the President.

6.2.2.2.1 Extent of Governor’s Discretion to Assent the Bills:

In the form of government set up under the Indian Constitution, it would be politically impossible for a Governor to refuse his assent to a Bill, after it has been passed by the Legislature because he acts in this matter, as in all other public matters, on the advice of his Cabinet and no Bill could pass through both the Houses and come before the Governor for his assent, if it was opposed by the Cabinet. However, the power vested in the Governor to reserve a Bill for the consideration of the President is discretionary.\textsuperscript{47} It is general provision of Article 200 of the Constitution that enables the Governor to reserve a Bill passed by the State Legislature for Presidential consideration and assent. It is his discretion whether the Bill should be reserved for the consideration of the President and in this respect the Governor becomes an important link between the Union and the States, thereby enabling the Union to exercise some kind of control over the legislative activities of the State.

But Article 200 of the Constitution does not make clear that in which situations and circumstances the Governor may reserve the Bill for the consideration of the President. Or in other words, no norms have been laid down in

\textsuperscript{46} Hoechst Pharmaceuticals v. State of Bihar, AIR 1983 SC 1019.

\textsuperscript{47} Supra note 44 at 519.
the Constitution as to when the Governor can exercise this power or when the President can refuse to give his assent to a State Bill. On its face, it appears to give a blank cheque to the Governor and he would exercise this power in his sole discretion. \(^{48}\) Some situations when the Governor may be justified in reserving a State Bill are:

a) When the State Bill suffers from patent unconstitutionality.

b) When a State Bill derogates from the scheme and frame work of the Constitution so as to endanger the sovereignty, unity and integrity of the Country.

c) When the State Bill ex-facie comes in conflict with a central law.

d) When the legitimate interests of another State or its people are being adversely affected.

Mere policy differences between the Governor and the State Government do not justify reservation of the State Bills by the Governor for President’s assent. It may be stated that in several situations, the State Legislature may exceed its Legislative competence. The Punjab Legislative Assembly passed the Temporary Tax Bill, which levied a surcharge of 1% on sales tax. Centre refused its assent to the Bill as its effect was to levy 8% tax on luxury goods instead of 7% as fixed in the Chief Ministers Conference. Secondly, it levied 3% tax on declared essential goods instead of 2% tax as permissible under Central Sales Tax Act, 1956. Centre assented to it after the removal of all lacunae.

The Kerala Education Bill of 1957, the Kerala Agrarian Reform Bill of 1957 and the Madhya Pradesh Panchayat Raj Bill in 1961 were reserved by the

\(^{48}\) Supra note 21 at 650.
Governor for the consideration of the President. When the Kerala Education Bill of 1957 was passed by the Kerala State Legislature, it led to widespread agitation in the State. Governor reserved it for the consideration of the President. The President with a view to avoid the involvement of the Centre in any controversy referred it to the Supreme Court for an advisory opinion. The Supreme Court held that some of the provisions of the Bill offended Article 30 (1) of the Constitution pertaining to the rights of minorities to establish and administer educational institutions. The President sent the Bill back to the State for necessary amendments in the Bill by State Legislature in the light of the Supreme Court’s opinion.49

Centre refused to assent the Madhya Pradesh Panchayat Raj Bill of 1960, because it provided for nominated village panchayats to be set up for a year and the Centre took the view that the system of nominations was a negation of the concept of Panchayats. The Governor of Haryana Babu Parmanand did not give his assent to the amendment to the Central Statute, the Public Gambling Act, 1867, which would enable the State to allow betting and gambling as they were part of the State subject. The Casino Bill related to grant of licenses for opening Casinos in the State. The Governor by not giving assent to the Bills was reported to have upset the Chief Minister and his Council of Ministers. Opposition parties had alleged that the government passed the Bills in great haste. Opening of Casinos was also being opposed by social and non-government organizations.50 When, the Rajasthan Dharam Swatantrya Vidheyak, 2008, was passed again by the State Legislature, the Governor, S.K. Singh reserved it and sent it for the consideration of the President.

The proposed law prohibits conversions by force, allurement, or fraudulent means and provides for a prison term of a maximum of five years and/or fine of Rs. 50,000 for anyone convicted of the offence. It was against the Articles 24 (1), 25 and 26 of the Constitution. The Union Law Ministry wrote and advised the President to withhold assent to the Bill as “the Constitution states that there can be no restrictions on willful conversion from one religion to another.”

The Resettlement (of J&K State Subjects who left the State before 1954 and are now living in Pakistan) Bill passed by the State Legislature in 1982 and sent it to the then Governor, B.K. Nehru, for his assent. He, however, returned it for re-consideration. A presidential reference to this Act was made to the Supreme Court seeking the opinion “as to whether the Bill or any of the provisions thereof, if enacted would be constitutionally invalid”. The Supreme Court returned the Bill unanswered after 18 years, thus accepting the Legislature's competence to pass it. Rajasthan Religious Freedom Bill was reserved for the consideration of the President by Governor Pratibha Patil.

Further; the Second Proviso to Article 200 of the Constitution is intended to preserve the independence, dignity and status of a High Court. Under the Constitution the State Legislatures have exclusive law making power on matters touching the jurisdiction and powers of all courts within the State in respect of matters within their exclusive competence. The powers might be used by a State Legislature to deprive the High Court of much of its jurisdiction and power and to

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transfer the same to inferior courts and thus to lower the prestige and influence of
the High Court. As a safeguard the Governor has been directed by this proviso not
to assent to, but to reserve for consideration by the President, any Bill which would,
in the opinion of the Governor, if passed into law, so derogate from the powers of
the High Court as to endanger the role which it is designed to fulfill under the
Constitution. So, it is a safeguard against a State passing any law which may
adversely affect the powers, jurisdiction or status of the High Court. The Centre can
intervene in a fit case and preserve the High Court’s constitutional status. Many
examples of this nature can be found from time to time.

By reserving a Bill for the consideration of the President, some
Governors had used this power to delay the implementation of legislations. What is
happening in fact is that Governors generally act according to the instructions of the
Cabinet at the Centre. If the party/group in power at the Centre is a different from
the one in the State (whose Legislature has passed the particular Bill) and more
particularly where the party in power at the Centre is in opposition in the State
Legislature and had opposed the said Bill, or for any other reason, the Cabinet may
instruct the Governor either to withhold his assent or reserve it for the
consideration of the President or return the Bill in case the party position in the
Legislature has, in the meanwhile, undergone a change. If any such instructions are
received by the Governor, most likely, he would act according to them,
notwithstanding the advice of his Council of Ministers to the contrary. This is
clearly an undemocratic exercise of power by the Governor. The Legislature has no
remedy against any arbitrary withholding of assent, inordinate delay in granting
assent or unwarranted and unjustified reservation of a Bill for the consideration of the President.\textsuperscript{54}

On the question that whether a Bill should have been reserved for the consideration of the President or not, the Supreme Court held that it is for the Governor to exercise his individual judgement to decide whether he should assent to the Bill or should reserve it for the consideration of the President.\textsuperscript{55} And on the question that in case if the reservation of a Bill for the consideration of the President is necessary and Governor gave his assent, can it be reserved for the consideration of the President after it became full-fledged law, the Supreme Court held that the Governor is prohibited from giving his assent before the recommendations of the President.\textsuperscript{56}

According to Article 255 of the Constitution, no Act of Parliament or of a State Legislature is to be invalidated by reason only that the recommendation or previous sanction of the President required by the Constitution was not given, if assent is given to it by the President subsequently. A law levying a tax was passed by the Rajasthan State Legislature, but it did not secure the assent of the President. Later on State Legislature enacted another law declaring that the earlier law would not be deemed to be invalid by reason of the fact that the earlier law had not secured the assent of the President. But the Supreme Court in the case \textit{Jawaharmal vs State of Rajasthan}\textsuperscript{57} declared that the later law which secured the assent of the

\textsuperscript{55} Supra note 46 at 1048.
\textsuperscript{56} State of Bihar vs Maharajadhiraj Sri Kameswar Singh of Darbhanga and others, AIR 1952 SC 252.
\textsuperscript{57} AIR 1966 SC 764.
President could not cure the infirmity of the earlier law. That infirmity could be cured only by Presidential assent.

6.2.2.2 Specific Situations which Compulsorily Require Central Assent:

The circumstances in which a Bill is reserved by the Governor for presidential assent are as under:

i) The second Proviso to Article 200 of the Constitution as discussed earlier provides a safeguard against a State passing any law which may adversely affect the powers, jurisdiction or status of the High Court.

ii) Article 31A (1) of the Constitution provides that a law regarding acquisition of estates will not be invalid even if it is inconsistent with Articles 14 or 19 of the Constitution. However, under the First Proviso to Article 31A (1), the exemption granted to some categories of acquisitorial law from Articles 14 and 19, cannot be available unless the relevant State Law has been reserved for the consideration of the President and has received his assent. In this way, the Centre can ensure that the States make only justifiable use of their power to deviate from the fundamental rights.

The proviso enables the Central Executive to keep some check on State Laws falling under Article 31A (1), so that there is some uniformity among the State Laws and that there is no undue curtailment of the fundamental rights guaranteed by Article 14 and 19. The Centre can also ensure that the State does not use its legislative power for a purpose extraneous or collateral to the purposes mentioned in Article 31A (1). This
is a safeguard against undue, excessive and indiscriminate abridgement of fundamental rights by State legislation.

iii) Article 31(C) of the Constitution gives overriding effect to the directive principles over fundamental rights guaranteed by Articles 14 & 19 of the Constitution, but a State law can claim this effect only if the President gives his assent to it. This is also a safeguard against undue abridgment of fundamental rights in the name of implementation of directive principles. It may be appreciated that Article 31 (C) confers very drastic power on State Legislatures and so some safeguard is necessary against unwise and inappropriate laws being enacted and claiming exemption from fundamental rights guaranteed by Articles 14 or 19.

iv) Under Article 288 (2) of the Constitution, a State legislation imposing or authorizing imposing of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by an authority established by law made by Parliament for regulating or developing any interstate river or river valley, has no effect unless it has received the assent of the President.

v) Article 301 of the Constitution declare that trade, commerce and intercourse shall be free throughout India. However, under Article 304 (b), a State Legislature may impose reasonable restriction in public interest on the freedom of trade; commerce or intercourse with or within that State as may be required in the public interest but no such Bill is to be moved in the State Legislature without the previous sanction of the President. This Proviso is also a safeguard to ensure that State laws do not unduly disrupt the
economic unity of the Country. The Centre can ensure that States do not make laws to unnecessarily curtail freedom of trade and commerce. It may however be mentioned that in the absence of prior sanction of the President, the defect can be cured under Article 255 by subsequent assent of the President to the State law in question.

vi) Under Article 254 (2) of the Constitution, repugnancy or inconsistency between a State law and a Central law with respect to a matter in the Concurrent List may be cured by the assent of the President to State legislation.

vii) When a proclamation of financial emergency is in operation under Article 360 (1) of the Constitution, the President can direct the States to reserve all Money Bills or Financial Bills for the President’s consideration, after they are passed by the State Legislature.

6.2.2.2.3 President’s Assent to State Bills:

When a Bill is reserved for the consideration of the President, he may take one of three courses:

i) He may assent to the Bill,

ii) He may withhold the Bill, or

iii) He may, where the Bill is not a Money Bill, direct the Governor to return the Bill to the Houses of the Legislature of the State together with such a message as is referred to in the First Proviso to Article 200 of the Constitution. It shall be the duty of the Houses to reconsider the Bill within a period of six months from the date of receipt of such message. If it is again
passed by the House, it shall be presented again to the President for his consideration.\(^58\)

When a Bill is again presented to the President for his assent after its reconsideration by the House, nothing is said as to what the President may do thereafter, but presumably, he may follow the same course as explained above. It does not appear that there is any obligation on the President to give his assent to the Bill. But an Act, which has been passed by the Governor, cannot be disallowed by the President. Article 201 of the Constitution does not prescribe any time limit within which, the President has to come to his decision on a Bill referred to him for his assent. It shows that a Bill reserved by the Governor for the consideration of the President does not lapse as a result of the dissolution of the State Assembly.

In the case of *Jamalpur Gram Panchayat vs Malwinder Singh*\(^59\), the Supreme Court held that if the assent of the President were sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it.

Article 201 of the Constitution confers an unrestricted power on the Central Government to examine the reserved State Laws. However, the Central control over the State laws is justified in some situations. There are considerations of uniformity of law and uniformity of approach in certain basic matters. If, for instance, a State Government were to embark on a large scale indiscriminate nationalisation, its impact may be felt not merely within the State but the national economic interest as a whole may be affected, it may drive away foreign investors

\(^{58}\) Article 201, Constitution of India.

\(^{59}\) AIR 1985 SC 1394
from the Country and so, the Centre may not remain a passive spectator for long. This is a matter which the Centre can decide keeping in view the consideration of uniformity as against local exigencies. Some of the grounds on which the assent of the President has been refused are as under;

a) there was already a Central law in existence.

b) the matter lies within the exclusive jurisdiction of the Centre.

c) the Centre is contemplating action itself.

d) exclusion of Union property from State taxation; non-conformity with the policies of Central Government.

e) unconstitutionality.

f) lack of procedural safeguards etc.

So, the Central Executive is entitled to examine the State law from all angles, such as, whether or not, it is in conformity with the Constitution or the Central policies, whether it is inconsistent with any Central law.\textsuperscript{60} The Kerala Agrarian Reforms Bill was passed by the Kerala Legislature in 1959, but Governor reserved it for the consideration of the President’s assent. Meanwhile, Kerala Legislature was dissolved and fresh elections held. Thereafter, the President sent back the Bill for re-consideration in the light of the amendments suggested by him. The Assembly passed it after incorporating the suggested modifications and thereafter, it received the President’s assent. Legislature can re-consider and amend a Bill passed by a predecessor Legislature.\textsuperscript{61}

\textsuperscript{60} Supra note 21 at 651- 652.

\textsuperscript{61} P. Nambudiri vs State of Kerala, AIR 1962 SC 694.
In 1983, the then Governor of Karnataka had reserved the State's Comprehensive Education Bill for the assent of the President of India. The President gave his assent after a long time. The Gujarat Control of Organised Crime Bill, 2003, which was modeled on the MCOCA, adopted the special procedure for interception of electronic communication. This procedure was struck down by Bombay High Court from the MCOCA in *Bharat Shantilal Shah vs State of Maharashtra* and held that a State could not legislate on a subject that was enumerated in the Union List. In view of this, the President, under Article 201 of the Constitution, directed the Gujarat Governor to return the Bill to the State Assembly for reconsideration and necessary amendments. The Gujarat Assembly re-considered the Bill and passed it again, on June 2, 2004, after deleting Sections 14, 15 and 16. Governor sent it again for the assent of the President. The Union Government has retuned it again with the three recommendations on June 19, 2009 after keeping it with them for the last five years.

6.2.2.2.4 Rajamanar Committee Recommendations:

Under the Chairmanship of Dr. P.V. Rajamanar a Committee was set up by the then DMK Government of Tamil Nadu on 2nd September, 1969 to consider the question regarding relationship that should subsist between the Centre and the States in a federal set up.

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63 Maharashtra Control of Organised Crime Act.
The Committee in its report recommended that the Inter-State Council should be constituted and no decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council.

The Committee further recommended that every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill.

6.2.2.2.5 Recommendations of Sarkaria Commission regarding Assent to Bills:

The Sarkaria Commission examined the scope of the discretion of the Governor in relation to assent to the Bills under Article 200 of the Constitution.\textsuperscript{66} The Commission viewed that Article 200 does not provide discretion to the Governor either expressly or by implication. However, Commission also observed that there may be occasions, which make it necessary for the Governor to use his discretion to assent a Bill. But, the scope of Governor’s discretion is very limited as is obvious by the fact that the Governor cannot

\textsuperscript{66} On March 24, 1983 Smt. India Gandhi announced in the Parliament the proposal to appoint a commission under the Chairmanship of R.S Sarkaria, a retire judge of Supreme Court. She enunciated that the Commission would examine the working of the existing arrangements between Centre and States and recommend such changes in the said arrangements as might be appropriate within the present constitutional framework. The Commission submitted its report to the Union Government in 1987. The report of the Commission made public on January 30, 1988.
withhold assent to a reconsidered Bill. The Sarkaria Commission made the following recommendations:

i) Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. Article 200 does not invest in the Governor, expressly or by necessary implication, with a general discretion in the performance of his functions there-under, including reservation of a Bill for the consideration of the President. However, in rare and exceptional cases, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are patently unconstitutional, such as, where the subject matter of the Bill is ex-facie beyond the legislative competence of the State Legislature or where its provisions manifestly derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the Nation or clearly violate fundamental rights or transgress other constitutional limitations and provisions.67

ii) In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because personally he does not like the policy embodied in the Bill.68

iii) Needless reservation of Bills for the consideration of the President should be avoided and should be reserved only if required for specific purpose such as:

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67 Supra note 13 paras 5.6.06 & 5.6.13 (i).
68 Id. paras 5.6.09 & 5.6.13(ii).
i) to secure immunity from the operation of Article 14 and 19 of the Constitution vide First Proviso to Articles 31 (1) and 31 (C).

ii) to ensure validity and effect for a State legislation imposing tax on water or electricity stored, generated, consumed, distributed or sold by an authority established under Union law vide Article 288 (2).

iii) to save a Bill on Concurrent List subject from being invalidated on the ground of repugnancy to the provisions of a law made by Parliament or/and existing law vide Article 254 (2).

iv) a Bill imposing restrictions on trade or commerce in respect of which previous sanction of the President had not been obtained vide Article 304 (b) read with Article 255.69

The Commission accepted that the discretion of the Governor in relation with assent to Bills is limited but the President could withhold a State Bill reserved for his assent for an indefinite period. So the Commission recommended that;

i) as a matter of salutary convention, a Bill reserved for consideration of the President should be disposed of by the President within a period of 4 months from the date on which it is received by the Union Government.

ii) if, however, it is considered necessary to seek clarification from the State Government or to return the Bill for consideration by the State Legislature under the Proviso to Article 201, this should be done within two months of the date on which the original reference was received by the Union Government.

69 Id. para 5.14.05.
iii) any communication for seeking clarification should be self-contained. Seeking clarification piece-meal should be avoided.

iv) a receipt of the clarification or the reconsidered Bill from the State under the Proviso to Article 201, the matter should be disposed of by the President within 4 months of the date of receipt of the clarification or the back reference on the reconsidered Bill, as the case may be, from the State Government.⁷⁰

6.2.2.3 Dissolution of State Assembly:

The Governor has the power to dissolve the Legislative Assembly.⁷¹ But there is neither explicit provision in the Constitution, which regulates this power of the Governor nor has any convention developed in this regard.⁷² Article 174(2) (b) of the Constitution merely says that the Governor may from time to time dissolve the Legislative Assembly. The Constitution is silent as to when and in what circumstances the Governor may dissolve the House. During the debate in the Constituent Assembly, Mohammed Tahir (member of the Constituent Assembly) wanted to amend the draft Article 153 to incorporate the reasons for the dissolution of the Assembly, but his amendment was not incorporated in the final Article 174 of the Constitution.⁷³ Generally, the Legislative Assembly is not dissolved till the expiry of normal period of 5 years,⁷⁴ but in exceptional circumstances, it can be

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⁷⁰ Id. para 5.16.03 & 5.7.09.
⁷¹ Article 174(2) (b), Constitution of India.
⁷³ Vol. VIII, CAD at 555.
⁷⁴ Article 172 (1) of the Constitution of India provides that Every Legislative Assembly of every State, unless sooner dissolved shall continue for five years from the date appointed for its first
dissolved by the Governor before the expiry of the normal period. About the exceptional circumstances, M.V. Pylee opined that “it is not a normal practice to dissolve a Legislature before it has completed its prescribed period of life. Dissolution at an earlier date with a view to appealing to the electorates and seeking to solve a situation of political instability is an accepted principle of Parliamentary System of Government.”

Exceptional circumstances, when the Governor may dissolve the Legislative Assembly are as under:

i) Chief Minister enjoys the majority support and advises the Governor to dissolve the Legislative Assembly.

ii) Due to the defection of the members of ruling party or by another reason, the ruling party comes in minority.

iii) Other party or coalition of parties is not in a position to form the government.

iv) On the basis of the report sent by the Governor that the constitutional machinery of the State has been failed, the President may dissolve the Legislative Assembly on the recommendations of the Union Cabinet.

6.2.2.3.1 Discretion of the Governor in Dissolution of the State Legislative Assembly:

In the normal circumstances, when the State Government is in the majority, the Governor as the constitutional head is bound to accept the advice of the Council of Ministers to dissolve the State Assembly. A Chief Minister having a meeting and no longer and the expiration of the said period of five years shall operate as the dissolution of the Assembly.

75 M.V. Pylee, Constitutional Government in India, 1960, p. 113.
majority support can get dissolution of the Legislative Assembly as and when he
wants.

The Andhra Pradesh Governor, Surjit Singh Barnala dissolved the
State Assembly on the recommendation of the Council of Ministers headed by
Chief Minister, N. Chandrababu Naidu having majority in the House and asked
Chief Minister, N Chandrababu Naidu to head a caretaker government.\textsuperscript{76}

On August 21, 2009, Haryana Cabinet headed by Mr. Bhupinder
Singh Hooda recommended the dissolution of the State Assembly nearly six months
before the expiry of its term.\textsuperscript{77} And on the recommendations of the Chief Minister,
the Governor, Jagan Nath Pahadia dissolved the Legislative Assembly just hours
after the Haryana Cabinet recommended its dissolution. In this way the Governor
obliged the Chief Minister to dissolve the Legislative Assembly at the time when
the situations in the State were in the favour of his party.

On certain occasions, the Governor can use his discretion regarding
dissolution of State Assembly and can refuse to accept the advice of the Council of
Ministers to dissolve the Legislative Assembly. When the State Government is in
majority, the Governor can refuse to accept the advice of the Chief Minister to
dissolve the Legislative Assembly, if the Chief Minister having majority in the
Assembly advises the Governor to dissolve the House a few days before the
beginning of the Budget Session. In such situation, the Governor will have no
alternative but to reject the advice because the acceptance of this advice would
mean that the ministry would stay in office till the elections are held without getting

\textsuperscript{76} Indian Express, Nov. 15, 2003.
\textsuperscript{77} The Tribune, Aug. 22, 2009.
the Budget passed and the Budget cannot be passed through an ordinance. For this reason, the dissolution was not granted to Hitendra Desai in Gujarat in spite of the fact that he claimed the support of 87 members in a House of 163 members.  

When the ruling party has lost the majority in the Assembly or has a doubtful majority, the Governor can use his discretion and may accept or refuse to accept the advice of the Chief Minister to dissolve the Legislative Assembly. It is also clear from the language of the Constitution itself which provides that the Governor may from time to time dissolve the Legislative Assembly. The use of the expression “may” in Article 174(2) shows that the advice of the Council of Ministers is not binding on the Governor for the dissolution of the State Assembly.

In 1997, Sh. Krishna Pal Singh, the Governor of Gujarat, dissolved the State Assembly on the advice of the Chief Minister, Sh. Dilip Parikh who had lost no-confidence motion in the House, in spite of the fact that BJP was ready to form the government. In April, 1992, the Governor of Nagaland dissolved the State Legislative Assembly on the advice of the defeated Chief Minister.

There are many examples, where Governors refused to accept the advice given by the defeated Chief Ministers to dissolve the House. In 1965 in Travancore-Cochin defeated Chief Minister advised the Governor to dissolve the Assembly but Governor refused to accept his advice and did not dissolve the Assembly.

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78 Supra note 25 at 169.
79 Article 174 (2) (b), Constitution of India.
80 Supra note 26 at 539.
In 1967, in Punjab, when the ministry of Jan Sangh and Akali Dal lost its majority, the Governor refused to accept the advice of the defeated Chief Minister to dissolve the Legislative Assembly and invited the leader of the defector group to form the government as he claimed assured support by the Congress Party and thus had a majority support in the Assembly. The Governor publicly asserted that he was not bound to accept the advice of the outgoing Chief Minister because it was tendered after he had lost majority support in the Assembly.\(^{81}\)

There are many examples in which Governor recommended to the Centre for the dissolution of the State Assemblies on the basis that the State Government is not being carried on in accordance with the constitutional provisions. In 1974, the Gujarat Legislative Assembly was dissolved following the resignation of the ministry. Though the ministry was in a majority, yet it left office because there was a wide spread public agitation against it.\(^{82}\)

In 1976, in Tamil Nadu, D.M.K. Ministry was in majority in the House. The Governor sent his report to the Centre that the ministry was charged with maladministration and corruption and recommended for the dissolution of the House. On the basis of the report of the Governor, the State Legislature was dissolved.

In 1977, in the Parliamentary General Elections, the people gave their verdict in favour of Janta Party. The Congress Party was badly routed. At that time Congress Party was in command in nine States. The Legislative Assemblies of these States were dissolved in spite of the fact that there was no breakdown of

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\(^{81}\) Supra note 21 at 359.

\(^{82}\) Id. at 805.
constitutional machinery in these States. The only reason was that the party commanding at the Centre was different from the parties commanding in these States. Similarly, when after the Parliamentary General Elections in 1980, Congress secured the tremendous majority. The Congress Party after forming the government in the Centre under the leadership of Smt Indira Gandhi dissolved the State Legislative Assemblies of nine States on same pattern as of the Janta Party by taking the plea that the existing State Governments did no longer reflect the wishes of the electorate. These States were Uttar Pradesh, Bihar, Tamil Nadu, Rajasthan, Madhya Pradesh, Maharashtra, Punjab, Orissa and Gujarat.

On August 7, 1988 the Legislative Assembly of Nagaland was dissolved on the basis of the Governor’s report that the “horse-trading was going on in the State”.

In Bihar, when election result was announced on March 4, 2005, it was known that both major groups had the support of 92 MLA’s, 30 short of the number required to cross the majority mark. And when the Presidential proclamation on March 7, 2005 kept the Assembly under suspended animation, the purpose was to allow the political parties to work out a majority group in accordance with the law. The then Governor Mr. Buta Singh sent his report to the President, in which he had stated that some horse-trading was going on and some MLA’s were being won over by allurements. On the basis of the report Prime Minister Manmohan Singh convened a Cabinet meeting on the night of May 22, 2005 to review the law and order situation in Bihar and decided to dissolve the State Assembly. The President on the recommendations of the Union Cabinet

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dissolved the Legislative Assembly of Bihar on May 23, 2005. The unexpected dissolution generated much heat. The BJP has called this dissolution of assembly a 'murder of democracy'. The NDA called it a fraud on the Constitution and said that it had exposed the unscrupulous, anti-democratic and fascist character of the Congress-led alliance.

6.2.2.3.2 Recommendations of the Sarkaria Commission regarding Dissolution of the State Assembly:

The Commission has recommended the following guidelines for the Governor regarding dissolution of the State Assembly:

i) When the advice for dissolving the State Legislative Assembly is made by a ministry, which has lost or is likely to lose majority support, the Governor should summon the Assembly so that the majority can be tested on the floor of the House.\(^84\)

ii) If ultimately a viable ministry fails to emerge, the Governor should first consider dissolving the State Legislative Assembly and arrange for a fresh election after consulting the leaders of the political parties concerned and the Chief Election Commissioner.\(^85\)

iii) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the

\(^{84}\) Supra note 13 para 4.16.17 (a).

\(^{85}\) Id. para 4.16.17 (b).
outgoing ministry, if there is one, to continue as a caretaker government, provided the ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day governance and desist from taking any major policy decision.\(^{86}\)

iv) The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it.\(^{87}\)

6.2.2.4 Dismissal of Ministry;

Article 164 (1) of the Constitution provides that ministers in a State hold office during the pleasure of the Governor. It means that the Constitution itself gives the power to the Governor to dismiss the ministry, when the Governor thinks it necessary. But the Governor cannot dismiss it at his sweet will. In the Parliamentary form of government, the expression ‘during the pleasure’ used in the Constitution means the confidence of the majority in the House. It has also been cleared during the debate in the Constituent Assembly by Dr. B.R. Ambedkar, the Chairman of the Constituent Assembly, when he told about the word ‘pleasure’ that

\(^{86}\) Id. para 6.8.04 (a).

\(^{87}\) Id. para 6.8.06.
I have no doubt about it that it is the intention of this Constitution that the ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle, the Constitution will work. During pleasure is always understood to mean that the ‘pleasure’ shall not continue notwithstanding the fact that the ministry has lost the confidence of the majority. The moment the ministry has lost the confidence of the majority, it is presumed that the president (Governor in case of State) will exercise his pleasure in dismissing the ministry.  

Generally, Governor is to exercise his pleasure according to the Council of Ministers. This follows from the provision in Article 164 (2) which makes the Council of Ministers collectively responsible to the Legislative Assembly of the State. This means that so long as a ministry enjoys the confidence of the majority in the Lower House, the Governor cannot dismiss it and refuse to accept the advice of the Council of Ministers in this regard. But the Governor has some discretion in this area and he may refuse to accept the advice of the ministry which has lost the majority in the House and can dismiss the ministry if he believes that the ministry is in minority. The Committee of Governors appointed by the President in November 1970 recommended that the Governor should compel the Chief Minister to face the Legislature if he is reduced to a minority through defections. It is also recommended by the Sarkaria Commission that the Governor should not dismiss a Council of Ministers, unless the Legislative Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible. If the Chief Minister does

88 Vol. VIII, CAD at 520.
89 Supra note 26 at 532.
not accept the Governor's advice, the Governor may summon the Assembly for the specific purpose of testing the majority of the ministry.\footnote{Supra note 13 para 4.11.11.}

In the circumstances of political instability Governor may use his discretion relating to the dismissal of the ministry and may or may not ask the Chief Minister to face the Assembly immediately. Mr. B.N. Chakravarti, the Governor of Haryana did not ask the Chief Minister, Rao Birender Singh to face the Assembly when Rao had a doubtful majority. The Governor said that it was not necessary for Rao to resign until he ceased to be the leader of the largest single party in the Assembly.\footnote{The Tribune, Nov. 1, 1967, p. 1.} Similarly, the Chief Minister of Punjab, Sh. Parkash Singh Badal was not asked by the Governor, Dr. D.C. Pavate to face the Assembly immediately, when due to the defection of three members, the majority of Parkash Singh Badal was reduced from 54 to 51 in the House of 104 members. There are many cases of similar nature, when Governor used his discretion and did not ask the Chief Minister to face the Assembly in the case of doubtful majority.

Governor is to preserve, protect and defend the Constitution and the law of the Country.\footnote{Article 159, Constitution of India.} He is the only person on the spot who can take stock of the situation and initiate appropriate action including the dismissal of the ministry and if he has the reason to believe that the ministry of the State is involved in anti-national or solidarity activities, which undermine the unity of the Nation, he may justifiably dismiss such a ministry, even if it enjoys a majority in the Legislature. The same was happened in Jammu and Kashmir, in 1953 and the government
headed by Sheikh Abdullah was dismissed. It was reported that the Chief Minister was engaged in subversive activities against the security and integrity of the State which was ultimately detrimental to security of India.

Similarly in Kerala, in July 1959, Namboodripad ministry was dislodged from power due to anti-communist movement. This movement popularly known as mass-upsurge was organized by congress-led front to oust the communist from power.93

The Governor can dismiss the ministry, if it refuses to resign after a vote of no-confidence has been passed against it. It should, however, be noted that when government is defeated even on a major issue, the pleasure may not always be withdrawn. In April 1967, when the Punjab Government was defeated by 53 votes to 49 on the issue of an opposition amendment to the Governor’s address, the pleasure was not withdrawn by the Governor. The Governor was of the opinion that the situation was not so clear as to justify the dismissal of the government on that day when congress opposition amendment to the motion of thanks to the Governor’s address was carried.94 But the ministry will loose the confidence, if a Money Bill or any other Bill dealing with important policy matter introduced by the government is defeated, but even then it is not necessary that the government may resign or the Governor may dismiss the ministry. In such circumstances, generally Governor uses his discretion.

93 Supra note 72 at 111.
6.2.2.4.1 Extent of Discretion of Governor to Dismiss the Ministry:

Governor has the discretion to dismiss the ministry. This power has been given to the Governor by the Constitution itself, when it says that ministers hold office during the pleasure of the Governor. Generally, Governor cannot use his sweet will to dissolve the ministry; there must be some ground to dissolve it. In the following circumstances Governors may use his discretion and dissolve the ministry.

i) When the no confidence motion has been passed against the government and the ministry refuses to resign.

ii) When Governor has a reasonable ground to believe that the Chief Minister no longer enjoys the confidence of the Legislative Assembly and he is not prepared to face the Assembly immediately, on one pretext or the other.  

iii) When Governor believes that the ministry is trying to maintain its majority in the Legislative Assembly by practicing corruption.

iv) When Governor believes that the ministry is violating the law of the land.

6.2.2.4.2 Use and Misuse of the Discretionary Power to Dismiss the Ministry:

There are many instances when Governors have used their discretion to dismiss the ministry. The first instance of a controversial dismissal of ministry occurred in the West Bengal, when Dr. P.C. Ghose resigned and formed a new

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95 Article 164 (1), Constitution of India.
96 Supra note 94 at 75.
97 Ibid.
98 Supra note 72 at 96.
party with 17 members of the Legislative Assembly. The opposition then claimed that the government had lost the majority. The Governor asked the Chief Minister Ajoy Mukherjee to call the Assembly Session by the end of the November so that the government could prove the majority on the floor of the House. But the Chief Minister instead of calling the Assembly Session, advised the Governor to convene the meeting of the Assembly on 18th December. The Governor was not satisfied with the reason given by the Chief Minister and believed that he was knowingly avoiding to face the House. With this reason Governor, Dharam Vira dismissed the ministry on November 21, 1967. The Calcutta High Court\textsuperscript{99} also upheld the action of the Governor on the ground that no condition or restriction has been imposed upon the power of the Governor with regard to dismissal of the ministry under Article 164 (1) of the Constitution.

On 17 February 1970, Sh. Charan Singh formed the government in U.P. with the help of The New Congress Party. When the Congress (R) withdrew its support, the Governor, Sh. B. Gopala Reddy asked the Chief Minister to resign even though he was ready to face the Assembly to prove his majority. The Governor wrote a letter to the President on Sept. 29, 1970 and demanded for the invocation of Article 356. The President rule was imposed on Oct. 3, 1970 and the ministry was dismissed.

In this case Governor used his discretion and dismissed the ministry without giving a chance to Sh. Charan Singh to prove his majority inspite of the fact that he was also ready to face the Assembly. The President appointed a Committee

\textsuperscript{99} Mahabir Prasad Sharma vs Prafulla Chandra Ghose, AIR 1969 Calcutta 189.
of Governors on the role of Governors under the Chairmanship of Sh. Bhagvan Sahai to study and formulate the guidelines for the Governors. But even after the norms or the recommendations of the Committee, many a times, Governors misuse this august office and have continued to exercise their discretion in an arbitrary manner.

In 1984, in Andhra Pradesh, when N.T. Rama Rao was the Chief Minister of Andhra Pradesh, Shri Bhaskara Rao, his Finance Minister revolted against him. Shri Bhaskara Rao with some defected members joined hand with Congress-I and claimed to form the government. The Governor, Shri Ram Lal without verifying the strength of Shri Bhaskara Rao asked the Chief Minister, N.T. Rama Rao to tender his resignation by saying that he had lost the majority.

Shri N.T. Rama Rao refused to resign and advised the Governor to convene the emergency session of the House and to give him a chance to prove his majority on the floor of the House. But on August 16, 1984, the Governor dismissed the Chief Minister, N.T. Rama Rao and N.T. Rama Rao also paraded with his supporters before the Governor.

The Governor should have accepted the advice of Shri N.T. Rama Rao to give him a chance to prove his majority. The Governor exercised his discretionary power to dismiss the ministry in an arbitrary and dictatorial manner. And Governor’s hasty and politically motivated action to dismiss the ministry devalued the prestige of this august office.

When 12 MLA’s of National Conference Party withdrew their support to it and joined Real National Conference, the Chief Minister, Dr. Farooq
Abdullah requested the Governor of Jammu & Kashmir, Shri Jagmohan to summon the Assembly to test the majority on the floor of the House. But the Governor on the evening of 2nd July 1984 dismissed, Dr. Farooq Abdullah. This action of the Governor was the misuse of his power in dismissing the ministry as he acted arbitrarily and in haste. The opposition parties criticized the dismissal of Dr. Farooq Abdullah’s ministry and the installation of G.M. Shah’s government with in few hours.

On Feb. 21, 1998, in U.P., Governor, Mr. Romesh Bhandari dismissed the Kalyan Singh ministry without giving him an opportunity to face the confidence motion in the House. The Governor at that time took the plea that the ministry had lost the majority in Assembly due to the defection of some members. The action of the Governor was widely criticized as he did not even ask him to seek the vote of confidence. A writ petition was filed in the Allahabad High Court against the action of the Governor and on 23 February 1998, a two-member Bench of the Allahabad High Court ordered for the restoration of the Kalyan Singh government in the State as it existed.

When the order of the High Court was challenged in the Supreme Court,\textsuperscript{100} it ordered that a Special Session of the Assembly be summoned, which would have the only agenda to have a composite floor test between the two contending parties to ascertain who out of two (Sh. Kalyan Singh and Sh. Jagdambika Pal) enjoyed the majority in the Assembly.

\textsuperscript{100}Jagdambika Pal vs State of U.P., AIR 1998 SC 998.
6.2.2.4.3 Recommendations of the Committee of Governors regarding Dismissal the Ministry:

The Committee of Governors\footnote{It was appointed by the President in the year 1970 after the constitutional crisis in Uttar Pradesh.} gave the following recommendations relating to the discretionary powers of the Governor to dissolve the ministry;

i) A Governor has the right to dismiss a ministry, if the Chief Minister shirks his primary responsibility of facing the Assembly within the shortest time to test the confidence of the Legislature in him.

ii) The test of confidence in the ministry should normally be left to a vote in the Assembly. A Chief Minister’s refusal to test his strength on the floor of Assembly can well be interpreted as a prima-facie proof of his no longer enjoying the confidence of the Legislature.

iii) If an alternative ministry can be formed, which in the Governor’s view can command a majority in the Assembly; he must dismiss the ministry in power and install an alternative ministry in office.

iv) The Chief Minister in a coalition, the Committee feels, deprives his pre-eminence solely from the agreement among the partner. When the Chief Minister heads a single party government his pre-eminence is unquestioned. A Chief Minister is the key stone of the arch of the Cabinet but this can
apply only when he heads a team which collectively has a majority support
in the Legislature. Thus the Chief Minister in a coalition cannot claim the
right of advising the Governor in matter of dismissal of ministers in such a
manner as to break the arch yet claim the right to continue as Chief
Minister.102

6.2.2.5 Summon and Prorogue the State Assembly:

The Governor under the Constitution has the power to summon and
prorogue the House of the Legislature. Governor acts regarding summoning and
proroguing the House on the advice of the Council of Ministers. Sarkaria
Commission also recommended that so long as the Council of Ministers enjoys the
confidence of the Legislative Assembly, the advice of the Council of Ministers in
regard to summoning and proroguing a House of the Legislature, if such advice is
not patently unconstitutional, should be deemed as binding on the Governor.103

Constitution of India empowers the Governor of a State to convene
each House of the Legislature. It provides that the Governor shall from time to time
summon the House or each House of the Legislature of the State to meet at such
time and place as he thinks fit, but six months shall not intervene between its last
sitting in one session and the date appointed for its first sitting in the next session.104
Generally, the Governor has nothing much to do with the summoning of the State
Assembly except for making an opening address at the commencement of the first
session after each General Assembly Elections of the House as well as at the

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102 Supra note 26 at 534-535.
103 Supra note 13 para 4.16.14.
104 Article 174 (1), Constitution of India.
commencement of the first session of each year and to inform the Legislature of the causes of its summons.\textsuperscript{105} The Governor may address the Legislative Assembly or in the case of a State having a Legislative Council, either House of the Legislature of the State or both Houses assembled together.\textsuperscript{106}

Governor is also empowered to prorogue the House. Constitution of India provides that the Governor may from time to time prorogue the House or either House of the Legislature.\textsuperscript{107}

6.2.2.5.1 Discretion of the Governor in Summoning the House:

In general, it is expected that the Governor of the State shall summon the Legislature on the aid and advice of the Council of Ministers and he will not convene the Assembly suo-motu. The reason for this convention is that it is the Chief Minister alone, who can provide the Assembly with business to transact.\textsuperscript{108} Dr. B. R. Ambedkar also pointed out during the debate in Constituent Assembly that neither the Speaker nor the Chairman of either House would be entitled to summon the meeting of the Legislature. The business had to be provided by the executive that is to say the Prime Minister who would advise the President to summon the Parliament.\textsuperscript{109} And in the parliamentary form of government, the pattern of formation of the government at the State is same as that at the Centre, so the Governor would convene the Assembly on the advice of the Chief Minister.

\textsuperscript{105} Article 176 (1), ibid.
\textsuperscript{106} Article 175 (1), ibid.
\textsuperscript{107} Article 174 (2) (a), ibid.
\textsuperscript{108} Supra note 72 at 119.
\textsuperscript{109} Vol. VII, CAD at 106.
But the instances show that the Governor used his discretion for summoning the House several times. When, the Chief Minister has the fear of defeat in the Assembly and intentionally bypasses the Assembly session or avoids to advice the Governor to summon the House, in such circumstances, the Governor can use his discretion and ask the Chief Minister to summon the House. Or, if it appears to the Governor that the ministry has lost the majority support, then the Governor in order to remove the clouds of doubts on the majority support of the ministry impressed on the Chief Minister the imperative need of calling of an earliest session of the House.

It is also recommended by the Committee of the Governors appointed by the President on 26th November 1970 that where the Governor has reason to believe that the Ministry no longer enjoys the majority, he may ask the Chief Minister to face the Assembly.\(^{110}\)

The Administrative Reform Commission has also suggested that when a question arises as to whether the Council of Ministers enjoys majority support in the Assembly, the Governor may suo-motu summon the Assembly to obtain the verdict, if the Chief Minister does not advice him to convene the Assembly.\(^{111}\)

There are many examples, where the Governor in order to remove the clouds of doubts of majority support of the House asked the Chief Minister to summon the Assembly. In Orissa, the Governor asked the Swatantra Party Chief Minister, R. N. Singh Deo, to call the session of the House to test the majority support.

\(^{110}\) Committee was headed by Sh. Bhagawan Sahay of Jammu and Kashmir.

\(^{111}\) Report of Administrative Reforms Commission’s on Centre-State Relations, p. 25.
behind him after the withdrawal of the cooperation of the Jan Congress led by Dr. Harekrishna Mehtab in December, 1970 and the date of January 15, 1971 was fixed for the purpose.  

In order to clear the clouds of doubt regarding majority of the ministry, it is the discretion of the Governor to ask the Chief Minister to summon the earlier session of the House or he may refuse the request of opposition parties to ask the Chief Minister to call earlier session of the House. For instance, in December 1968, when Bansi Lal’s government in Haryana was reduced to a minority due to defections and even 41 MLA’s paraded before the Governor and demanded early session of the Assembly to prove the majority of the House, he did not concede the request. Rather, he said that there was no need of convening the Assembly.  

When the Governor believes that the ministry is intentionally avoiding to follow his direction to convene the Assembly, he can even dismiss the ministry. On November 2, 1967, some members defected from the United Front government in West Bengal and formed a new party. The Governor, Dharam Vira due to this happening asked the Chief Minister to convene an early session of the Assembly, but the Chief Minister, Ajoy Mukherjee wanted to delay the convening of the Assembly by six weeks or in other words, he was not agree to follow the directions of the Governor. The Governor then dismissed the ministry and installed new ministry. But this may be the action in haste. In such circumstances, the

112 Supra note 72 at 125.
113 Id. at 125-126.
Governor may convene the session of the House, so that the majority of the House can be tested on the floor of the House.

6.2.2.5.2 Discretion of the Governor in Proroguing the House:

Governor has the power to prorogue the House and generally, he exercises this power on the advice of the Council of Ministers. On March 12, 1968, the Governor of Punjab, Mr. D.C. Pavate prorogued the House on the advice of the Chief Minister for passing the Appropriation Bill. When it was challenged, the Supreme Court held that where the Assembly was in session but it was put in a state of inaction for two months by the adjournment by the Speaker under Rule 105, which the Governor had no power to rescind and the time was running out and the Budget Session of the Assembly had to reach a conclusion before 31 March, because after that date no money could be drawn from the Consolidated Fund. The Governor had to act quickly to put back the legislative machinery of State into life. In such a case only two courses are open. One is for the ministers to ask the Speaker under Rule 16 to recall the Assembly and the other is to prorogue the Assembly to get rid of the adjournment and then to resummon the Assembly. The second was not only a reasonable solution but the one most properly adapted to achieve a constitutional result and it was followed.\(^{114}\)

In the normal circumstances, Governor prorogues the House on the advice of the Chief Minister. But it does not mean that Governor cannot use his discretion in proroguing the House. Constitution of India itself enables the Governor to prorogue the Assembly in his discretion. It uses the word ‘may’ in

Article 174 (2)(a), which means that the Governor in his discretion may prorogue the State Legislature or may refuse the request of the Chief Minister for proroguing the Assembly. When the Governor feels that ministry is not in majority in such circumstances the Governor may refuse the advice of the Chief Minister to prorogue the Assembly.

Many times the Governor uses his discretion in partisan manner and prorogues the Assembly in order to enable the Chief Minister to manage the majority support. When in 1967, 40 congress members of Madhya Pradesh Legislative Assembly, under the leadership of Mr. G. N. Singh defected from the ministry; the Governor K.C. Reddy prorogued the Legislative Assembly on the advice of the Chief Minister, D.P. Mishra. This action of the Governor was criticised.

In 1970, when 15 MLAs of the Congress Party in Haryana, left the party, the Bansi Lal government came in minority and the special session of the Assembly for no-confidence motion was called to be held on March 3, 1970. But the Governor, B. N. Chakravarty prorogued the House instead of compelling him to face the Assembly. The opposition criticised this action of the Governor.

In Uttar Pradesh the Governor, B. Gopala Reddy prorogued the Assembly on the advice of the Chief Minister, Charan Singh on January 9, 1968, when the Samyouta Vidhayak Dal was reduced to a minority as the C.P.I (M) and S.S.P. withdrew their support and alleged that the government had failed to carry out the 19 points programme.\footnote{Supra note 72 at 133.}
Goa incident is the latest example of use of power to prorogue the Assembly for providing the benefits to the ministry. Governor of Goa, S.C. Jamir prorogued the Goa Assembly on January 17, 2008, even as senior leaders of the Congress began a fire-fighting operation to save the seven-month-old Digambar Kamat government in this politically volatile state as Independent MLA Vishwajeet Rane and three MLAs from the Nationalist Congress Party (NCP) hold the key to the survival of the Congress-led government in Goa. The opposition BJP with 14 members and the two-member Maharashtra Gomantak Party were egging on Rane and the NCP legislators to form the government with outside support. As the Congress-led government in Goa plunged into minority, the BJP demanded convening of a special session of the Assembly for a trial of strength to “call the bluff” of the ruling alliance. The Congress rushed AICC general secretaries Mabel Rebello and Siddarth Patel to negotiate with Kamat and the Congress leaders were unable to make any headway and the Governor prorogued the Assembly just before it was to convene at 2.30 p.m. The BJP, which air-dashed senior leader Rajiv Pratap Rudy to Goa to assess the situation there, was angry at the way the Assembly was prorogued. Ravi Shankar Prasad\footnote{Spokesperson of BJP at that time.} said the decision to prorogue the Assembly was taken in haste to save the government which was on the verge of collapse and called it constitutional deceit.\footnote{The Tribune Chandigarh, Jan. 18, 2008.} Governor prorogued the Assembly to facilitate the government. Rather, he should have used his discretion and not prorogued the House.
6.2.2.5.3 Recommendations of Sarkaria Commission regardingSummoning and Proroguing the State Assembly:

Regarding the discretion of the Governor for summoning and proroguing the Assembly, the Commission recommended that:

i) If the Chief Minister neglects or refuses to summon the Assembly for holding a “Floor Test”, the Governor should summon the Assembly for the purpose.\(^{118}\)

ii) The Governor may in the exigencies of certain situations, exercise his discretion to summon the Assembly, only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution.\(^ {119}\)

iii) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting or advises it’s summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months specified in Article 174(1).\(^ {120}\)

iv) When a Chief Minister (who is not the leader of the party which has absolute majority in the Assembly), is not prepared to summon the Legislative Assembly within 30 days of the taking over or 60 days, as the case may be or when the Governor finds that the Chief Minister no longer enjoys the confidence of the Assembly the Governor would be within his constitutional right to summon the Assembly for holding the “Floor

\(^ {118}\) Supra note 13 para 4.11.20.

\(^ {119}\) Id. para 4.16.15 (a).

\(^ {120}\) Id. para 4.16.15 (b).
Generally, a period of 30 days will be reasonable for summoning the assembly, unless there is very urgent business to be transacted, such as passing the Budget, in which case, a shorter period may be indicated. In special circumstances, it may even exceed this period and go up to 60 days.\footnote{Id. para 4.16.15 (c).}

v) If a notice of a no-confidence motion against a ministry is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition, but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. He should advise the Chief Minister to postpone the prorogation and face the motion.\footnote{Id. para 4.16.16.}

6.2.2.6 Recommendation of President’s Rule:

If the Governor finds that it is impossible to carry on the administration of the State according to the provisions of the Constitution, he reports about the failure of the constitutional machinery in the State to the President.\footnote{R.N. Mishra, the President of the Indian Republic, Vora & Company Publishers Pvt. Ltd. Bombay, 1965, p. 163.} The Governor makes his report to the President in his discretion and he is under no constitutional obligation to act in this matter on the aid and advice of the Council of Ministers. Because, such report may be against a ministry in power so, it cannot be made in accordance with the ministerial advice. Further when the ministry has resigned the possibility of getting their advice is too remote. Governor
has to exercise his discretion in sending the report under Article 356. Article 356(1) of the Constitution provides that if the President on receipt of report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may proclaimed the President’s rule in that State. In making a report to the President the Governor acts not only as the head of the State but also as representative of the Centre, who is under an oath to preserve, protect and defend the Constitution and the law.  

The Governor, therefore, has a requisite discretion to judge the situation of the State while making a report to the President. Such a report is a veto of censure on the ministry in power and it will be absurd to imagine that the Governor is expected to send such a report with the advice of the Council of Ministers as no ministry can be asked to recommend self-annihilation. In other words, the assessment of the situation that necessitates presidential intervention is primarily the task of the Governor. During the President’s rule since, there is no ministry in the State, so, the Governor acts not only as the head of the State but also as the de facto ministry.

6.2.2.6.1 Need and Scope of Article 356:

The Union has the obligation to protect the constitutional form of government in the State. It has to protect the State against invasion. It has also to protect the State against domestic violence. To discharge these constitutional obligations of the Union, the Constitution provides a sort of control over the State

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125 Article 159, Constitution of India.
126 Supra note 124.
through the executive power of the President. The main aim of the founding fathers of our Constitution was to make the Centre strong, which is the approach to make the parliamentary system successful. They were highly influenced by the factors like national unity, integrity and security of the Country. Article 355 of the Constitution imposes a duty on the Centre to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. It implies that the Centre Government is entitled to receive the reports about the situations of the State from the Governor, who will act while making this report in his discretion. The Office of the Governor is the connecting link between the Centre and the States in administrative matters.

The scope of Article 356 to impose President’s Rule in a State is very wide. Article 356 prescribes that President can proclaim Presidential rule in a State on the satisfaction that the government of the State cannot be carried on in accordance with the provisions of the Constitution. But it is a very wide ground. This Article gives wide powers in the hands of the Centre. If the commanding party in the State is different from the commanding party in the Centre then Centre can misuse this Article and may impose the President’s rule by taking the plea that government of the State cannot be carried on in accordance with the provisions of the Constitution. Although the Constitution does not mention any particular situation for imposition of President’s rule, but some situations may be covered under the following heads:

i) Breakdown of constitutional machinery;

ii) Political instability;
iii) No party is in a position to form the Government;

i) Breakdown of Constitutional Machinery:

Breakdown of constitutional machinery is a very wide term. It may include in its ambit a number of situations. When in a State law and order machinery has failed, it may be said that the constitutional machinery has failed. Failure of law and order machinery means the government of the State is incompetent to maintain the peace in the State or in other words, the State government has failed to discharge its constitutional obligations. But the term law and order is very extensive which in itself includes from the most trivial to the worst of the situations.

The popular agitations, corruption and maladministration may be covered in the ambit of breakdown of the constitutional machinery of the State. When the State Government commits the acts amounting to abrogation of the provisions of the Constitution, there is breakdown of the constitutional machinery. The Union Government is empowered to give directions to the State Government and Governor is to watch that the State Government is following those directions. If the State Government refuses to follow the directions of the Union, then the Governor may send the report to the Centre in this regard and it may be the failure of the constitutional machinery. The Governor is the sole judge, who sends the report to the Centre, about the failure of the constitutional machinery in the State.

ii) Political Instability:

Political instability means when the members of the ruling party withdraw their support to it and commanding party comes in minority. It may be a

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127 Article 365, Constitution of India.
ground for the imposition of President’s rule in that State, because in such circumstances, the working of the responsible government is not possible. Under such circumstances, Governor can find the alternate or if it is not possible to establish stable government, then he may send the report about this situation to the President and the President may impose President’s rule.

iii) No Party is in a Position to form the Government:

When after the general assembly elections, not even a single party comes in majority and it is also not possible to form ministry in a coalition then the Governor may send a report about this situation to the President and may recommend for the imposition of the President’s rule.

So, the scope of Article 356 is very wide. The wide scope of this article is in tune with Article 355 of the Constitution of India. The study of the use of this Article reveals that the Centre Government has used the wide scope of this Article many times for its political benefits.

6.2.2.6.2 Interference of the Centre:

The latter part of Article 355 imposes a duty on the Union Government to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Language of this Article is wide or it would not be impossible to say that the Union Government even in resorting to enforce a political doctrine or theory may act unconstitutionally, so long as the doctrine or theory is covered by the purposes of the Constitution found in preamble, which has been held to be a part of the Constitution.\(^{128}\) Article 356 empowers the

Centre with vast powers and many a times the Centre played a controversial role in the administration of the State with the help of the power of this Article to get rid of the State Governments. According to this Article, if the President, on the receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution may impose President’s rule. The use of word ‘otherwise’ in this Article provides that President can impose Presidential rule in the State even without the report of the Governor. At the time of debates in the Constituent Assembly on the word ‘otherwise’, Dr. B.R. Ambedkar viewed that in emergent situations the President should come from the very beginning and not after the suppression of the Constitution by the Governor as envisaged under Article 188 of the Draft Constitution.”

So, the aim of the inclusion of this word was to empower the President to act even on his own initiative. But word “otherwise” is a very vague term, which gives blanket powers in the hands of the Centre or in other words Centre can interfere or impose the President’s rule in the State not only on the report of the Governor but also “otherwise”. Justice Bhagwati observed that the inclusion of the word ‘otherwise’ in Article 356 gave very drastic powers to the President which if misused or abused, can destroy the constitutional equilibrium between the Union and the States.

The Centre can interfere in the administration of the State to fulfill its obligations or may be for the political purpose by the help of:

a) Satisfaction of the President.

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129 Vol. IX, CAD at 134.
130 State of Rajasthan vs UOI, AIR 1977 SC 1361.

a) Satisfaction of the President:

Article 356 (1) is invoked on the condition that the President is satisfied that the constitutional machinery has failed to function in accordance with the provisions of the Constitution. The satisfaction of the President under Article 356(1) does not mean the personal satisfaction of the President but it is the satisfaction of the Cabinet.\(^{131}\) Whether there is breakdown of constitutional machinery in a State is a matter of assessment of a ‘situation’ by Union Government. And the court cannot substitute its own judgement on such a matter.\(^{132}\)

So, Constitution provides wide powers to the Centre to interfere in the matters of the State under Article 356, which provides that the President can issue proclamation of President’s rule even without the Governor’s report, if he is satisfied that such events occurred in a State which invoke the special responsibility placed upon the Centre to maintain the State under the Constitution.

Justice Bhagwati\(^{133}\) emphasized that the satisfaction of the President under Article 356 is a subjective one and cannot be tested by reference to any objective tests, or by judicially discoverable and manageable standards. The court cannot go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based.

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\(^{131}\) The (Constitution 38\(^{th}\) Amendment) Act, 1975 declared that the satisfaction of the President mentioned in Article 356 shall be final and conclusive and shall not be questioned in any court on any ground. But The (Constitution 44\(^{th}\) Amendment) Act, 1978 withdrew this clause.

\(^{132}\) Supra note 128.

\(^{133}\) Supra note 130.
Justice Bhagwati has also conceded that the inclusion of the word ‘otherwise’ in Article 356 gave to the President very drastic powers which if misused or abused can destroy the constitutional equilibrium between the Union and the States. He says “indeed the usual practice is that the President acts under Article 356 (1) of the Constitution only on Governor’s report. But the use of word ‘or otherwise’ (in Article 356) shows that President’s satisfaction could be based on other material as well. This feature of our Constitution indicates most striking the extent to which in-roads have been made by it on the federal principle of Government”

Late, Shri Charan Singh, the then Union Home Minister addressed a letter to the Chief Ministers that they should advice the Governors’ of their respective States to dissolve the State Assembly in exercise of the power under Article 174 (2) and seek a fresh mandate from the electorate. When a Legislature no longer reflects the wishes of the electorate he said it should obtain a fresh mandate. The States challenged the validity of the directives issued by the Home Minister to Chief Ministers to dissolve their Assemblies and seek fresh mandate on the ground that the reason for imposition of President Rule mentioned in the letter was outside the scope of Article 356.\(^\text{134}\)

The Petitioners prayed for a permanent injunction for restraining the Centre from giving effect to the directives of the Home Minister. A Bench of seven members of the Supreme Court rejected the petition and upheld the Centre’s action of dissolution of three Assemblies under Article 356. The court ruled that the

\(^{134}\) Ibid.
satisfaction of the President under Article 356 could not be questioned. The President acts not only on the report of the Governor but also otherwise. This means that the satisfaction can be based on material other than Governor’s report.

Justice P.B. Sawant opined in *S.R. Bommai vs UOI* 135 that the President's satisfaction has to be based on objective material. That material may be available in the report sent to him by the Governor or otherwise or both from the report and other sources. Further, the objective material so available must indicate that the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus the existence of the objective material showing that the government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition precedent before the President issues the proclamation. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question. However, if there is no such objective material before the President or the material before him cannot reasonably suggest that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the proclamation issued is open to challenge. It is further necessary to note that the objective material before the President must indicate that the government of the State "cannot be carried on in accordance with the provisions of the Constitution".

In other words, the provisions require that the material before the President must be sufficient to indicate that unless a proclamation is issued, it is not possible to carry on the affairs of the State as per the provisions of the Constitution.

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135 AIR 1994 SC 1918.
It is not every situation arising in the State but a situation which shows that the constitutional government has become an impossibility, which alone will entitle the President to issue the proclamation. These parameters of the condition precedent to the issuance of the proclamation indicate both the extent of and the limitations on, the power of the judicial review of the proclamation issued."

The study reveals that the Union Government has not adopted uniform pattern in accepting the causes and circumstances which may warrant the invocation of Article 356.136 The word failure of constitutional machinery has been liberally used by the Union Government justifying the grounds which were not even anticipated by the founding fathers of our Constitution. When, in April 1992, the Governor of Nagaland dissolved the State Assembly on the advice of the Chief Minister under Article 174(2)(b) the Central Government did not approve this action of the Governor. The Central Government invoked Article 356 ‘suo moto’ without any recommendations of the Governor on April 2, by taking the plea that the Chief Minister had already lost his majority when he advised the Governor to dissolve the House. This action shows the unnecessary interference of the Centre in the political affairs of the State. The opposition parties at Centre described that action as an attack on the federal character of the Constitution.

b) Report of the Governor:

Article 356 (1) may be invoked on the report of the Governor. Governor is the bridge between the Centre and the States. It is the duty of the Governor to protect and sustain the constitutional machinery in the State. He keeps

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the President informed about the developments of the State. Governor prepares the report about the situations of the State for the President in his discretion and recommends the imposition of President’s rule. Various instances of imposition of president’s rule on the recommendations of the Governor show that the Governor acted for providing political benefits to the Centre. At this time Governor acts as the true agent of the Centre or in other words the Centre may use the Office of the Governor to interfere in the administration of the State.

6.2.2.6.3 Effects of the President’s Rule:

When the President after the acceptance of the Governor’s report imposes the President’s rule and declares that the powers of the State Legislature are to be exercised by or under the authority of the Parliament, then the entire Legislative field of the States comes under the control of the Union. And Central Government gets the power to make laws for any matters enumerated in the State List. The President may be authorized by Parliament to delegate the power so conferred on him to any other authority with subject to such conditions as he may impose.\textsuperscript{137} The executive power of the Union also extends to the giving of directions to any State Government as to manner in which its executive power is to be exercised. And if the Lok Sabha is not in session the President may be authorized the expenditure from the consolidated fund of State, pending sanction of such expenditure by Parliament.\textsuperscript{138}

In that context the position of the Governor is not that of the head of the State but of a mere deputy of the President and all his actions in this connection

\textsuperscript{137} Article 357 (1) (a), Constitution of India.

\textsuperscript{138} Article 357 (1) (c), ibid.
are performed in the capacity as a representative of the President and in the very nature of being a representative, he exercises only those powers which are delegated to him by the President.\(^{139}\) When the President’s rule is imposed in a State, the President may assume to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by the Governor.\(^{140}\)

The President may suspend the State Legislature or dissolve it and ask the Cabinet in power to continue in office till a new Legislature has been elected. When under the proclamation of President’s rule the Cabinet continues in the office after the dissolution, till the election of the new Legislature, the interim government cannot initiate anything which might require legislative sanction. But in routine matters it would exercise the same powers as it did prior to the dissolution of the House. When President decides to take over the administration of a State, the ministry ceases to function and he may do the followings;

i) assume to himself all or any of the functions of the government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State.\(^{141}\)

ii) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.\(^{142}\)

\(^{139}\) Supra note 124 at 164.

\(^{140}\) Annual Survey of Indian Law, by Indian Law Institute, New Delhi, 2006, p. 120.

\(^{141}\) Article 356 (1) (a), Constitution of India.

\(^{142}\) Article 356 (1) (b), Ibid.
iii) 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 the Constitution relating to anybody or authority in the State.\textsuperscript{143}

However, the President is not authorized to assume the powers of the High Court or to suspend any constitutional provision relating to it.\textsuperscript{144} During the President’s rule the problems of bringing in legislation is resolved either by the issue of ordinances by the President or by legislation in Parliament. All proposals involving legislation are sent to the Central Government. The Central Government is answerable to Parliament for the government of the State. The life of the law made by Parliament or the President during the operation of Article 356 is not co-terminus with the subsistence of the proclamation. The law does not come to an end automatically as soon as the proclamation is revoked, it remains in force until it is altered or repealed by the State Legislature.

6.2.2.6.4 Duration of Proclamation of President’s Rule:

A proclamation issued under Article 356 shall be laid before each House of Parliament and shall remain in operation for two months unless before the expiry of that period it has been approved by both Houses of Parliament.\textsuperscript{145} When the President’s rule is invoked at the time when Parliament is dissolved or dissolution takes place during the period of two months and the proclamation is

\textsuperscript{143} Article 356 (1) (c), Ibid.
\textsuperscript{144} Proviso to Article 356, Ibid.
\textsuperscript{145} Clause (3) of Article 356, Constitution of India.
passed by the Rajya Sabha but not passed by the Lok Sabha, the proclamation shall cease to operate at expiry of 30 days from the date on which the new Lok Sabha first meets after reconstitution unless before the expiry of 30 days it has also been passed by the Lok Sabha.\textsuperscript{146} When the Parliament approves the imposition of President’s rule, it remains in operation for six months. It may be revoked or varied by a subsequent proclamation of emergency.\textsuperscript{147}

The normal operative period for the proclamation is six months,\textsuperscript{148} which will count from the day on which the Houses pass the resolution approving the proclamation. The Centre has the wide powers to extend the duration of imposition of President’s rule for six months at a time\textsuperscript{149} but in any case the President’s rule will not remain continue for more than three years\textsuperscript{150} or in other words the constitutional machinery must be restored to the State.

\textsuperscript{146} Proviso to Article 356(3), ibid.
\textsuperscript{147} Article 356 (2), ibid.
\textsuperscript{148} The (Constitution 42\textsuperscript{nd} Amendment) Act, 1976 had risen the period of six months to one year. But the (Constitution 44th Amendment) Act, 1978 reduced this period to six months.
\textsuperscript{149} 44\textsuperscript{th} Amendment, 1978, substituted the word six months for the word one year. Thus it restores the position as it stood before 42\textsuperscript{nd} Amendment, 1976.
\textsuperscript{150} First Proviso to Article 356(4), Constitution of India.
The (Constitution 44th Amendment) Act, 1978 restricted the power of the Centre to continue President’s rule and provides that the extension of the emergency beyond the period of one year\textsuperscript{151} is possible only if the conditions mentioned in clause (5) of Article 356 are present, which are as follows;

i) A proclamation of emergency under Article 352 is in operation at the time of the passing of such resolution in the whole of India or in the concerned State or in the part of the State and

ii) The Election Commission certify that the continuance in force of the proclamation under Article 356 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.

The effect of this clause is that normally a proclamation under Article 356 remains in force in a State for one year at the most but under special circumstances mentioned above it can remain in force up to three years which is the absolute maximum ceiling.\textsuperscript{152} However, The (Constitution 64th Amendment) Act, 1990 provided that in case of proclamation of President’s rule in Punjab on May 11, 1987, the conditions mentioned in clause (5) of Article 356 shall not apply. The

\textsuperscript{151} Due to the Akali agitation in Punjab the (Constitution 48th Amendment) Act, 1984, substituted the words “any period beyond the expiration of two years for the words any period beyond the expiration of one year” in clause (5) of Article 356. Again the (Constitution 64th Amendment) Act, 1990 added a new proviso to clause (4) of Article 356 and substituted the words “three years and six months for the words three years”. Again the (Constitution 67th Amendment) Act, 1990 due to the circumstances of Punjab, substituted the words “four years for the words three years and six months.” Again the (Constitution 68th Amendment) Act, 1991 substituted the words “five years for the word four years.”

\textsuperscript{152} Supra note 21 at 800.
idea behind periodic parliamentary ratification of continuance of the proclamation under article 356 is to afford an opportunity to Parliament to review for itself the situation prevailing in the concerned State, so that the central executive does not feel free to keep the proclamation in force longer than what may be absolutely necessary.\(^{153}\)

6.2.2.6.5 Use and Misuse of the Power under Article 356 (1):

The President under Article 356 (1) is empowered to impose Presidential rule in the State. This Article gives very important power in the hands of the Centre and due to this power Centre can fulfill its obligations under the Constitution. Generally, President uses this Article on the report of the Governor of the State but he can also do so even without the report of the Governor. There are many instances when Centre fulfilled its obligation to protect the States by using this Article.\(^{154}\) In a number of cases Central intervention has taken place in the States because of the instability of the Government in those States. When the existing ministry either resigns, or is defeated on the floor of the House and no viable alternative ministry is in sight or is possible to form, then the Centre takes over the State’s administration by using this Article and carries it through the Governor or as per constitutional provisions.

In 1951, when in the State of East Punjab it became impossible to work well due to groupism within the Congress Party in the State, the Centre used Article 356 (1) and invoked President’s rule on June 20, 1951 in the State.

\(^{153}\) Ibid.

\(^{154}\) Provided under Articles 355 & 365, Constitution of India.
In the State of PEPSU after the General Assembly Elections of the State Col. Ranbir Singh formed the ministry on March 19, 1952 but due to the defection of some members, he submitted his resignation. Sardar Gian Singh Rarewala of United Front was called to form the government but Election Tribunal declared the election of Sardar Gian Sing including 9 members as invalid. On this happening the Governor sent the report to the President and the President's rule was invoked on March 5, 1953.

On November 15, 1954 the President’s rule was imposed in State of Andhra Pradesh because the ruling Prakasam Ministry supported by other parties was defeated on a crucial vote of no-confidence on the issue of the implementation of the recommendations of Ram Murthy Committee.

On February 25, 1961 the President’s rule was imposed in the State of Orissa. Dr. Mahatab was the Chief Minister of a coalition ministry of Congress and Ganatantra Parishad at that time. Due to the end of the coalition, Dr. Mahatab resigned and because of the strong opposition of prominent members of Congress Party, the formation of an alternative ministry was not possible. So, on the recommendation of the Governor President’s rule was imposed.

On March, 1965 the President’s rule was imposed in Kerala because after the mid term elections, no party secured a clear majority and it became inevitable to invoke Article 356 (1). At that time Congress got 36 seats and Communists secured 40 seats out of which 29 members were in prison under Defence of India Rules. Congress leaders did not want to form ministry with their
rebel congress members. So, it was the use of Article 356 (1) to impose President’s rule in the State on the recommendations of the Governor.

In 1966, consequent upon the Centre’s decision to bifurcate the State of Punjab into the State of Punjab and Haryana to smoothen the process of partition, Shri Ram Kishan, the Chief Minister of Punjab resigned and the President’s rule was imposed on July 5, 1966. The Legislature was not dissolved but suspended as it was thought desirable that the Legislature of the composite State be broken into two parts so as to constitute the Legislatures of Punjab and Haryana till new Legislature could be elected.

In 1967, in Haryana the ministry in office was dismissed because of large scale defections of members of the Assembly from one party to other. The game of defection from one party to other continued for a long time. The Governor pointed out in his report that defections had made a mockery of the Constitution and had brought democracy to ridicule. With such large scale and frequent defections, it was impossible to find out whether the will of the majority in the House represented the will of the people. It was clearly a use of this Article 356 (1).

In 1973, the Congress Ministry of Andhra Pradesh resigned on the advice of the congress high command and the President’s rule was imposed so that the situation arising out of a public agitation for creation of a separate Telengana State could be adequately handled. The State Legislature was not dissolved but kept in suspended animation. It was revived when the Centre was able to find a political solution to the demand being raised.
In 1974, the Gujarat Ministry was dissolved following the resignation of the ministry. Though the ministry was in a majority in the Legislature, yet it left office because there was a widespread public agitation against it.

In November, 1975, Article 356 was invoked in Uttar Pradesh when Bahuguna Ministry resigned. Similarly in March 1976, the President’s rule was imposed in Gujarat, when the Patel Ministry resigned after being defeated in the House on a budget demand. These are the examples of use of Article 356 (1) and without this Article the obligation of Centre under Article 355 could not be fulfilled.

After the Ram Janmabhoomi-Babri Masjid dispute, the Congress Party commanding at Centre invoked Article 356 and the President’s rule was imposed in Uttar Pradesh on December 6, 1992.

The President’s rule was also imposed on the same ground in the States of Madhya Pradesh, Rajasthan and Himachal Pradesh on December 15, 1992. The President’s rule in U.P. was not challenged but in other three States it was challenged. Even the M.P. High Court held that the imposition of President’s rule in Madhya Pradesh was invalid and beyond the scope of Article 356. In *S.R. Bommai vs UOI*\(^{155}\), the Supreme Court was also called upon to decide the validity of imposition of President’s rule in Madhya Pradesh, Rajasthan and Himachal Pradesh and held that the imposition of the President’s rule in Madhya Pradesh, Rajasthan and Himachal Pradesh was valid. The Supreme Court also held that secularism is a

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\(^{155}\) Supra note 135.
part of the basic structure of the Constitution and if a State acts in a manner to subvert or sabotage secularism, it can lawfully be regarded that a situation has arisen in which the State Government cannot be carried on in accordance with the constitutional provisions. Ratnavel Pandian J. observed that “in matters of State, religion has no place. No political party can simultaneously be a religious party and politics and religion cannot be mixed.”

The Supreme Court also reversed the decision of the M.P. High Court. So, a State may enjoy majority support in the Assembly, but if it subverts the basic value of secularism, it can be dismissed under Article 356 and such Government may be regarded as not functioning in accordance with the provisions of the Constitution. 156 It is the use of Article 356 for the protection of the constitutional provisions.

In September, 1998 the Governor of Bihar, Shri S.S. Bhandari sent a report to the President and mentioned therein that the government of Smt. Rabri Devi had failed to maintain the law and order in the State. Governor recommended the imposition of the President’s rule in the State. In October, 1998 the Central Government recommended to the President for the dissolution of Rabri Devi Government and for the invocation of Article 356 (1) in the State. The President considered the Governor’s report and the recommendations of the Central Government, after that he decided to return the recommendations for reconsideration. 157 The Central Cabinet deferred the decision for sometime but after a few months, due to the wake of two successive massacres of Dalits on January 25

156 S.R. Bommai vs UOI, AIR 1994 SC 1918.
157 Under Article 74 (1), Constitution of India.
and February 10-11, 1999 in two villages in Jehanabad district in central Bihar by the members of Ranvir Sena, the Central Government on Feb. 12, 1999 again recommended for the imposition of President’s rule and the President imposed the President’s rule on Feb. 12, 1999.\textsuperscript{158} When it was challenged in the Patna High Court, the Chief Justice said that there was a Jungle Raj in Bihar and it was a fit case for the imposition of President’s rule.\textsuperscript{159} The invocation of Article 356 (1) was approved by Lok Sabha but in Rajya Sabha the BJP coalition party was not in majority there and Congress Party, in majority there, decided to oppose the proclamation. So, Central Government did not go to the Rajya Sabha and revoked the same on March 12, 1999. This was the clear use of Article 356 (1) but could not pass due to constitutional requirement.

On November 20, 2007, The President, Pratibha Devisingh Patil signed the proclamation bringing Karnataka under the President’s rule following the Cabinet accepting the recommendation of the Governor, Rameshwar Thakur.\textsuperscript{160} This action of the Centre’s came, when the BJP Chief Minister of Karnataka, B.S. Yeddyurappa handed over his resignation to the Governor after their alliance partner JD (S) issued a whip to vote against the government seeking a vote of confidence in the specially convened session of the Assembly on November 19, 2007. It was the proper case for invocation of Article 356 in Karnataka as Congress, BJP and JD (S) initially desired to go to the people to seek a fresh mandate.

\textsuperscript{158} According to Article 74 (1), this time the President had to sign the proclamation under Article 356(1) of the Constitution of India.

\textsuperscript{159} Supra note 26 at 723.

\textsuperscript{160} The Tribune, Nov. 21, 2007, p. 1.
On January 19, 2009, President’s rule was imposed in Jharkhand and kept the State Assembly under suspended animation. The decision to impose direct rule has been taken on the basis of Governor, Syed Sibte Razvi’s report on the political deadlock in the State after the Chief Minister stepped down on January 12, when he failed to enter the State Assembly through a bye-election within six months of taking over the reins of the State.

On February 26, 2009 justifying the imposition of President’s rule, Minister of State for Home Shakeel Ahmad said in the Rajya Sabha that government had no other option as no political party or group came forward to form the government after Chief Minister Shibu Soren resigned after losing a bye-election. He assured the House that a popular government would be installed in Jharkhand soon.\textsuperscript{161}

There are many instances, when the imposition of President’s rule under Article 356(1) became very controversial as Centre used the discretion of the Governor for its political goals and even ignored the guidelines provided time to time by Rajamanar Committee, Sarkaria Commission, S.R. Bommai case and National Commission to review the working of the Constitution. This is alleged that the Central Government is using the Governor to destabilize the State Governments run by parties different from that in power in the Centre to facilitate imposition of the President’s rule. At the time of sending the report to the President for the invocation of President’s rule, the Governor acted as the puppet in the hands of the Centre. The study of imposition of President’s rule also reveals that the Union Government has used this Article 356 (1) by and large as a political weapon and

\textsuperscript{161} The Hindu, Feb. 27, 2009.
dislodged the State Governments. The ruling party at Centre has been taking undue advantage of the vagueness of this Article and has used it on a variety of reasons.

In Kerala, in 1959, Communist Ministry was commanding majority, but there was a wide spread discontent and mass upsurge in the State against the policies of the ministry. The Communist Ministry had to face a strong opposition from all political parties. The Prime Minister advised the State Ministry to resign but the State Ministry did not heed to this advice. In the circumstances, on receipt of Governor’s report the Centre invoked Article 356 on July 31, 1959 and dismissed the State Ministry in spite of the fact that the ministry enjoyed the majority in the House. The Kerala episode brought into sharp focus the question of the scope of Article 356 and circumstances under which it could be invoked. The Communist characterized the Central Government’s action as political intolerance on the part of the Congress Government at the Centre towards a Communist Government in a State. The Centre misused the Article 356 as in reality there was no constitutional breakdown but only the political crisis which was created by the opposition parties.

The Fourth Parliamentary Elections held in 1967, brought a new turn in the political history of India. The Congress Party came in triumphant majority in this general election. The different type of alliances among the different non-congress parties was a notable feature of the political scene in India. The collapse of the coalition governments in the States invited the frequent imposition of President’s rule for the vested interest of the ruling party at the Centre.\textsuperscript{162} In 1967, after the General Assembly Elections, no party got absolute majority in Rajasthan.

However, the Governor called Shri M.L. Sukhadia to form the government being the leader of the largest party. Due to the wide spread agitation organized by the opposition group, Shri Sukhadia declined to form the government. He informed the Governor that in such situation his party did not think it proper to form the government. The Governor instead of calling the leader of the opposition group to form the government or finding alternate government recommended the dissolution of the Assembly. The President’ rule was imposed on March 15, 1967\textsuperscript{163} and the Assembly was suspended. It was the misuse of Article 356 (1) because Congress at the Centre wanted to form the Congress Government at the State also.

In West Bengal after the General Assembly Elections, no party secured clear majority. Shri Ajoy Mukherjee, the leader of United Democratic Front formed the Government on March, 1967. But after few months due to Naxalbari movement and defection of some members from the ruling party, the Cabinet decided to convene the State Assembly on December 18, 1967. The Governor asked the Chief Minister to convene the meeting not latter than November 30, 1967. When Cabinet expressed its inability to do so, then Governor on November 21, 1967 dismissed the Ajoy Mukherjee Government and called Dr. P.C. Ghose, leader of Progressive Democratic Front to form the government. On February 11, 1968 a group of 18 MLA’s of ruling party formed a new group Indian National Democratic Front with some other members. The Governor, Dr. Dharam Vira sent a report to the President and stated therein that the strength of various parties was very fluid and the Speaker’s ruling had made the functioning of the Assembly impossible. The Governor’s action was criticized as arbitrary and hasty. And on the

\textsuperscript{163} The Statesman, March 16, 1967.
recommendations of the Governor the President’s rule was imposed on February 20, 1968.

Rajamanar Committee gave its recommendations regarding the Article 356 (1).\textsuperscript{164} But the misuses of this Article continue by the Centre even after its recommendations.

On June 14, 1972, Nandini Satpathi formed the government in Orissa. But she could not work well due to opposition of some members of her ministry. On March 1, 1973 some members of ruling party resigned and joined the Pragati Party of Biju Patnaik. By this act the ruling party came in minority and the Chief Minister lost the majority in the Assembly on March 1, 1973. Shri Biju Patnaik the leader of Pragati Party claimed the majority with 72 members but the Governor instead of giving him a chance to form the ministry, he prorogued the Assembly and recommended the imposition of President’s rule in the State. On the recommendations of the Governor President’s rule was imposed on March 3, 1973. It was the misuse of Article 356(1). Shri Biju Patnaik challenged the invocation of President’s rule in the Supreme Court and said that Governor should have called him to form the government. The report of the Governor was actuated with mal-intention. The petitioner averted that the proclamation was issued not because the Pragati Party did not command the majority in the House but because a government formed by the Pragati Party would not be stable and would not last long.

During the Emergency on June 26, 1975, Governors had forgotten their constitutional role and obligations and began to please Mrs. Indira Gandhi, the then Prime Minister. At that time, Governors functioned just as representatives of

\textsuperscript{164} Rajamanar Committee constituted in 1969.
Mrs. Gandhi in various States instead of the representatives of the President. President’s rule was imposed in Tamil Nadu and the D.M.K. Ministry of Karunanidhi was dismissed unceremoniously in December, 1975 on the fake charges of corruption, favouritism, abuse of powers.\textsuperscript{165}

In 1977, in the Parliamentary General Elections, the people gave their verdict in favour of Janta Party. The Congress Party was badly routed. At that time Congress Party was in command in nine States. The Janta Government invoked Article 356 and dismissed the State Assemblies of these nine States in spite of the fact that there was no breakdown of constitutional machinery in these States. The only reason was that the party commanding at the Centre was different from the parties commanding in these States. Similarly, when after the Parliamentary General Elections in 1980, Congress secured the tremendous majority. The Congress Party after forming the government in the Centre under the leadership of Smt Indira Gandhi, invoked the Article 356 (1) and dissolved the State Assemblies of nine States on same pattern as of the Janta Party by taking the plea that the existing State Governments did no longer reflect the wishes of the electorate. These States were Uttar Pradesh, Bihar, Tamil Nadu, Rajasthan, Madhya Pradesh, Maharashtra, Punjab, Orissa and Gujarat. The propriety of the wholesale use of Article 356 first in 1977 and again in 1980 has been widely questioned. It was the misuse of power by the Centre.

After the frequent use of Article 356 (1) the Sarkaria Commission was appointed to review the Centre-State relations. It viewed on this wholesale misuse of Article 356 (1) that the dismissal of ministries in 18 cases is based on

\textsuperscript{165} Supra note 72 at 161-162.
political purposes which are unrelated to the Article 356.\textsuperscript{166} But even after its recommendations the misuse of this Article continued for providing political benefits to the ruling party at the Centre.

On August 7, 1988 the President’s rule was imposed in Nagaland. At that time Shri Sema was the Chief Minister of the ruling party. On July 28, 1988, 13 members of the ruling party defected and formed their separate party. On July 31, 1988, Shri Vamuzo, leader of new party informed the Governor that he commanded the majority in the House and was in a position to form the government. On August 3, 1988, the Chief Secretary wrote a letter to Shri Vamuzo and blamed that he had wrongfully confined the MLA’s. But shri Vamuzo and other MLA’s denied the allegations on their verification. On August 6, 1988, Governor sent the report to the President about the formation of new party and also blamed that Shri Vamuzo had confined the MLA’s forcibly. He also stated in his report that the horse-trading was going on in the State. Meanwhile, Chief Minister submitted his resignation and recommended for the imposition of President’s rule. Shri Vamuzo challenged the validity of the President’s rule in Guahati High Court on the ground that he was not called to form the ministry. The Union of India moved to the Supreme Court in this case and Supreme Court stayed the proceedings of the High Court.\textsuperscript{167}

In March 1990, in Meghalaya government was formed under the leadership of Shri B.B. Lyngdoh by Meghalaya United Parliamentary Party. On the request of the leader of the opposition party (United Meghalaya Parliamentary Forum) Governor asked to Shri B.B. Lyngdoh to prove the majority on the floor of

\textsuperscript{166} Supra note 13 para 6.4.01.

\textsuperscript{167} Supra note 156.
the House. On August 7, 1991 the motion of confidence was moved and 30 members voted in favour of the motion and 27 members voted against it. But Speaker declared that he had received a complaint against five MLA’s of ruling coalition party that they were disqualifying under anti-defection law and adjourned the House. Again on October 8, 1991 confidence motion was moved and 56 MLA’s including four independent MLA’s voted the motion. The Speaker declared that 26 members voted in favour and 26 members voted against the motion, excluding four independent disqualified MLA’s and in tie he voted against the confidence motion. But in reality 30 MLA’s including four independent voted in favour of the motion and 26 MLA’s voted against the motion. These 30 MLA’s also wrote a letter to the Governor stating therein that they voted in favour of the ministry. The Governor sent a report to the President and recommended the invocation of Article 356. On October 11, 1991, the President issued the proclamation under Article 356 (1). It was the clear case of misuse of power.

In Karnataka the leader of the Janta Party, Shri S.R. Bommai formed the Government on August 30, 1988. On April 18, 1989, Shri K.R. Molakery member of ruling party presented 19 signed letters of the legislators including 17 Janta Dal legislators and 1 independent legislator, to the Governor about withdrawal of their support to the ruling party. On April 19, 1989 the Governor sent a report to the President stating therein that due to defection the ministry came in minority. He also added that no other party was in a position to form the government and recommended the invocation of Article 356(1). On April 20, 1989, 7 legislators out 19 defector legislators wrote letters to the Governor, therein they alleged that in
earlier letters their signature were obtained by misrepresentation and affirmed their support to the Bommai Ministry.

The Governor sent another report on April 20, 1989 and referred therein the support letters of 7 legislators. He mis-stated therein that the support of 7 members had been obtained under pressure by the Chief Minister and he recommended for the invocation of Article 356(1). On the report of the Governor the President invoked the President’s rule on April 21, 1989. S.R. Bommai challenged the proclamation in the Karnataka High Court. A special bench of three judges of Karnataka High Court dismissed the writ petition.168 S.R. Bommai appealed in the Supreme Court against the High Court’s judgement.169 The Supreme Court was also called upon to decide the validity of imposition of President’s rule in Meghalaya and Nagaland. The Supreme Court declared that the President’s rule in Karnataka was unconstitutional. The majority of the commanding party was not tested on the floor of the House. Moreover, the Governor did not try to find alternate ministry. This proved that the report of the Governor was faulty and malafide.

In his judgement delivered for himself, Kuldip Singh J., Sawant J. commented upon the conduct of the then Governor of Karnataka, “It was improper on the part of the Governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and were written by the said legislators of their free will and volition. He had not even cared to interview the said legislators but had merely got the authenticity of the signatures verified through the

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168 S.R. Bommai vs UOI, AIR 1990 Kant. 5.
169 Supra note 156.
Legislature Secretariat. We are of the view that this is a case where all canons of propriety were thrown to winds and the undue haste made by the Governor in inviting the President to issue the proclamation under Article 356(1) smacked of malafide. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the ministry and dissolve the Assembly.” 170

In case of Meghalaya the Supreme Court held that the material before the President was not factual and relevant. In case of Nagaland, the Supreme Court held that after the resignation of the Chief Minister, Shri Vamuzo claimed the majority support but instead of allowing him to test his claim on the floor of the House, the Governor recommended for invocation of Article 356 (1) and President on his report issued the proclamation. The Court ruled that in such circumstances, the proclamation was unconstitutional.

The Article 356 was discussed in the Bommai case and some guidelines were also provided in this case. Although it has proved to be a check in some cases but in other cases, it is clear that the Centre has misused this Article 356.

On October 18, 1995, when the President’s rule was imposed in Uttar Pradesh, the Government was of the BSP in alliance with BJP. And in Centre the congress party was in power under the leadership of P.V. Narsimha Rao. The BJP party withdrew its support due to some actions of the BSP Government, which

170 Supra note 156.
could affect the image of BJP Party. The State Assembly was kept in suspended animation and later on dissolved on October 27, 1995 before the approval of the proclamation by the Parliament. The ostensible reason given for this step was that there was a possibility of ‘horse-trading’ of MLA’s. However, the fact was that the Congress Party at Centre wanted to kill the possibility of emergence of a BJP Government in the State. The decision to dissolve the Assembly was purely a political decision which was not in consonance with the guidelines provided in the Bommai case.

In U.P. General State Assembly Elections of September 1996, no party could get the majority. BJP was the largest party but no party except few independent MLA’s wanted to support the BJP. Meanwhile, one year of President’s rule in U.P. imposed on October 18, 1995 was going to complete on October 17, 1996. In such circumstances, it would have been possible to revoke the President’s rule and invite the largest party to form the government and if it failed to prove the majority then the President’s rule could be re-imposed but Governor did not do this and the earlier President’s rule imposed on October 18, 1996 was revoked and new proclamation was issued. This was the colourable exercise of power by the President or it is the misuse of Article 356(1) or the violation of the judicial guidelines laid down by the Supreme Court in the Bommai case and also against the Sarkaria Commission’s recommendations as the Governor did not take any step to form a government in the State.\footnote{Supra note 26 at 721.} The proclamation was challenged in the High Court of Allahabad and a special bench of the three judges declared it unconstitutional and based on wholly irrelevant and extraneous grounds and liable
to be quashed. Ultimately, the government was formed by a unique agreement between BJP and BSP for sharing power.

In Gujarat, when the BJP was in power under the leadership of Shri Suresh Mehta as Chief Minister, due to split in the party Shri Shankar Singh Vaghela formed a separate party and claimed the majority of 42 MLA’s. Upon the request of the Chief Minister, Governor summoned the House on September 13 and 14, 1996. There was violent scene in the House and opposition walked out. Amidst such circumstances Chief Minister won the vote of confidence by 92 votes to nil. The Governor sent a report to the President about the happenings in the Assembly and recommended the invocation of Article 356 (1). The Central Government under the leadership of Shri Deve Gowda acted in haste and imposed the President’s rule and dismissed the State Assembly. It was the misuse of Article 356 (1) as the violence and the disturbance in the Assembly was not so serious that amounting to breakdown of the constitutional machinery in the State. Home Minister Inderjit Gupta described it as “Painful and reluctant” decision to impose President’s rule in Gujarat.

In October, 1997 the Governor of UP asked the Chief Minister to prove his majority on the floor and on October 21, 1997 he obtained a vote of confidence on the floor of the House amidst pandemonium. In spite of that the Governor recommended the imposition of President’s rule in his report to the President. Central Government after accepting the report recommended to invoke Article 356 but the President returned the recommendations under Article 74 (1) for

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172 Times of India, Sept. 20, 1996.
re-consideration with a doubt about the constitutional correctness of the Governors report. Lastly Central Government withdrew its recommendations to invoke Article 356 (1) and the misuse of Article was avoided.

The President’s rule was imposed in Uttar Pradesh on March, 8, 2002 on the recommendations of the Governor. In the General Assembly Elections no party got the majority and no party wanted to support any other party to form the government. So, it was not possible to form a viable government. The leader of the Samajwadi Party staked his claim as the single largest party to form the government and claimed that he would prove his majority on the floor of the House. But the Governor was not satisfied with his claim. Such instances may be multiplied.\(^\text{174}\)

The other example of misuse of Article 356 (1) was seen in Bihar, where General State Assembly election was held in December 17, 2004 and results were declared on March 4, 2005 but no party gained the requisite majority in the House of 243 members. Since no political party was in a position to form the government, the President’s rule was imposed on March 7, 2005 and the Assembly was kept in suspended animation. Afterwards, efforts of realignment of political forces started and NDA reached to a position to form the government but this was not acceptable to UPA Government at the Centre. So the Governor sent a report on May 21, 2005 that attempts were being made to cobble a majority by illegal means and lay claim to form the government in the State and recommended the dissolution of the Assembly under Article 356 (1). The proclamation was issued on May 23, 2005 dissolving the Bihar State Assembly. It was challenged in \textit{Rameshwar

\(^{173}\) Supra note 21 at 821.

\(^{174}\) Id. at 805.
Prasad vs UOI,\textsuperscript{175} where the Supreme Court held that the presidential proclamation dated May 23, 2005 dissolving State Assembly was unconstitutional and based on extraneous and irrelevant grounds. The Governor acted in undue haste in sending his report and his full motive was to prevent JDU from staking claim to form the government. The Supreme Court order declaring as "unconstitutional" the Presidential proclamation dissolving the Bihar Assembly is a rap on the knuckles of the Congress-led United Progressive Alliance government at the Centre.\textsuperscript{176}

On January 3, 2008 the President's rule was imposed in the State of Nagaland, although the Chief Minister Neiphiu Rio of BJP backed Democratic Alliance of Nagal and survived the no-confidence in the Assembly on December 13, 2007. The President's rule was imposed in spite of the fact that the State Assembly Elections was due in Mach, 2008. Chief Minister Neiphiu Rio condemned the move to impose President's rule in the State and said "Such a move will be illegal and unconstitutional as I have come to power only after being elected democratically and my government has won the trust vote in Nagaland Assembly on December 13".\textsuperscript{177} Bharatiya Janta Party spokesman Rajiv Pratap Rudy accused the United Progressive Alliance Government of imposing President's rule in Nagaland a fortnight before the Election Commission is expected to announce the election schedule.

In Meghalaya, the President's rule was imposed on March 19, 2009. The decision was taken on the basis of report sent by Meghalaya Governor

\textsuperscript{175} (2006) 2 SCC 1.

\textsuperscript{176} India News Online, Oct. 10, 2005.

\textsuperscript{177} The Tribune, Jan. 4, 2008, p. 2.
recommending President's rule in the State owing to the break down of constitutional machinery in the State. He had sent the report following the dramatic development of March 17, when Chief Minister Donkupar Roy survived the no confidence motion after Speaker, Bindo M. Lanong exercised his vote in its favour. The Centre's decision has come under sharp criticism from various political parties including the BJP, Left Parties and the Nationalist Congress Party who deplored the imposition of President's rule at a time when the Country was going for the Lok Sabha polls. Former Lok Sabha Speaker, P.A. Sangma and three other legislators challenged the invocation of Article 356 in the Supreme Court.  

6.2.2.6.6 Recommendations of Rajamannar Committee on Article 356;

Rajamanar Committee recommended the following provisions relating to the Article 356 (1):

i) Article 356 and 357 should be totally omitted or

ii) In the alternative, sufficient safeguards should be provided in the Constitution itself to secure the interests of the State against the arbitrary and unilateral action of the ruling party at the Centre.

iii) The only contingency which may justify the imposition of President’s rule in the State under Article 356 (1) is the complete breakdown of law and order in the State, when the State Government itself is unable or unwilling to maintain the safety, security of the people and property of the State.

178 Id. March 26, 2009, p. 20.

179 Tamil Nadu State in 1969 appointed a Committee under the Chairmanship of Rajamanar to examine the Centre-State relations and emergency provisions.
iv) The words “or otherwise” occurring in clause (1) of the Article 356 should be omitted; and

v) A proviso should be added to Article 356(1) requiring the President before issuing the proclamation to refer the report of the Governor to the Legislative Assembly of the concerned State for expressing its views thereon within such period as may be specified in the reference.

vi) It recommended the omission of Article 365.

6.2.2.6.7 Recommendations of Sarkaria Commission regarding President’s Rule under Article 356:

The report of the Commission was made public on January 30, 1988.\(^{180}\) The Commission viewed that the words “a Government of the State cannot be carried on in accordance with the provisions of the Constitution” are of wide amplitude. Each and every breach of the constitutional provision irrespective of its significance, extent and effect cannot be treated as the failure of constitutional machinery in the state. Commission observed that the failure of the constitutional machinery may occur in several situations namely political crisis, internal subversions, fiscal break down and non compliance of constitutional directions of

\(^{180}\) On March 24, 1983 Smt. India Gandhi announced in the Parliament the proposal to appoint a commission under the chairmanship of R.S Sarkaria, a retired judge of Supreme Court. She enunciated that the Commission would examine the working of the existing arrangements between Centre and States and recommend such changes in the said arrangements as might be appropriate within the present constitutional framework. The Commission has submitted its report to the Union Government in 1987.
the Union.\textsuperscript{181} The recommendations of the Commission relating to the President’s Rule under Article 356 (1) are as follows:

i) It should be used very sparingly in extreme cases as a matter of last resort, when all other available alternatives fail to prevent or rectify the breakdown of constitutional machinery in a state. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend upon the nature of the constitutional crisis in the State, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the union to take immediate action under Article 356 will lead to disastrous consequences.\textsuperscript{182}

ii) A warning should be issued to errant State in specific terms that it is not carrying the government of the State in accordance with the provisions of the Constitution. Before action under Article 356 any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.\textsuperscript{183}

iii) When an external aggression or internal disturbance paralyses the State administration creating a situation drafting towards a political break-down of the constitutional machinery in the State all alternative courses available

\textsuperscript{181} Supra note 13 para 6.4.01
\textsuperscript{182} Id. para 6.8.01.
\textsuperscript{183} Id. para 6.8.02.
to the Union for discharging its paramount duty under Article 355 should be exhausted to contain the situation.\textsuperscript{184}

iv) In the situation of political breakdown the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay he should ask the outgoing ministry, if there is one to continue as caretaker government, provided the ministry was defeated solely on a major policy issue unconnected with any allegations of mal-administration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period the caretaker government should be allowed to function. As a matter of convention the caretaker government should merely carry out day to day work and desist from taking any major policy decisions.\textsuperscript{185}

v) If the important ingredients described above are absent it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend President’s rule without dissolving the Assembly.\textsuperscript{186}

\textsuperscript{184} Id. para 6.8.03.
\textsuperscript{185} Id. para 6.8.04 (a).
\textsuperscript{186} Id. para 6.8.04 (b).
vi) Every proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the period of two months contemplated in clause (3) of Article 356.\textsuperscript{187}

vii) The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1) has been laid before the House of Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.\textsuperscript{188}

viii) Safeguards corresponding in principle to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a proclamation.\textsuperscript{189}

ix) To make the remedy of judicial review on the ground of mala fides a little more meaningful it should be provided through an appropriate amendment. Notwithstanding anything in clause (2) of Article 74 of the Constitution, the facts and grounds on which Article 356 (1) is invoked should be made an integral part of the proclamation issued under that Article. This will also make the control of Parliament over the exercise of this power by the Union executive more effective.\textsuperscript{190}

x) Normally the President is moved to action under Article 356 on the report of the Governor. The report of the Governor is placed before each House of
Parliament. Such a report should be a speaking document containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.191

xi) The Governor’s report on the basis of which proclamation under Article 356 is issued should be given wide publicity in all the media in full.192

xii) Normally President’s rule in a state should be proclaimed on the basis of the report of the Governor.193

xiii) In clause (5) of Article 356 the word ‘and’ occurring between sub-clause (a) and (b) should be substituted by ‘or’.194

M.M. Punchhi Commission recommends that there should be an amendment in Articles 355 and 356 of the Constitution to enable the Centre to bring specific trouble-torn areas under its rule for a limited period. It has proposed “localizing emergency provisions” under Articles 355 and 356, contending that localized areas either a district or parts of a district be brought under Governor’s rule instead of the whole State. Such an emergency provision should however not be of duration of more than three months.

6.2.2.7 Pardoning Power:

Governor has the power to grant the pardon. This power has been conferred on the Governor with a view that the executive body of the State would

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191 Id. para 6.8.09.
192 Id. para 6.8.10.
193 Id. para 6.8.11.
194 Id. para 6.8.12.
improve the judicial errors committed by a decisive judicial authority of the State.\textsuperscript{195} The philosophy underlying the pardon power is that “every civilized country recognizes and has, therefore, provided for the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency to be exercised by some department or functionary of a government, a Country would be most imperfect and deficient in its political morality and in that attribute of deity whose judgements are always tempered with mercy.”\textsuperscript{196}

The power of the Governor to exercise pardon under Article 161 runs parallel to the Presidential power to grant pardon under Article 72 of the Constitution. Article 161 of the Constitution provides that the Governor has the power to grant pardons, reprieves, respites or remissions of punishment and to suspend, remit or commute sentences of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. This Article 161 confers the Governor with the followings powers:

i) Pardon: it is an act of grace which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.\textsuperscript{197}

ii) Reprieve: it is merely the postponement of the execution of a sentence for a definite time or to a day certain. It does not and cannot defeat the ultimate execution of the judgement of the court, but merely delays it temporarily.\textsuperscript{198}

\textsuperscript{195} S. Madhusoodan, Governor and Chief Ministers in Indian States- Conflicts and Relations, Deep & Deep Publications, 1991, p. 186.
\textsuperscript{196} Epuru Sudhakar vs Government of A.P., AIR 2006 SC 3385.
iii) Respite: it means postponement to the future the execution of a sentence.  

iv) Remission: it means to reduce the amount of punishment without changing the character of punishment.  

v) Commutation: it means changing a punishment to one of a different sort than that originally proposed.  

vi) Suspend: it means to interrupt, to stay and delay.  

Exercising this power of pardon is an executive act and the Governor can exercise this power for an offence against any law relating to a matter to which the executive power of the State extends. Article 162 of the Constitution provides that the executive of the State extends to matters with respect to which the Legislature of the State has power to make laws. It means Governor can exercise these powers with regard to crimes committed and convicted for by the State Judiciary in relation to matters under List II and List III, provided there are no Union Laws with respect to List III.  

Regarding the pardoning power, President has wider powers than the Governor of a State has. Proviso to Article 162 provides that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by the

198 Supra note 196 at 3391.  
200 Ibid.  
201 Ibid.  
202 Supra note 197 at 1845.  
203 Dr. Purushottam Singh, Governor’s office in independent India, Navayug Sahitya Mandir, Bihar 1968, p. 149.
executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof. Section 433-A\(^{204}\) of the Criminal Procedure Code, 1973 lays down restrictions on provisions of remission or commutation in certain cases mentioned therein. It provides that notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

Section 434 of the Code confers concurrent power on the Central Government in case of death. It provides that the power conferred, by Sections 432 and 433 of the Code, upon the State Government may in the case of sentences of death, also be exercised by the Central Government. Section 435 of the Code provides that the power of the State Government to remit or commute a sentence, where the sentence is in respect of certain offences specified therein, will be exercised by the State Government only after consultation with the Central Government.

The President has the power to pardon a sentence of death\(^{205}\) but the Governor does not have this power. The Governor can suspend, remit or commute the death sentence. It is provided by Section 54 of the Indian Penal Code, 1860 that in every case in which sentence of death shall have been passed (the appropriate


\(^{205}\) Article 72(1) (c), Constitution of India.
government) may, without the consent of the offender, commute the punishment for any other punishment provided by this Code. Appropriate Government means:206

a) In cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government.

b) In cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the government of the State within which the offender is sentenced.

Section 432(1) of the Criminal Procedure Code, 1973 also provides that when any person has been sentenced to punishment for an offence, the appropriate government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

A pardon is an act of grace and it cannot be demanded as a matter of right. A pardon not only removes the punishment but also places the offender in the same position as if he had never committed the offence.207 A Pardon may be given at any time after the commission of an offence, either before the legal proceeding is started or after the conviction. It may be granted during the pendency of the suit. It may be absolute or conditional. It is conditional where it does not become operative.

206 Section 55 A, Indian Penal Code, 1860.
207 Supra note 199 at 384.
until the grantee has performed some specified act or where it becomes void when some specified event happens.\textsuperscript{208}

Section 432(3) of Criminal Procedure Code, 1973 provides that if any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate government, not fulfilled, the appropriate government may cancel the suspension or remission and thereupon, the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

6.2.2.7.1 Extent of Discretion of the Governor regarding Pardoning Power:

“A Pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgement fixed.”\textsuperscript{209}

Pardoning power under Article 161 of the Constitution is to be exercised by the Governor on the basis of the aid and advice of the State Government. He cannot use his individual judgement for pardoning a sentence. He cannot take any action under this Section suo motu. In \textit{Maru Ram vs UOI},\textsuperscript{210} Supreme Court held that the power under Article 72 and 161 of the Constitution can be exercised by the Central and the State Governments, not by the President or Governor on their own. The advice of the appropriate government binds the heads

\textsuperscript{208} Ibid.
\textsuperscript{209} Quoted in Epuru Sudhakar vs Government of A.P., AIR 2006 SC 3385 at 3390.
\textsuperscript{210} AIR 1980 SC 2147
of the State. If the Governor is found to have exercised himself without being advised by the Government, the power is amenable to judicial review.211

The power of granting pardon is very wide and do not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said powers could be exercised. Section 432(2) of the Criminal Procedure Code, 1973 also says that whenever an application is made to the appropriate government for the suspension or remission of a sentence, the appropriate government may require the presiding judge of the court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

The considerations for the use of this power are wide but should not be irrelevant. The Supreme Court held that consideration for exercise of power under Articles 72 and 161 may be myriad and their occasions protean and are left to the appropriate government but no consideration or occasion can be wholly irrelevant, irrational, discriminatory or malafide.212

When the case is before the Supreme Court under special leave petition under Article 136 of the Constitution, the Governor cannot use the power to suspend the sentence because under Article 142 of the Constitution, the Supreme Court is empowered to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it. In *K.M. Nanavati vs*

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212 Maru Ram vs UOI. AIR 1980 SC 2147
State of Bombay. Supreme Court held that the power of the Governor to suspend a sentence is subject to the rules made by the Supreme Court regarding cases which are pending before it in appeal. The Governor may grant pardon at any time but the suspension of sentence for the period when the matter is sub-judice in the Supreme Court under special leave to appeal under Article 136 of the Constitution, could be granted only by the court itself and not by the Governor. For using the pardoning power, the Government should place all the material facts regarding the case before the Governor, so that the governor can apply his mind fairly.

Governor is bound by the advice of the government. But government some times uses this power for providing benefits to the criminal politicians by not submitting all the facts regarding the case under mercy petition. In U.P. an MLA of the State Assembly had been convicted of the offence of murder and within a period of less than two years he succeeded in coming out of the prison as the Governor of U.P. granted remission of the remaining long period of his life sentence. The son of the deceased moved the Allahabad High Court challenging the aforesaid action of the Governor and the same having been dismissed; the matter had been brought to the Supreme Court by grant of special leave petition. The Supreme Court had come to the conclusion that the Governor was not told of certain vital facts concerning the prisoner such as his earlier clemency petition and the report of the jail authority that his conduct inside the jail was far from satisfactory and out of two years and five months he was supposed to have been in jail, he was in fact on parole during substantial part thereof.

213 AIR 1961 SC 112.

The court in this case held that when the Governor was not posted with all the material facts, the Governor was apparently deprived of the opportunity to exercise the powers in fair and just manner and the order fringes on arbitrariness. The court, therefore, quashed the order of the Governor with a direction to reconsider the petition of the prisoner in the light of the materials which the Governor had no occasion to know earlier.\(^\text{215}\)

Governor should have applied his mind to the record at the time of using this power. In *Sat Pal vs State of Haryana*,\(^\text{216}\) the court held that when we examine the case in hand, the conclusion is irresistible that the Governor had not applied his mind to the material on record and has mechanically passed the order just to allow the prisoner to overcome the conviction and sentence passed by this court. The order dated 25 January 1999 clearly indicates that the Governor of Haryana is pleased to remit the unexpired portion of the sentence passed on prisoner Siriyans Kumar Jain confined in the Hissar Central Jail. When an accused is convicted of heinous offence of murder and is sentenced to imprisonment for life, the authority, which has been conferred with power to grant pardon and remission of sentence under Article 161 of the Constitution, must be made aware of the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he has been undergoing the sentence, which would be all germane considerations for exercise of the power. Not being aware of such material facts tends to make an order of granting pardon arbitrary and irrational. In the instant case, the order granting pardon remitting the unexpired period of sentence was


\(^{216}\) AIR 2000 SC 1702.
passed even before the accused had surrendered to serve out the sentence. But the order mentioned that the accused was confined in jail. The Governor was not made aware of as to what is the total period of sentence the accused has really undergone or if at all has undergone any sentence. The record showed an uncanny haste with which the file has been processed and the unusual interest zeal shown by the authorities in the matter of exercise of power to grant pardon. The only irresistible conclusion would be that the governor had not applied his mind to the material on record and the court set aside the order granting pardon.

Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public consideration alone. The President and the Governor are the sole judges of the sufficiency of facts and of the appropriateness of granting the pardons and reprieves. However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. The powers of clemency by the President or the Governor of a State cannot be exercised for political considerations or on the basis of religion, caste or other extraneous factors. A bench consisting of Justices Arijit Pasayat and S.H. Kapadia made it clear that the powers of reprieve, pardon or remission of sentence cannot be done on irrelevant materials. The exercise of the powers must be for bona fide and valid
The court can set aside the order of commutation of death sentence to life imprisonment, if no reason is indicated, as to, why the Governor decided to commute the death sentence to that of life imprisonment.\textsuperscript{218}

6.2.2.8 Appointment of the Vice-Chancellor:

Governor has the power to appoint the Vice-Chancellors of the Universities in the State. This power has been conferred upon him by the different State University Acts, which provide that Governor by virtue of his office is the Chancellor of the Universities in the State. He appoints the Vice-Chancellors from the panel of names recommended by the Search Committee. As a Governor, he functions with the aid and advice of the Council of Ministers. But the question arises is whether as a Chancellor he can use his discretion in the appointment of the Vice-Chancellor or is he bound by the advice of his Council of Ministers under Article 163(1) of the Constitution. This power of the Governor as a Chancellor is not a constitutional power. It is a statutory power because he does not derive it from the Constitution, he derives it from the Statute passed by the Legislature of the State. For instance, Chaudhary Devi Lal University Act, 2003 provides that the Governor of Haryana by virtue of his office shall be the Chancellor of the University.\textsuperscript{219} The Chancellor shall be the Head of the University.\textsuperscript{220} The Chancellor shall, if present, preside over the convocation of the University for

\textsuperscript{217} Supra note 196.
\textsuperscript{219} Section 10(1), Chaudhary Devi Lal University Act, 2003.
\textsuperscript{220} Section 10(2), ibid.
conferring degrees and meetings of the Court. The Government shall constitute a Selection Committee consisting of one nominee of the Chancellor and two nominees of the executive council, which shall prepare a panel of at least three names, in alphabetical order, from which the Chancellor shall appoint the Vice-Chancellor on the advice of the government. The Pro Vice-Chancellor shall be appointed by the Chancellor on the advice of the government. If the Vice-Chancellor is unable to perform his duties owing to his temporary incapacity on account of illness or any other reason, or the office of the Vice-Chancellor falls vacant due to death, resignation or otherwise, the chancellor may make arrangement for the performance of duties of the Vice-Chancellor until the existing Vice-Chancellor is able to resume his office or until a regular Vice-Chancellor is appointed, as the case may be.

Similarly, the Jharkhand State Universities Act, 2000 provides that the Governor of Jharkhand shall be the Chancellor and shall, by virtue of his office, be the head of the University and the President of the Senate, and shall when present, preside over the meetings of the Senate and any convocation of the University. The Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government and shall hold his office during the pleasure of the Chancellor for a term not exceeding three years. The Chancellor shall

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221 Section 10(3), ibid.
222 Section 11(1), ibid.
223 Section 11-A, ibid.
224 Section 11(4), ibid.
226 Section 10 b, ibid.
appoint the Pro Vice-Chancellor, in consultation with the State Government, for a period not exceeding three years during the pleasure of the Chancellor.\textsuperscript{227}

The Chancellor may make such arrangements as he deems fit, for the performance of the duties of the office of the Vice-Chancellor during the temporary absence of the Vice-Chancellor by reason of leave, illness or for any other cause. In case of vacancy of the post of the Vice-Chancellor caused due to death, resignation, completion of the term or any other reason the Chancellor on the basis of the information received from the Pro Vice-Chancellor or Registrar or any other source, may make such arrangements for the performance of the duties of the office of the Vice-Chancellor, as he deems fit.\textsuperscript{228}

According to the State University Acts, Chancellor has the power to remove the Vice-Chancellor. Ch. Devi Lal University Act, 2003 provides that the Chancellor may, on the advice of the government, cause an inquiry to be held in accordance with the principles of natural justice and remove the Vice-Chancellor from office, if he is found on such inquiry, to be a person patently unfit to be continued in such office.\textsuperscript{229}

About the removal of the Vice-Chancellors, UGC Committee (1991-93) headed by Dr Ram Lal Parikh recommended that:

“He/she could be removed after show cause notice and on grounds proved by an enquiry held by a committee consisting of sitting/retired judge of the

\textsuperscript{227} Section 12, ibid.

\textsuperscript{228} Section 13, ibid.

\textsuperscript{229} Supra Note 1, Section 11(2).
Supreme Court/High Court in which he/she has been given an opportunity of being heard”.  

Governor as a Chancellor is not immune under Article 361 of the Constitution because only as a Governor, he has immunity from all suits. By virtue of his office, he is the Chancellor and is the same person but in the capacity of Chancellor, he is not immune to any suit.

6.2.2.8.1 Extent of Discretion in the Appointment of the Vice-Chancellor:

Governor as the Chancellor of the State University derives his power in the appointment of the Vice-Chancellor from the State University Act, which generally provides that the Chancellor shall appoint the Vice-Chancellor in consultation with the State Government. But he is not bound to accept the recommendations of the State Government. Many a times Governor as a Chancellor did not accept the advice of the Education Minister or the Chief Minister in making such appointment and appointed the Vice-Chancellor of his own choice, which had also indulged him in controversy and conflict with the State Government. For instances:

In 1971, the Chancellor of Universities in Orissa, Sh. S.S. Ansari appointed Chaudhary Nishamani Nanda as the Vice-Chancellor of State Agriculture University without consulting the Government/Chief Minister of Orissa Sh. Biswanath.  

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Similarly, in 1981, the Chancellor of Universities in Kerala, Mrs. Jyoti Venkatachallam, appointed A.V. Verghese as the Vice-Chancellor of Kerala University without seeking the advice of the State Government. On October 28, 1977, the Chancellor of Universities in Haryana, Sh. H.S. Brar, appointed Hardwari Lal as the Vice-Chancellor of Maharshi Dayanand University, Rohtak in confutation with the State Government.

In 1984, the Chancellor of Universities in Andhra Pradesh, Sh. Ram Lal, appointed Sh. G.N. Reddy as the Vice-Chancellor of Sri Venkateswara University, Tirupati disregarding the advice of the Government. Government had recommended the name of I.J. Naidu.

In 2010, a panel of three names, submitted by the Search Committee, for the appointment of Vice-Chancellor, was forwarded to the Chancellor of the Mangalore University, Sh. H.R. Bhardwaj by the State Government. The Chancellor rejected the recommendations of the Government regarding Dr. Thimme Gowda for the post of Vice-Chancellor.

Although many a times Governor refused to appoint such person as the Vice-Chancellor as was recommended by the State Government but generally Governors as Chancellor appoint such person as the Vice-Chancellor, who is recommended by the State Government. No doubt, it is not obligatory to the Governor to accept the advice of the Government in such appointment but it is

helpful for the Governor to consult with the Chief Minister or the Education Minister at the time of appointment.

6.2.2.8.2 Recommendations of the Sarkaria Commission regarding Appointment of the Vice-Chancellor:

Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the Governor, in his capacity as Chancellor, always to act on ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chancellor of a University, the Governor may be required by the University's Statute to consult a Minister mentioned in the Statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.\(^{236}\)

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\(^{236}\) Supra note 13 para 4.16.19.