Chapter- VIII
Conclusion and Suggestions

Conclusion:

The Constitution of India is based on the principle of federalism with a strong and indestructible Centre. Governor of a State is the key functionary in the system envisaged by the Constitution. Vesting the Governor with discretionary powers was justified even in the Constituent Assembly on the ground that the Provincial Governments are required to work in subordination to Central Government. He is a vital link between the Centre and the State. The founding fathers of our Constitution had deliberately conferred certain special and extraordinary powers on the Governor. The Governor plays a dual role under the Indian Constitution.

He acts as the constitutional head of the State and performs his functions on the advice of the Council of Ministers. He also serves as the agent of the Central Government. Our constitution imposes a duty on the Centre to protect the States against disturbances and to ensure that every State Government is carried on in accordance with the provisions of the Indian Constitution. President appoints Governor on the recommendations of the Central Government.

Article 163(2) of the Constitution provides that if there is a conflict of opinion between the Governor and the ministry as to whether or not a particular matter falls within the scope of the Governor’s discretionary power, the decision of the Governor in his discretion shall be final and the validity of anything done by him shall not be called in question on the ground that he ought or ought not to have
acted in his discretion. However, the Punchhi Commission report recommends that a constitutional amendment be brought about to limit the scope of discretionary powers of the Governor under Article 163 (2) of the Constitution.

Article 159 of the Constitution imposes a duty upon the Governor to preserve, protect and defend the Constitution and the law of the Country and he is also responsible for the well being of the people of the State. Generally, he is to exercise on the recommendations of the Council of Ministers. But Governor cannot remain merely a figure-head.

He has to fulfill the obligations, which are imposed upon him under the Constitution. For this purpose, Constitution also confers on the Governor some discretionary powers which make him powerful. Sometimes the discretionary powers which he/she exercises bring him/her in controversy. This study about the discretionary powers of the Governor confirms that during the exercise of circumstantial powers he played a dictatorial role many a times in the interest of the ruling party at the Centre.

The institution of the Governor was misused to a great extent especially after 1967. The Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.¹ Efforts have been made by Administrative Reforms Commission and Sarkaria Commission to make him/her impartial but nothing concrete has come out.

¹ Article 361, Constitution of India.
Governor has the say in the appointment of the Chief Minister in case no party has the clear-cut majority in the Legislative Assembly. In such circumstances, it is the Governor alone who judges the situation and being the custodian of the Constitution calls such person to form the ministry, who is in a position to give stable government in the State. In the exercise of their discretion in the appointment of the Chief Minister, Governors have not followed any uniform practice. Some times, Governors invited the leader of the single largest party to form the government\(^2\) and bypassed the claim of the leader of the alliance group. Some times, Governors invited the leader of the alliance group to form the government\(^3\) and bypassed the claim of the leader of the single largest party. Many a times the role of the Governors in the appointment of the Chief Minister came in controversy.

The power of the Governor with regard to the appointment of Chief Minister is a power which he exercises in his discretion and this act of the Governor is absolutely immune and it cannot be questioned even under writ jurisdiction.\(^4\) In *Mahabir P. Sharma v Prafulla C. Ghose and others*\(^5\), the Calcutta High Court held that "the Governor in making the appointment under Article 164(1) of the Constitution acts on his sole discretion. The exercise of this discretion by the Governor cannot be called in question in writ proceedings."


\(^4\) S. Dharmalingam vs Governor of Tamil Nadu, AIR 1989 Mad. 48.

\(^5\) AIR 1969, Calcutta 198.
Governor can appoint a non-legislator as the Chief Minister under Article 164(4) but the provision under this Article is not an enabling provision for appointment of a non-legislator as Chief Minister for a short duration, instead it is in the nature of a disqualification that he cannot continue in office without getting himself elected within six consecutive months.

It is necessary to empower the Governor with discretion relating to the assent to State Bills to avoid hasty legislations and to preserve or protect the Constitution. In the same, the Governor should act above party politics and in the interest of Nation. If past practice is any guide, the Centre is wary of controlling State legislation unless it is demonstrably against national interest or unconstitutional or against well established national policies and perhaps mere difference of approach is not the determining factor.

Article 174 (2) (b) of the Constitution clearly shows itself that Governor is not always bound to accept the advice of the Council of Ministers in relation with the dissolution of the Legislative Assembly. The past practices followed by the Governors also prove that the Governor is not bound to accept the advice of the defeated Chief Minister to dissolve the Assembly. In such circumstances, Governor may use his discretion and act according to his best judgement.

When Governor is satisfied that other party or combination of parties is not in a position to provide stable government, then Governor should dissolve the House and keep the resigning ministry in office to act as a caretaker government. The Chief Minister before advising the Governor to dissolve the House must get it
passed in the meeting of the House, because in Kerala in 1970, when the Chief Minister heading a coalition ministry advised the Governor to dissolve the Assembly, then his partner parties surprised and criticized this action of the Chief Minister.

Many a times, Governor sends his report to the President and recommends the dissolution of the Legislative Assembly on unreasonable grounds. There is need for proper convention on the dissolution of the Legislative Assembly, which may properly guide the Governors on the dissolution of the House. He should weigh all factors carefully before taking his decision to dissolve the Legislative Assembly.

The Governors should follow the convention pointed out by the Committee of the Governors appointed by the President of India, which submitted its report in the year of 1971. The Committee viewed that “if a Chief Minister, who enjoys majority support advises dissolution, the Governor must accept the advice, but if he advises the dissolution after losing his majority, the Governor need to accept the advice only if the ministry suffers a defeat on question of major policy and the Chief Minister wishes to appeal to the electorate for a mandate on that policy.

In the case of a Chief Minister heading a single party government which has been returned by the electorate in absolute majority, if the ruling party loses its majority because of defection by a few members and the Chief Minister recommends dissolution so as to enable him to make a fresh appeal to the electorate, the Governor may grant a dissolution.
In dismissing the Council of Ministers, Constitution does not explicitly confer any such power on the Governor but he is to protect and preserve the Constitution. He cannot sit with his eyes closed from the affairs of the State. In reality, he is the person on the spot to play a vital role in specific circumstances. Mentioned examples clearly show that many a times Governors abused their power and dissolved the ministry in haste. Some guidelines were provided by the Committee of Governors but even after the report of the Committee, Governors continue to exercise their discretionary power in an arbitrary and partisan manner.

Generally, Governor should not dissolve a ministry when it enjoys the majority support in the Legislative Assembly and works for the betterment of the State under the Constitution. But if he feels that the ministry has lost the majority then he may use his discretion and dissolve the ministry. The majority of the ministry can only be decided on the floor of the House. In case of political crisis a ministry is to seek a vote of confidence in the House. If a no-confidence motion is passed against a ministry, this is a clear proof that the ministry has lost the confidence of the majority in the House. Hence, the majority of the ministry cannot be judged on the basis of information or material extraneous to the proceedings in the Assembly. The Governor should wait till the ministry is voted out of the office by the House itself.6

The Governor summons the Assembly on the advice of the Chief Minister and six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. But because it is unconstitutional for a government to remain in the office when after defection of

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some members of the House, the ministry is likely to come in minority. In such circumstances, the Governor cannot be a silent spectator of the situation. He cannot wait for the advice of the Chief Minister to call the Assembly, till the expiration of the six months. Governor has the discretion in proroguing the State Legislature even though the convention is that the Governor acts on the advice of the Chief Minister. Past practice clearly shows that the Governor many a times prorogued the House in partisan manner to provide the benefits to the party in power in the State.

Article 356 provides very drastic powers in the hands of the Centre. During the debates in the Constituent Assembly, when a question was raised by some members to Dr. B.R. Ambedkar that Union can find at any time that any State Government is attempting to subvert the Constitution and it is its duty to suppress the subversive activities. On this question, Dr. Ambedkar answered that it shall be the duty of the Union to maintain the law in the Provinces as enacted by this Constitution. But he also cautioned and defended this drastic provision under this Article by saying that this Article will never be called into operation and that it would remain as a dead letter.\(^7\) Article 356 was inserted in our Constitution with a view to restoring the democratic pattern of our Parliamentary System. For this purpose, the makers of the Constitution strengthened the hands of the Centre through Article 355 besides Article 356 of the Constitution. During the Constituent Assembly debates some members observed that the inclusion of the word “otherwise” in Article 356 would widen the scope of the central intervention. Dr. B.R. Ambedkar himself realized the fact that the possibility of Article 356 being

\(^7\) Vol. IX, CAD at 133.
misused could not completely be ruled out.\textsuperscript{8} Generally, Article 356 provides remedy for a situation, where there has been an actual break-down of the constitutional machinery of the State.

Governor acts on the aid and advice of the Council of Ministers or the Governor is merely a constitutional head and the real power is vested in the Council of Ministers. This concept is right and sound if the commanding party in the State is the same as that in the Centre or if the Union Government and the State Government are run by the same political party or group. At this time the role of the Governor generally remains beyond the public controversy.

Sarojini Naidu at one time the Governor of Uttar Pradesh said that she considered herself “a bird in a golden cage”, similarly the Governor of Madhya Pradesh, Mr. B. Pattabhi Sitaramayya also observed that he had no public function to perform except making the fortnight report to the President.\textsuperscript{9} But if the State Government is run by different party than the commanding party at Centre, the role of the Governor may become publicly controversial or in other words, under this circumstances Governor’s role does not make him merely an ornamental figure-head, but he plays an important role in the administration of the State. Study of the discretionary powers of the Governor reveals that under such circumstances many a times Governor acted as the agent of the Centre.

\textsuperscript{8} Dr. N.S. Gehlot, The Office of the Governor – its Constitutional Image and Reality, Chugh Publications, Allahabad, 1977, p. 163.

\textsuperscript{9} Sibranjan Chatterjee, Governor’s Role in the Indian Constitution, Mittal Publication, New Delhi, 1992, p. 1.
The language of Article 356 is very wide and loose. Any abuse or misuses of this drastic power may damage the fabric of the Constitution. The purpose of Article 356 is that the Centre can take remedial action to put the State Government back in its place so that it can function according to the Constitution. In case of ministerial crisis, the Centre should invoke the Governor’s power and hold fresh elections and in the meantime keep the ministry in office as a caretaker government.

The study of use of Article 356 appears that the commanding party at the Centre uses this Article for political purpose rather than for restoration of the constitutional government in the State. The Office of the Governor is mainly used under this Article to serve the interests of the ruling party in the Centre and the imposition of President’s rule has become a normal feature.

About the invocation of Article 356 Justice K. Ramaswamy\(^\text{10}\) viewed that “the exercise of the power under Article 356 is an extraordinary one and needs to be used sparingly when the situation contemplated by Article 356, warrants to maintain democratic form of government and to prevent paralyzing of the political process. Single or individual act or acts of violation of the Constitution for good or bad or indifferent administration does not necessarily constitute the failure of the constitutional machinery or characterizes that a situation has arisen in which the government of the State cannot be carried on in accordance with the Constitution.”

For the imposition of President’s rule under Article 356 of the Constitution, the Sarkaria Commission viewed that “Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available

\(^{10}\)S.R. Bommai vs UOI, AIR 1994 SC 1918.
alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All attempts should be made to resolve the crisis at State level before taking recourse to the provisions of Article 356.\textsuperscript{11} After the Supreme Court judgment in the Bommai Case, the Centre has been reluctant to use the powers under Article 356.

The Centre prior to imposition of President’s rule should do its best to control the situation in the State and should not use this Article in haste and try its best to settle the political scores. At the time of exercising Article 356, Centre is presumed to be very careful otherwise an injury may be caused to the federal fabric of the Constitution.

Governor has the power to grant pardon but he does not have the power to pardon sentence of death. Regarding death sentence, he can only suspend, commute or remit the same. Governor cannot exercise this power as per his own judgement. He has to follow the guidance given by the government.

To control the differences between the Centre and the States, the Central Government has set up a new Commission in April 2007 under the Chairmanship of Justice M.M. Punchhi to look into the issues of Centre-State relations in view of the sea changes that have taken place in the polity and economy of India since the Sarkaria commission had last looked into the matter.\textsuperscript{12} The Commission reviewed the working of the existing arrangements between the Union and the States and submitted its report on April 19, 2010 to the Union Home Minister, Sh. P. Chidambaram.

\textsuperscript{11} Sarkaria Commission’s Report on Centre-State relations, p. 178.

\textsuperscript{12} The Tribune, June 20, 2009.
Lastly, it can be concluded that Governor is not mere a figure head and the discretionary powers given to him under the Constitution of India make him a very powerful functionary in the Parliamentary form of government in India and being the head of the State, he is suggested to avoid getting himself involved in Party Politics.

**Suggestions:**

On the basis of my research work, I furnish the following suggestions:

1) A politician who is involved in active party politics in the Centre should be avoided to be appointed as the Governor of a State because his role as the Governor will remain as a politician.

2) A panel of the retired military officials or the other civil officials, who are not in touch with the politics, can be constituted and Governors may be appointed from this panel.

3) In order to avoid misuse of this august office, persons of great eminence and integrity must be appointed as Governors. So that they can maintain the dignity and prestige of this august office.

4) To make the office of the Governor independent, its tenure must be constitutionally secured. So that he can hold office without any fear of his removal. His term of the office should be fixed for five years. M.M. Punchhi Commission also recommends the fixed tenure of five years. The procedure of the removal should be changed and the system of the impeachment which is applied for the removal of the President may be inserted in the Constitution for the removal of the Governors.
5) A person appointed as Governor should be made ineligible for further appointments to offices under the Centre or States and also made ineligible for contesting elections.

6) At any time, if there is a clash between the advice given to the Governor by the Centre and the advice given to him by the Council of Ministers of the relevant State, the Governor should act according to the provisions of the Constitution in favour of the people of the State. G.S. Pathak, a noted jurist also said in his speech on April 3, 1970, when he was the Vice-President of India, “In the sphere in which he is bound by the advice of the Council of Ministers, for obvious reasons, he must be independent of the Centre. There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers. In such cases, the Governor must ignore the Centre’s advice and act on the advice of his Council of Ministers of the State.”

7) No doubt that Governor has the discretion in the appointment of the Chief Minister but should try his best to follow the uniform practice and the guidelines provided by different Commissions. He should invite such person to form the government, who has agreed to summon the Legislative Assembly without delay.

8) He should use his discretionary powers only in exceptional and warranted cases or in other words he should reserve a Bill for President’s assent not liberally but exceptionally or only in rarest of rare cases. The reason for taking this view is that if the Governor interprets his power too liberally, it

will result in too many State Bills being reserved for the Centre’s assent and this will jeopardize the system of parliamentary democracy in the State.

9) When a Bill is reserved for the consideration of the President, he can veto any Bill without giving any reason and no time limit is prescribed for presidential veto. Therefore, the time limit for presidential veto should be mentioned in the Constitution and a Bill should be deemed to be passed after the completion of six months which should be calculated from the date since when Governor sent it for the presidential assent.

10) The mere fact that a few members of the party have defected does not necessarily prove that the party has lost the confidence of the electorate. If there is a no confidence motion against a ministry and the Chief Minister instead of facing the Assembly, advises the Governor to dissolve the Assembly, the Governor need not accept the advice, but should ask the Chief Minister to get the verdict of the Assembly on the floor of the House. So, if the Chief Minister is trying to avoid a no-confidence motion and recommends the Governor to dissolve the Legislative Assembly, then the Governor should not accept his advice.

11) It should not be left to the Governor to determine whether a ministry is or is not enjoying the majority support of the members in the House. Even if, the members of the House inform in writing to the Governor about their withdrawal of support, it is the prerogative of the Assembly to decide this issue. The Governor should dismiss a ministry, only if, the House passes a vote of no-confidence and the ministry refuses to tender its resignation.
12) The Chief Minister should resign if he has lost the majority support in the Legislature without waiting any longer. When a question arises as to whether a ministry is in a majority or not, it should be decided on the floor of the House and a Chief Minister’s refusal to test his strength on the floor of the House means he has no longer enjoying the confidence of the Legislative Assembly.\(^\text{14}\) In the matter of dismissal of the ministry, Governor should act more cautiously.

13) In case of political instability Governor should impress on the Chief Minister to convene the early session of the Assembly and it will be the proper sense of Article 174 (1).

14) Governor should use the power to prorogue the House in good faith for the public interest and protection of the Constitution. When the no-confidence motion is pending or the government is likely to be in the minority and other important matters like Budget Session is pending in the House the Governor should avoid proroguing the House either on the advice of the Chief Minister or without the advice of the Chief Minister.

15) Article 356 should be used in the State as a safety measure. It should be used as a last resort in the circumstances when the State Assembly fails to discharge its duties within the framework of the Constitution. All the guidelines provided by the different Commissions\(^\text{15}\) or the judicial guidelines should be followed by the Centre prior to the invocation of Article 356.

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\(^{15}\) Sarkaria Commission, M.M. Punchhi Commission, other Committee’s recommendations and guidelines provided by Courts.
16) There must be a provision in Article 356 which provides the system of warning by the President to the State Government prior to proclamation of President’s rule in the State and taking over the administration of the State. Constitution should provide detailed provisions regarding the use of Article 356 in light of different guidelines provided at different times. It is neither wise nor justified to dissolve the Legislative Assembly each and every time irrespective of the demand of the situation, because excessive use of power is also misuse of power. The decisions of the Governor must not be influenced by any sense of being an agent of the Centre.

17) Governor should use the power of pardon only in rarest of the cases and after considering the effect of the case. Governor should avoid superfluous interference in the functioning of the judiciary. While exercising the pardoning power, the Governor should keep in mind not only the welfare of the convict but also the welfare of the public and the impact of release of the convict on society.

18) Since Governor cannot use his discretionary power in pardon, he has to follow the advice of the government and particularly the Law Ministry, but Governor cannot remain as a rubber stamp. There should be some mechanism for using the pardoning power or some discretionary power may be given to the Governor, so that a check on the nexus between the politics and the criminals can be imposed.
19) Governor should appoint the Vice-Chancellor of a State University in consultation with the Chief Minister and the concern minister of the relevant State.

20) A Governor should exercise the discretionary powers, if absolutely based on his own decision, with great caution. His decision must not be influenced by any sense of being agent of the Centre. The true constitutional position of the Governor is that he is the head of the State. He has to act according to the aid and advice of his Council of Ministers, using his discretion wherever the Constitution allows him.

Lastly, it is opined that for the proper functioning of a parliamentary form of government in India, it is compulsory that there should be Governor, as the head of the State and he should not be affected by the rise and fall of the governments. When he uses his discretionary powers, he must play a constructive role between the Union and the States.