Chapter - 4

Cabinet Camouflage and Political Governors: A Serious Ingenuity
Article 74 begins with the words as "there shall be a Council of Ministers to aid and advise the President". The number of members of the Council of Ministers is nowhere mentioned in the constitution. It is determined according to the exigencies of the time. Likewise the constitution does not classify the members of the Council of Ministers into different ranks. All this has been done informally, following the English practice. The Council of Ministers is, thus, a composite body, consisting of different categories like Cabinet Ministers, State Ministers and Deputy Ministers. It is the cabinet which is an inner body within the Council. According to the Salaries and Allowances of Ministers Act, each Minister gets a sumptuary allowance at a varying scale, as per his rank, and a residence, free of rent.

Position and Functions of Cabinet:

It is now settled that since the cabinet system of Government has been introduced into the Indian constitution based upon the British Model and since all the conventions cannot possibly be codified exhaustively, it would be legitimate to refer to the British conventions in interpreting the provisions of Art. 74-75 unless, of course, they are excluded or modified by these other provisions of the Constitution of India. So it becomes necessary in the context to discuss the position and function of the cabinet with historical touch. It is through the institution of the cabinet that the absolute monarch of England has been transformed into a constitutional ruler - the formal head of the Executive. In Law and in strict theory, the Crown is still the source of all authority, and the cabinet, as such, is still unknown to the law. But though unknown to the law, the cabinet is the "driving and steering force" in the English system of Government today. The main principles upon which this
system of responsible government rests were evolved as a result of the Revolution of 1688, viz. (1) the sovereign is irresponsible, but (2) He must act through Ministers enjoying confidence of Parliament (i.e. of the majority in the House of Commons) and must retain them only so long as that confidence is maintained. This latter principle rests entirely upon convention and there is no law to enjoin it.

In the words of Ilbert

"The essential feature of the Cabinet system of government, those which distinguish it from the Presidential system of the United States, are that the king's Principal Ministers, the men who are responsible for the government of the country, must be members of Parliament, and must resign office if they are unable to command and the confident in the House of commons".

In the words of Parliamentary Committee on the Machinery of Government the main functions of a modern cabinet are three fold -

"(a) the final determination of the policy to be submitted to Parliament;
(b) the Supreme Control of the national executive in accordance with the policy prescribed by Parliament; and
(c) the continuous coordination and delimitation of the interests of the several Departments".

(a) The primary function of the cabinet is formulation of the policy according to which the nation is to be governed. It is, by its very nature, incapable of carrying on the actual administration of the country. What the
cabinet does is to determine the policy by consultation amongst its members who are the heads of the different Department or "ministries" and after the policy is determined, it is the duty of each of the Departments to carry out that policy and also to fill in the details within the frame work of the policy laid down by the cabinet (and approved by Parliament either by a debate or by legislation where legislation is necessary to carry out the policy).

(b) The next function is to control the entire administration in the matter of implementation of the policy so laid down. Even in carrying out the policy thus laid down, reference to the Cabinet becomes necessary whenever any question of policy is involved in taking an administrative decision. In fact, one of the potent sources of evolution of new policies is the problems arising out of the administration of existing policies and laws. To certain extent, it depends on each individual Minister to determine which matters should be referred to the cabinet; but the exercise of this discretion is controlled by the very nature of ministerial responsibility, and the loyalty of each Minister to the cabinet and ultimately to the Prime Minister. While, therefore, it would be unnecessary and unwise for a Minister to refer questions of mere admininistrative details to the cabinet which it has no time to deal with, it would be equally unwise for a minister to withhold questions involving policy from the cabinet and make a decision on his sole responsibility. Even the prime Minister can hardly afford to commit himself to major questions without prior consultation with his colleagues. In this matter, as in all matters relating to the cabinet, there is no hard and fast rule, but the whole machine works smoothly according to convention and good sense. Apart from questions raising new issues of policy, a Minister would, as a matter of prudence, place
before the cabinet issues which have external implications or are likely to raise serious controversy in Parliament or a dispute with another Department.

(c) Next in importance is the part played by the cabinet in legislation. Its initiation and control in the matter of legislation has become so much overwhelming that, Ilbert observed.\(^7\)

(d) The control of the cabinet over financial legislation is almost absolute. The cabinet has the sole responsibility of preparing and laying before Parliament both the estimates for expenditure as well as the proposals for taxation.

It is the cabinet which co-ordinates and guides the political action of the different branches of the government, and thus to create a consistent policy.\(^8\) Hence Bagehot called it "a hyphen that joins, a buckle that fastens, the executive and legislative together". It formulates the general policy of the government and is collectively responsible to Parliament for that. Apart from this general function of co-ordination and leadership, it exercises actual executive and legislative functions. As the adviser of the crown, the cabinet exercise all the prerogative and statutory powers of the crown and its individual members administer the various Department of government. On the other hand, it possesses the exclusive right of initiating and conducting public bills in Parliament and exercises exclusive control over all financial measures.

The Cabinet, in fact, forms the pivot round which the whole machine of England revolves,
"on the one hand, they are the king's ministers exercising their powers in the king's name, and it is by them, and not by either house of Parliament, or by any committee of either house, that the government of the country is carried on. On the other hand, they are members of legislature liable at any moment, so long as Parliament is sitting, to be called to account for their actions by the House to which they belong, and are dependant for their tenure of office (technically on the king's pleasure), but practically on the goodwill of the House of commons".9

Deliberations of Cabinet :

Not only its existence but the working of the Cabinet system, as a whole, rests on convention. As Gladstone observed -

"the cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to Parliament, or to the nation; or the relations of its members to one another, or to their head".

The entire proceedings of the Cabinet meeting are informal10, except that since 1917 the cabinet has a Secretariat11 to keep minutes of its proceedings - which, however are, not meant for the public, there is no order of precedence at cabinet meetings, nor any quorum. Except on unusual occasions, no vote is taken12, and any minister who can not reconcile himself with the decision taken at the meeting must resign.13

"Resignations may entail the breaking up of the Cabinet and, in addition, a party split. Great efforts are therefore, made to secure agreement. Compromise is the first and last order of the day".14
The advice tendered by the Cabinet through the Prime Minister must formally be unanimous, and the king has no right to enquire into cabinet divisions. Sometimes the Prime Minister even ventures to advise the king against the adverse opinion of the cabinet, but before doing that, the Prime Minister must be very sure of the strength of his personal leadership. Particular matters are referred to committees of the Cabinet, for the purpose of speedy and efficient disposal.

Another characteristic of cabinet deliberations is their secrecy. A cabinet decision being theoretically an advice to the crown, it can not be made public without the consent of the crown. So, even though a resigning Minister is permitted to make a statement in parliament, referring to the causes of his differences with his colleagues, cabinet discussions can be disclosed in such statement only with the permission of the crown, through the Prime Minister. Each member of the cabinet is prohibited from disclosing any information relating to cabinet deliberations not only by the Oath which he takes as a member of the Privy Council but also by provisions of the official secret Act.

The rule of secrecy binds the members of a cabinet even after retirement or fall of a cabinet. Hence, a former Minister cannot disclose the deliberations of a previous cabinet or the attitude of any member of the Cabinet, including himself.

All these principles are generally being followed in India. The principle of homogeneity is illustrated by the fact that there have been resignations of individual Ministers who failed to agree with the policy
decisions of cabinet, e.g. among other resignations, Dr. Ambedkar resigned in 1951 on the ground of slow progress of Hindu Code Bill.

All the major decisions take place at the meetings of the Cabinet but to help the cabinet in coming to decisions, the cabinet, as in England, has a member of standing committees which discuss matters in a more informal manner and report their conclusions to the cabinet. The committee system within the cabinet, which is itself in the nature of a committee, is a time-saving device. The whole thing being informal, there is no fixed number of cabinet committees; but mention may be made of the Defence committee, planning committee, Economic committee, Foreign Affairs Committee, Appointments sub-committee, Production and Distribution Committee, Parliamentary Affairs committee. The proceedings of a cabinet committee are as secret as those of the cabinet itself. To assist the cabinet in its work, there is a cabinet Secretariat, headed by a secretary to the Government of India.

**Evolution of Cabinet as a Coalition:**

The text of the term coalition has not been unknown to the Indian Political system, rather to say, to the Parliamentary form of Government. As the cabinet system does not only embody the principle of representative government accountable to people's representatives in Parliament, it also incorporates the principle of coalition. As already mentioned, coalition means a temporary alliance for some specific purpose. As our constitution gives pace way that there is no bar to the appointment of a person from outside the legislature as Minister. But he cannot continue as Minister for more than 6 months unless he secures a seat in either House of Parliament (by election or nomination, as the case may be), in the mean time.
The evolution of the cabinet and its practices, such as collective responsibility, during the 18th Century England, points out Patrick Gordon Walker, a minister in the Harold Wilson government, was a sort of an anti-monarch alliance drawing sanction from the Parliament. It was meant to beat the practice of the king meeting and doing business with his ministers one by one in his closet. Later the same principle was gradually channelized from the king to Parliament as the locus of power shifted.

The evolution of the Cabinet system in India reflects building of a similar alliance. Even though the Interim Government formed on 2 September 1946 under Nehru's leadership, following intense negotiations on the proposals of the Cabinet Mission plan, was not cabinet in the strict sense of the term it was Viceroy's Executive Council - Nehru treated the Council to be the Cabinet and was firm on making it function as one. Nehru's assertion in his letter to Viceroy Lord Wavell on 1 September 1946 that "this Government will function as a cabinet and will be jointly responsible for its decisions" was an indication of his desire to create and maintain a solid alliance against British, obviously Nehru's effort to create a coalition against the British before the transfer of power and to give the Interim Government the status of a cabinet succeeded.

True, the Deve Gowda Government is the first coalition of political parties to occupy office at the centre. But the Cabinet system in India has experienced functioning of coalition governments from the outset. In fact, going beyond the arguments presented in the foregoing paragraphs the cabinet system has evolved as a coalition, the Interim Government and the first cabinet at the centre were indeed grand political experiments of coalition govt.
Moreover, a study of socio-economic profile of the Indian cabinet over the years in the Book reveals that cabinet making in India has been an exercise in composing social coalitions.

According to the cabinet Mission plan the Interim Government, prior to the transfer of power from the British to the Indian representatives, was to be a coalition of the Indian National Congress and the Muslim League. The composition of the First Indian Cabinet after the Muslim league refused to join the Government, reflected the need to ensure representation to various sections of the Indian society. hence apart from seven members of the Indian National Congress in the twelve member "cabinet", there was a member each representing Sikhs, Indian Christians, Parsees, Depressed classes (i.e. Harijans) and Muslims. Not only that, since the Muslim League had refused to join the interim Government, two members were referred to a Muslim members of Congress.

However, the first real coalition government in political terms was constituted a month after the first Interim Government, when the Muslim League decided to participate in the pre-independence governance. The Indian National Congress Muslim League fourteen member "cabinet" dropped three members (including two Muslim members) from the first one and inducted five nominees of the Muslim League. The functioning of this government, which lasted for nine months, brought out the travailes of a coalition of unlike minded parties. It was also a good lesson in what a coalition should not do.

But this coalition, made up of a party attempting to pursuade the other against partition of the country, and the other bent upon partition, was
doomed from the very beginning. It lacked political homogeneity, one of the essential features of the cabinet government. Not reconciled to the pre-eminent position of Nehru, the league members refused to attend the informal "cabinet meetings" organised by Nehru, arguing that such meetings had no locus standi. In fact, Liaqat Ali, the leader of the Muslim league group, organised similar meetings for the League members. Consequently, the Congress and the League came as two separate (and warring) groups to the formal meetings. Maulana Abul Kalam Azad in 'India wins Freedom' has written in considerable detail about how Liaqat Ali effectively used his finance portfolio to check every proposal made by the Congress members.

The first few years after independence witnessed national coalition government in operation. Nehru's first post-independence cabinet did not consist of Congress members alone the seventeen member cabinet had six non-party members. Some of them were accommodated to represent different sections of Indian society, while others were invited to represent different point of view. As a part of perhaps the post-independence nation building strategy, Nehru persuaded even his critics like B.R. Ambedkar and Shyama Prasad Mookerjee, to join his cabinet. Others like Dr. John Mathai were in the cabinet as experts in their own right and not bound by party discipline to tow the Nehru line. Naturally, the cabinet was likely to, and it indeed did, function like a coalition since few of his cabinet colleagues were dwarfed by his personality, the Prime Minister was primus inter pares.

It, however, needs to be noted that this coalition was not as a result of the ruling party's political compulsions. It was a coalition volunteered by the leader of the political party which was firmly in saddle, therefore, it
would have lasted only as long as the ruling party and its leader could accommodate the views of the coalition members, thus, by late 1950's personalities like Matthai, Mookerjee, Ambedkar and C.D. Deshmukh resigned from the cabinet on policy differences.

Indeed, the Cabinet system in the present coalition situation is rather result of the ruling party's compulsion, a voracious act on the part of the parties coalescing to remain in power in the disguise of the pluralistic nature of the society. Though the present NDA govt. led by Shri Atal Bihari Vajpayee is an excellent example of coalition government, but the United Front (UF) government led by H.D. Deve Gowda has been described as the first true coalition govt. at the centre. The previous experiences such as the janata party government led by Morarji Desai, the Charan Singh led Samajwadi Janata Party government, V.P. Singh's Janata Dal government or the Chandra Shekhar government are not regarded as genuine coalition governments because in the janata party the parties, except the Akali Dal, had merged together and others were either minority governments supported by a major party from outside, or a transitory phenomenon. In the U.F. India has, for the first time in its post-independence history, thirteen political parties coalescing after the general elections to form a government at the centre, that the U.F. despite the coalition, is dependant on external support from the Congress, the second largest party in the Lok Sabha, adds another significant political dimension to the coalition.

How will the cabinet government function in this coalition situation? this will be the most important question from the point of view of India's governance now that the Deve Gowda government has conclusively won the
vote of confidence in the Lok Sabha and hopes to stay in office for a reasonable amount of time. For, despite the common Minimum Programme (CMP), there will be pressures from within as well as from without. Differences amongst political parties representing diverse interests have begun to emerge on an array of issues that have either not found a place in the CMP, or keep arising out "outside supporter" Congress, with a history of withdrawing such a support twice, brings in an additional factor of uncertainty.

**Immunities of the Cabinet:**

This is another aspect of the concept which is, in essence, to discuss for the purpose of bringing home the clear picture of relativity that is susceptible to open the door for political ingenuity. It is clause (2) of Art. 74\(^{19}\) of our constitution which prevents the jurisdiction of the Court to come into the way of the relationship of President and cabinet in terms of giving advice to him. This clause embodies the principle of confidentiality and secrecy of cabinet deliberations and of the advice tendered by the Council of Ministers to the President, who has the power to dismiss them. Even though after the 1976 amendment of Cl.(1), the President is bound to act according to the advice of the Council of Ministers, the courts are powerless to compel the President to take the advice of the Council of Ministers on any matter and then to act only in accordance with such advice because courts are barred by the constitution to compel production of the advice\(^{20}\), or the reason behind that advice, if any, tendered by the Council of Ministers. In shorts, if any President flouts the Council of Ministers, the latter may proceed against him politically, by way of impeachment, but can not obtain any legal relief\(^{21}\) from the courts.
If, however, the Government produces the papers showing what advice was in fact tendered by the Council of Ministers to the President, e.g. where malafides is alleged, there is no bar to the court looking into such papers and to come to its findings on the basis thereof. Similar would be the position if the Government, for any reasons, discloses to the public the advice tendered to the President or reasons therefore.

But though the court can not compel the Government to produce the advice tendered by the Ministers to President or the reasons therefore, there is nothing to prevent the court to compel production of the materials upon which the advice or its reasoning was based, because the "materials" can not be said to be a part of the advice. In other words, the bar of judicial review is confined to the factum of advice but not the reasons, i.e. the material on which the advice is founded, e.g. the correspondence between the Ministers and the chief justice of India in the matter of transfer of or confirmation of certain Additional Judges, on the basis of which the Council of Ministers tendered their advice. Upon such disclosure of the materials, it is competent for the court to give relief to the litigant in cases of Non-compliance with constitutional requirements or of malafides.

Where, no quorum no meetings and no number of the members of cabinet are prescribed, all thing is secretly policised and done in the form of the function. And the cabinet as a team is confidentially known and no proceedings and no advice could be taken before the court of law for scrutiny due to the immunity as provided under Art. 74(2), one can come to the stage of finding probably in favour of misusing the stronger position of the centre. As has already been said that, wherein the coalition situation, the misuse of
Art. 356 can be made possible due to the allied partner's sharing the executive government's i.e. cabinet, internal pressure of self favoured. It, is, however, satisfactory that the judicial travelling has reached somewhat near destination in 1994, in which the land-mark judgment came in S.R. Bommai's case\textsuperscript{28}, wherein, it has been propounded that Art. 74(2) is not a bar against the scrutiny of the material on the basis of which the President has arrived at his satisfaction for issuing the proclamation under Art. 356(1). It merely bars an inquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. What Art. 74(2) provides is that an order issued in the name of the President could not be questioned on the ground that it was either contrary to the advice tendered by the Ministers or was issued without obtaining any advice from the Ministers.

Thus, it is, hereafter, necessary to find the hitch, which is provided in our system, which is the potential of Misusing the constitutional spirit, which is only discernible by the political perceiver for their party benifits not for the nation. So in furtherance of such linkage it is necessary to detect the further positions that softens the ways to use the powers for their own benifits in the name of the constitutionalism.

\textbf{The Political Governor :}

The Constitution of India declares that there shall be a Governor for each state\textsuperscript{29}, but an amendment of the Constitution makes it possible to appoint the same person as the Governor for the two or more states.\textsuperscript{30} As the President is the Chief Executive of the Union of India and the Executive power of the Union is vested in him\textsuperscript{31}; the Governor is the Chief Executive of every state and the executive power of the state is vested in him.\textsuperscript{32}
Art. 155 of the constitution provides that "the Governor of a state shall be appointed by the President". However, the original plan in Draft Constitution was to have elected Governor the committee known as Provincial constitution committee was appointed by the President in pursuance of a resolution on April 30, 1947. It was presided over by Sardar Patel. It suggested a model provincial constitution with an elected Governor with a four years term, who would be removable for his misbehaviour by impeachment. The Charges against him could be framed by the lower House of the provincial legislature; and could be tried by a special committee of upper House of the Federal Parliament. The Governor was to have special responsibilities and discretion in relation to matters connected with grave menace to peace and tranquility, summoning and dissolving the Provincial Legislature, superintendence and control of elections, the appointment of the Provincial public service commission and the Provincial Auditor-General. In other respects he was to exercise his powers on the advice of the provincial council of Ministers in accordance with the conventions of responsible government which were set out in a schedule. The ordinance making power was provided too.

The committee held their sitting in June, 1947, and discussed the Constitutional Adviser's Memorandum of May 30, 1947, with the object of enunciation of the Principles of a model provincial constitution. These principles were laid down in the report presented to the Assembly by the committee chairman Sardar Patel on 15 July, 1947, speaking on his motion for consideration of the report, he said that it dealt with the principles and not the details or exact legal forms of the model provincial constitution. He
observed that it was agreed jointly by the PCC and UPC that "it would suit the conditions of this country better to adopt the parliamentary system of Constitution"; and added that on the question of Federal type provincial Constitution qua the groups there was difference of opinion.

The term "Governor" was not very much liked, but was accepted for want of better one. Because of the ill repute earned by the Governors of the British Indian provinces for their being the principal functionaries who performed acts of suppression of the freedom movement. The term had become synonymous with foreign repressive rule. Its use in the report of the PCC completely upset Maulana Hasrat Mohani who moved an amendment, and wanted that he be called "President" of what he called the Provincial Republic. Shri Nehru said that there was not much in terminology, if "the ideas and principles we have in view" were not lost sight of. Patel while moving the PCC report did not accept the Maulana's amendment; and it was later negatived by the Assembly.

The PCC suggested that "for each province there shall be a Governor to be elected directly by the people on the basis of adult suffrage". It was felt that the Governor's election should, as far as possible, synchronise with general election of the Provincial Assembly except when the latter was dissolved in mid-term. Patel did not think it to be an ideal arrangement; and said that the question arose whether the Governor should be elected even though he had merely limited powers. The suggestion of the PCC was made to lend dignity to the Governor's office. He added that a Governor who would be elected by adult franchise of the whole province would exert considerable influence on the popular ministry as well on the province as a whole.
The proposal for a popularly elected Governor seemed to have been made in the context of the cabinet mission proposals which provided for a looser union in which the provinces would be vested with larger powers and functions. The raison de etre was the desire to accommodate the secessionist Muslim League by ensuring that the Governors of the Muslim majority provinces would commonly be Muslims. A Governor elected by adult franchise would certainly have reflected the communal character of the Muslim majority provinces, and this would have been welcomed by the Muslim League. Because of this it was not so much evidence that the idea was taken from the American practice of election of the state Governors. In fact the proposal was justified only on the ground of expediency.

When the considerations of political expediency was no longer valid, the proposed looser federation idea, and along with it the suggestion for the institution of popular Governors were abandoned. In the post partition constitution they had no validity whatever. It was thought that a candidate for Governorship would be a man of substance, age and experience. He would not be a public servant, or a person who might have retired during the preceding five years.

The PCC did not, however, recommend to vest a state Governor with powers to act a discretion, except in the case of a grave menace to peace and tranquility in the province. It thought that vesting discretionary powers in him would bring about a conflict between him and ministry, and would rob the system of harmony with the Legislative Assembly which was sine qua non of any type of parliamentary responsible government. The PCC limited the Governor's discretion to make a report to the President on the conditions
prevailing in the province. He was also given powers of summoning, the Houses of, and dissolving the Assembly of the provincial legislature. The PCC recommended that a Governor should have only a special responsibility in the matter of "prevention of any grave menace to the peace and tranquility of the province" to report to the President who would be authorised to report to the Federal Legislature to enable him to secure the legislation "he considers essential" (clause 15) He would not act a discretion. This raised a heated controversy. Two amendments were moved to it:

(i) Pant: He should have no discretion; and the ministry should act effectively.

(ii) Munshi Gupta: The Governor should, by a proclamation, assume to himself "all or any functions of Government" under communication to the President. The proclamation would operate for two weeks.

The recommendation as also the amendments encroached upon the powers of the ministry. Pandit Pant opposed them "with force". On the other hand, many others thought "it is a dangerous thing not to provide for emergency powers". Pant said it was not intended that the Governor would be a 'Sahasrabahu' and would not have more than two hands and two eyes. It would be impracticable to keep the Governor aloof from the administration consequent to responsible cabinet system of government, and at the same time to handle a delicate menacing situation.

Simultaneously it would be dangerous to empower him to overrule the cabinet and bypass the legislature. In a delicate situation the ministry and not the Governor would have a free hand and converse the Munshi Gupta line
for a mere discretionary power to report was of no avail. The Governor should be enabled "to act immediately with some chance of success" in the event of a sudden flare up or a violent erruption. While he should act only when immediate action must be taken, and there was no time to report to the President and receive instructions from him. He should be the judge of the imminence of danger, should immediately act, and should communicate forthwith the initial action taken up by him. If he acted perversely, he could be impeached. The weight of opinion appeared to favour the Munshi Gupta amendment which was later adopted.

More specifically, the following arguments were put forward in favour of appointment in the Constituent Assembly\textsuperscript{35}.

(1) It would save the country from the evil consequences of still another election, run on personal issues. To sink every province into the vortex of an election with millions of primary voters but with no possible issue other than personal, would be highly detrimental to the country's progress.

(2) If the Governor were to be elected by direct vote, then he might consider himself to be superior to the Chief Minister, who was merely returned from a single constituency, and this might lead to frequent friction between the Governor and the Chief Minister.

But under the Parliamentary system of Government prescribed by the Constitution the Governor was to be constitutional head of the state - the real executive power being vested in the Ministry responsible to the legislature.
"When the whole of the executive power is vested in the council of Ministers, if there is another person who believes that he has got the backing of the province behind him, and therefore, at his discretion he can come forward and intervene in the governance of the province, it would really amount to a surrender of democracy". The expenses involved and the elaborate machinery of election would be out of proportion to the powers vested in this governor who was to act as mere constitutional head.

(4) A Governor elected by adult franchise to be at the top of the political life in the State would soon prefer to be the Chief Minister or a minister with effective powers. The partly in power during the election would naturally put up for Governorship a person who was not as outstanding as the future Chief Minister with the result that the state would not be able to get the best man of the party. All the process of election would have to be gone through only to get a second rate man of the party elected as Governor. Being subsidiary in importance to the chief Minister, he would be the nominee of the Chief Minister of the state, which was not a desirable thing.

(5) Through the procedure of appointment by the President, the Union Government would be able to maintain intact its control over the states.

(6) The method of election would encourage separatist tendencies. The Governor would then be the nominee of the Government of the particular province to stand for the Governorship. The stability and unity of Governmental Machinery of the country as a whole could be achieved only by adopting the system of nomination.

"He should be a more detached figure acceptable to the province, otherwise he could not function, and yet may not be a part of the party machine
of the province. On the whole it would probably be desirable to have people from outside, eminent is something, education or other fields of life who would naturally co-operate fully with the Government in carrying out the policy of the Government and yet represent before the public something above the politics".  

The arguments which were advanced, in the Constituent Assembly, against nomination are also worthy of consideration:

(i) A nominated Governor would not be able to work for the welfare of a state because he would be a foreigner to that state and would not be able to understand its special needs.

(ii) There was a chance of friction between the Governor and the Chief Minister of the state no less under the system of nomination, if the Premier of the state did not belong to the same party as the nominated Governor.

(iii) The argument that the system of election would not be compatible with the Parliamentary or cabinet system of Government is not strong enough in view of the fact that even at the center there is an elected President to be advised by a Council of Ministers. Of course, the election of the President is not direct but indirect.

(iv) An appointed Governor under the instruction of the centre might like to run the administration in a certain way contrary to the wishes of the cabinet. In this tussle, the cabinet would prevail and the President appointed Governor would have to be recalled. The system of election,
therefore, was for more compatible with good, better and efficient Government plus the right of self Government.

(v) The method of appointment of the head of the state executive by the federal executive is repugnant to the strict federal system as it obtains in U.S.A. and Australia.

Hence, with these main arguments that if the Governor was to be elected directly, then he might consider himself to be superior to the Chief Minister and this might lead to frequent friction between the two. Also direct election of the Governor could encourage separatist tendencies, as he would in that case be the representative of only the people of the state. So the stability and unity of the Governmental machinery of the country as a whole demanded that the Governor should be nominated by the Centre. M.V. Pylee also shares this view and agrees that when the Governor is elected directly by the people on the basis of adult franchise, he becomes a direct representative of the people and may very well try to exercise his powers not as a constitutional head of the state, but as its real head. Such a position is very likely to create a rivalry between the Governor and the Council of Ministers whose members also are directly elected by the people. Apart from the possibility of a clash between the Governor and the Council of Ministers, the direct election of the Governor creates a serious problem of leadership at the time of general election.39 The other aspect that the Canadian constitution which provides for a strong centre seems to have particularly influenced the Constituent Assembly in this connection. In Canada, the Governor General appoints all the Governors who hold office during his pleasure. This provision
as such has not affected the smooth working of the Canadian federation. On the contrary, it has on several occasions proved beneficial.

**Presidential Pleasure:**

Art. 155 of the Constitution vests complete power in the President for the selection and appoint of the Governor. Simultaneously, the succeeding Article prescribes the duration of his office by stating that "the Governor shall hold office during the pleasure of the President. This means in effect that he is a nominee of the Central Government. But two conventions have generally come to govern his nomination. The Central Government ordinarily consults the state concerned before announcing the appointment so that the person occupying his office is one who is acceptable to the concerned state ministry. This is a sound practice though it has not been adhered to in a few cases.

Before the General Election of 1967, no importance was given to this convention, because in centre and almost in all the states, the Congress was ruling party. But after 1967, it assumed a new significance when coalition governments came into being. There arose a controversy between the centre and non-Congress governments in various states. In this connection the difficulty was that the state governments misunderstood the meaning of consultation. But it is simply consultation and not the consent of the Chief Minister or the state cabinet, there is no logic in it. In Haryana, when Rao Birendra Singh was the Chief Minister, he had consultations with the central Government on the issue of the Governor's appointment. The centre refused to accept that the panel of names should be discussed with him or that he be taken into confidence, the centre suggested only one name and not a panel of
names.\textsuperscript{41} In Punjab, Gurnam Singh had disproved of two persons who were proposed as Governors by the Central Government. He suggested instead a few other names but none of these was appointed.\textsuperscript{42} What they acheived was only the appointment of non-Congressman as Governors of their respective states.\textsuperscript{43}

There are cases where the Chief Minister was not consulted at all. For instance in appointment of Sri Prakash (Madras) and Kumaraswami Raja (Orissa), the respective Chief Minister had gone on record that they were not consulted. In Uttar Pradesh, the appointment of B. Gopal Reddy was announced before the formation of the New Government headed by Charan Singh. In Lok Sabha, S.M. Banerjee wanted to know whether Charan Singh would be consulted and this appointment would be reconsidered.\textsuperscript{44} Y.B. Chavan, the then Home Minister, said that there would be no consultation.\textsuperscript{45}

Another convention is that the incumbent of this office comes from outside the State concerned. This again, is a wholesome arrangement, because such an incumbent does not have his local political roots and affiliations and would, thus, be free from State level party politics. But this convention has also been violated in some of the cases. For instance, H.C. Mukherjee J.C. Wadiyar Bahadur, Karan Singh and Ujjal Singh were appointed Governors of West Bengal (1951), Mysore (1956), Jammu & Kashmir (1965) and Punjab (1966) respectively the case of H.C. Mukherjee is very interesting. It is reported that when Nehru wanted to appoint a non-Bengali, the then Chief Minister of West Bengal B.C. Roy strongly objected saying that West Bengal would not tolerate a non-Bengali Governor and B.C. Roy was not a man to be trifled with.
Criteria Recommended by the Sarkaria Commission:

The Governors came into great prominence after 1967 and have adopted different standards and practice in various states to suit the interest of the ruling party at the centre, because right type of persons were not chosen for this high office. The Commission on centre-state Relations (Sarkaria Commission) very rightly observes in its report.

In all the evidence before us, a common thread is that much of the criticism against the Governors could have been avoided if their selection had been on correct principles to ensure appointment of right type of persons as Governors.46

Most of the replies to the Sarkaria commission's questionnaire received from a cross section of the public are critical of the quality and standard of some of the persons appointed as Governors. To summarise their comments.

1. Discarded and disgruntled politicians from the party in power in the Union, who can not be accommodated elsewhere, get appointed. Such persons, while in office, tend to function as agents of the Union Government rather than as impartial constitutional functionaries.

2. The number of Governors who have displayed the qualities of ability, integrity, impartiality and statemanship has been on the decline.

Sarkaria commission's survey of the appointments of Governors made since independence till October 1984, shows that over 60 per cent of Governors had taken active part in politics, many of them immediately prior to their appointment. Persons who were eminent in some walk of life
constituted less than 50 percent. This percentage shows a steep fall when the figures for the period from 1980 onwards are compared with those for Nehru period (August 1947 to May 1964)\(^47\), notwithstanding the fact that the Government of India accepted the recommendation of the Administrative Reforms Commission in this regard.\(^48\)

The commission on centre-state Relations has observed that there was a widespread feeling that in some cases Government were appointed on considerations extraneous to merit. The dignity of the office suffered when persons defeated in elections were appointed. A state Government has cited recent instances of persons who had to resign from offices as Ministers following judicial strictures, being subsequently appointed as Governors. Therefore, the commission recommends that a person to be appointed as a Governor should satisfy the following criteria\(^49\):

(i) He should be eminent in some walk of life.

(ii) He should be a person from outside the state.

(iii) He should be a detached figure and not too intimately connected with the local politics of the state; and

(iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

The Sarkaria commission received various suggestions in regard to the mode of selection of person for appointment as Governors. These may be
broadly grouped under two categories. Firstly there are those which are aimed at making involvement of the state-Government in the selection of the Governor more meaningful. Secondly there are those which seek to lay down consultation with, or concurrence of a constitutional authority or body in the selection of a Governor.

Role of State Government in Selection of Governor:

The Sarkaria Commission considered the following suggestions made in matter of involving the state Government in the appointment of the Governor.

(i) Appointment from a panel to be prepared by the state legislature; or

(ii) Appointment from a panel to be prepared by the state Government (in effect the State Chief Minister) or invariably with the concurrence of the State Chief Minister, or

(iii) Appointment invariably in consultation with the state Chief Minister.

Preparing a panel of names in accordance with the suggestion at (i) above will, in fact, mean a process of direct or indirect election by the state legislature. A Governor so 'selected' may well seek to override the powers of his Chief Minister, leading a friction between them and distortion of the system of responsible government. Such a Governor can hardly be expected to function as a constitutional head of the state. This was the reason why the constitutional farmers gave up the proposal to have an elected Governor.

As far the other suggestions, namely, that the Governors should be appointed either from a panel to be prepared by the State Government (in
effect, the state Chief Minister) or with the concurrence of the State Chief Minister, neither of them is a workable proposition. If the prime Minister, and the Chief Minister belong to different political parties, the process of selection will frequently end in deadlock, instead of concurrence. Secondly, if in the process a Chief Minister's concurrence for appointment of an 'insider' backed by his party in the legislative Assembly were to be obtained the selection will be vulnerable on the same ground on which the framers of the Constitution rejected the proposal to have a Governor directly or indirectly elected by the state. Besides this, there is a real danger that regional chauvinism might dictate the preference for a person of parochial views as Governor.

The Sarkaria Commission clearly says "we can not, therefore, subscribe to the suggestion that the Governor of a state should be appointed either from a panel to be prepared by the State Government or with the concurrence of the Chief Minister". 51

The commission has also examined the suggestion that the Governor should always be appointed after consultation with the Chief Minister of a state. There has never been any difference of opinion political or public circles as to the desirability of such consultation. The framers of the Constitution were of the view that the person to be nominated as Governor should be acceptable to the state Government and the Chief Minister should be consulted. To quote Pandit Jawahar Lal Nehru, the Governor "must be acceptable to the Government of province". "The Administrative Reforms Commission recommended 52 that the convention of consulting the Chief
Minister should continue. The Government of India accepted this recommendation of ARC in early seventies.

It is necessary to be quite clear as to the precise reasons why such consultation is essential. For proper working of the parliamentary system, there has to be a personal rapport between the Governor and the Chief Minister. The importance of such rapport will be easily comprehended when it is remembered that the Governor, as the constitutional head, has to act as 'friend, philosopher and guide' of his council of Ministers. It is from this aspect of personal relationship that consultation with Chief Minister at the initiation itself, may help prevent the choice of a person with whom the Chief Minister for personal reasons may not be able to work satisfactorily.

Thus, the main purpose of consulting the Chief Minister is to ascertain his objections, if any, to the proposed appointment. If the Union Government considers that the objection of the Chief Minister are not groundless, it may suggest an alternative name. However, if it finds that the objections are frivolous or manifestly untenable, it may inform the chief Minister accordingly and proceed to make the appointment.

The Sarkaria Commission found that consultation with the Chief Minister has not invariably been taking place in recent years. Some Chief Ministers have informed the commission that the Union Government did not ascertain their views before appointing Governors in their respective states. The general practice, as far as the commission has been able to ascertain, seems to be the Union Government merely informs the Chief Minister that a
certain person is being appointed as Governor of the state. Sometimes, even such prior information is not given.

The commission observes, "It is well established that 'consultation' in context means ascertainment of the views of the person consulted as to the suitability of the person proposed for the appointment. A mere intimation that a certain person is being appointed as a Governor is not 'consultation', as it reduces it to an empty formality". In order to ensure effective consultation with the state Chief Minister in the selection of a person to be appointed as Governor, the commission has recommended that the procedure should be prescribed in the constitution, itself. Article 155 should be suitably amended to give effect to this recommendation.

A suggestion was advanced that a National Presidential Council should be setup to advise the president on matters of National interest and inter alia for selection for persons to be appointed as Governors. The commission did not agree with this proposal for certain reasons and recommended that the Vice-President of India and the speaker of the Lok Sabha should be consulted by the Prime Minister in selecting a Governor. Such consultation will greatly enhance the credibility of selection process.

The foregoing analysis thus leads to the conclusion that the first and foremost provision to be made is to ensure the appointment of fair minded man of high calibre and integrity as Governors. If this is done they will surely act efficiently and impartially in the discharge of the limited discretionary functions to be discharged by the Governor. Thus the mode of Governor's selection, which by and large represents the historical legacies of the colonial
days, needs fresh thinking and serious effort at reform to face up to the challenges of change with rhisting political developments in our times.

Emergency Powers of Governors:

As what the constitutional spirit provides the form to the person as Governor does not seem to be appearing in practice, it is rather political one. So the discretionary powers conferred upon such person is generally discharged politically. In the constitution, there is some area which provides the potential to be misused if the person as Governor is like-minded i.e. not of high profile. Here it is relevant to discuss some of his powers which are essential in furtherance of the findings.

The Governor has no emergency powers\(^54\) to meet the situation arising from external aggression or armed rebellion as the President has\(^55\), but he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of the constitution, thereby inviting the President to assume to himself the functions of the Government of the State or any of them.\(^56\) The situation 'Emergency, when compared with clause (1) of Art. 352, it is evident that Art. 356(1) does not speak of any 'emergency' of any kind; in fact the word 'emergency' is not used anywhere in Art. 356.\(^57\) It is a proclamation intended either to safeguard against the failure of the Constitutional machinery in a state or to repair the effects of a breakdown. It may be either a preventive or a curative action.\(^58\)

Though it is somewhat reiteration, that the situation arisen under Art. 356 is politically interpreted and used as an emergency whereas constitution
does not provide that the powers are used under the Article under emergent form. The eminent jurist Shri Seervai states that when the Constitution intends to make a single transaction amount to a failure of Constitutional machinery it expressly does so.\(^9\) The effects of failure to comply with, or to give effect to, directions given by union under Art. 365 is obviously different from the "failure of Constitutional machinery in the states".

While the marginal note to Art. 356 uses the words 'failure of constitutional Machinery in states'', clause (1) of the Article uses the words 'can not be carried on in accordance with the provisions of this Constitution'. The latter are intended words of the widest import and if applied literally, they might mean the failure on the part of the State Government to comply with each and every provisions of the Constitution, and whatever might be the degree or extent of such failure, and it is place wherein the political game is played whereas the eminent authors on Constitution and the apex court, time and again have made it very much clear. It is submitted that Machinery of government does not ordinarily fail if this and that provision of the Constitution is violated in the course of the State's multifarious activities. The Directives of State policy, which are "provisions of the "Constitution" furnish the clearest instance of this. In Rajasthan's case, it was stated that, in federal constitution the wide general words of Art. 356 can not be construed so as to rob the states of their autonomy within the sphere assigned to them and thus destroy the federal distribution of powers between the Union and States. Thus in Attorney General for Ontario Vs. Att. Gen. for the Dominion\(^60\), the Privy Council limited the general words of section 91 of Canadian
Constitution "peace order and good government" to such matters as were unquestionable for canadian interest.

It is clear from the judgements of the privy council and our supreme court cited above, that the literal meaning of an Article ought not to be given to it, if it practically destroy the autonomy of the States. In this connection, it may be noted that if the framers of our Constitution had intended that the Union should be able to supervise and interfere in the administration of states to secure good government, the framers would have adopted in unitary constitution for India with a large devolution of power in favour of the States. The very fact that the framers enacted a federal constitution with a Parliamentary form of government for the Union and the States shows that internal sovereignty was to be divided between the union and the states. A literal construction of the wide general words of Art. 356 which could enable the Union Executive to cut at the root of the democratic Parliamentary form of government in the state must be rejected in favour of a construction which would preserve that form of government. The exercise of that power must be limited to a "failure of the constitutional machinery", that is, to preserving the Parliamentary form of government from internal subversion, or from a deliberate deadlock created by a party or a group of parties, or from a deadlock arising from an indecisive electoral verdict which makes the carrying on of government practically impossible. As SC in Rajasthan's case said that, no doubt it is not possible to define precisely. The situations in which the power conferred by Art. 356 can be exercised; but it is possible, negatively to state the situations in which the power can not be exercised. Now that the provision in Art. 356 has been resorted to by the Union
Government on 108 occasions till the time the paper has been written as shown in the following table-A, and there is a consensus amongst impartial observers and academicians that this extra-ordinary power has occasionally been abused to achieve political ends, the only way in which it has been rectified is to revert to the original narrow sense in which it had been explained by the makers of the Constitution.61

**TABLE - A**

**PRESIDENT'S RULE IN STATES AND UNION TERRITORIES**

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<td><strong>Total</strong></td>
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In most of the cases, it has been imposed in the circumstances in which a stable ministry could not be formed, e.g. in 1951 in Punjab in 1953 in Pepsu, in 1954 in Andhra Pradesh, in 1956 in Travancore-Cochin, in 1961 in Orissa, in 1964 in Kerala, in 1967 in Rajasthan, in 1968 in Uttar Pradesh, West Bengal, Bihar and Punjab, in 1966 in Bihar, in West Bengal for the Second time, in 1970 on the resignation of Sri Ajay Mukherjee, Chief Minister of the United Front Ministry, in U.P. second time in 1970 when the Chief Minister Mr. Charan Singh refused to resign when he had lost the majority, he had advised the Governor to dismiss 14 Ministers of his Cabinet in the BKD Congress Coalition Ministry. In Orissa Second time in 1971, when the Chief Minister resigned and his advice for dissolution of Assembly was not accepted by the Governor, in Mysore in 1971 in Gujarat in 1971, in Punjab fourth time in 1971, in Tripura in 1971, in Bihar in 1971, in Andhra
Pradesh in 1973, in Orissa for the third time on March 3, 1973 when the Chief Minister Nandini Satpathi had to resign due to defection, in 1973 it was imposed in Manipur owing to defection. In 1973 President rule was imposed in U.P. when the Chief Minister Mr. Kamla Pati Tripathi had to resign due to the moral responsibility to the Ministry of the Police revolt. In 1974, the President rule was imposed in Gujarat due to student's agitation demanding dissolution of Assembly. In 1975 it was imposed in Uttar Pradesh to solve party disputes. In 1976 it was imposed in Tamil Nadu on the ground that according to the Governor's report, the Tamil Nadu Government had disregarded the direction of the Central Government in relation to the emergency and misused the emergency powers. The report also said that D.M.K. Ministry had by a series of acts of mal-administration, corruption and misuse of power for achieving partisan ends set at naught all canons of justice and equity which are hallmark of democratic administration. The action of the Centre could not be called as democratic because the ministry enjoyed the full confidence of the Legislature as well as the confidence of the people. In 1981, President rule was imposed in Manipur following the resignation of the Congress-I Ministry as a result of defection. On October 22, 1981, the President rule was imposed in Kerala following resignation of the left front ministry headed by Mr. Nayanar because it was reduced to minority due to the withdrawal of the support by one of its constituents. On March 20, 1982 the President rule was imposed in Assam following the resignation of the 65 days old ministry of Congress-I led by Mr. K.C. Gogai as a result of defection. On March 18, 1982 this Article was invoked in Kerala when the Congress-I led O.D.F. Ministry to Mr. Karuna Karan was reduced to minority due to
defection. In June, 1983, the President rule was imposed in the Union Territory of Pondicherry following resignation of Congress-I Ministers in D.M.K. led Coalition Government.

In 1959 the President rule was imposed in Kerala in a peculiar circumstances. The Communist Ministry was dismissed on the ground that it had lost the confidence of the people, although it enjoyed the confidence of the Legislature. There was a widespread agitation against the Government and the law and order situation was beyond the control of the State Government justifying the imposition of the President rule. The action of the Central Government had been subject to criticism.

In 1967 in Haryana, and in 1975 in Nagaland the President rule was imposed due to defections. In 1966 President rule was imposed in Punjab as a result of the bifurcation of the State into Punjab and Haryana and in Goa for holding an opinion poll.

In 1976, President rule was imposed in two States - Gujarat and Orissa. In Gujarat it was imposed because of the failure of the coalition ministry due to defections. In 1976, in Orissa like Uttar Pradesh, this Article was invoked, to solve party disputes. The Chief Minister Mrs. Satpathy was asked to resign by the Congress High Command because she had defied certain directions of the High Command. The State Assembly was, however, kept under suspended animation. This was the fourth time the State of Orissa came under resident's rule, the last three occasions being the years, 1961, 1971 and 1973.

In 1977, Article 356 was invoked in very peculiar circumstances. The Assemblies of 9 States of Rajasthan, Uttar Pradesh, Madhya Pradesh,
Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana were dissolved and President rule was imposed on the ground that the Assemblies in these states no longer represented the wishes of the electorate.

In 1980, Article 356 was invoked by the Congress (I) Government more or less in similar circumstances in which it was invoked in 1977 by the Janata Government at the Centre. The Assemblies of 9 States of Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Punjab, Orissa, Gujarat, Maharashtra and Tamil Nadu were dismissed and the President rule was imposed on them on the ground that they no longer represented the wishes and aspirations of the electorate.

The President rule was imposed in Assam on December 12, 1979 on the ground that no Government was possible due to defection. The Janata Ministry led by Mr. G. Borbora which assumed office after elections in 1978 resigned in September following defection from the party. It was succeeded by a newly formed regional party - Assam Janata Dal consisting mostly of dissidents Janata members. The Assam Janata Dal headed by Mr. Hazarika came to power with the support of the Congress, C.P.I. and Progressive Democratic Front. The Hazarika Ministry was reduced to minority when Congress and C.P.I. withdrew their support. Thereupon, on the report of the Governor, the Ministry was dismissed and the President rule was imposed in the State.

In Oct. 1983 the President rule was proclaimed in Punjab in order to deal with the Akali Movement which had become violent and the Congress Government had failed to eliminate the extremists. The State Assembly was,
however, kept in suspended animation. The State Government was found to be very mild in dealing with extremists elements.

In 1984, President rule was imposed in the State of Sikkim for the first time since it merged with India in 1974. Art. 356 was invoked in a very peculiar situation prevailing in this sensitive State. Mr. Bhandari was made Chief Minister when his party (Janata Party) returned to power with thumping majority.

In September, 1986 the President rule was imposed for the first time in Jammu and Kashmir following the failure of the State Government to deal with law and order situation in the State.

In 1988 President rule was imposed in the State of Tamil Nadu and Nagaland. The President rule was imposed in Tamil Nadu on 30 June, 1988 of the report of the Governor that no single party was in a position to form a stable Government. After the death of Mr. Ram Chandran the AIADMK party split into two factions, Janki group and Jayalalitha group. In a 233 member Assembly, Mrs. Janki Ramchandran could secure the support of only 99 members in the House and that too after the police evicted the Congress members and the Speaker disqualified under the Defection Law all the AIADMK members belonging to the Jayalalitha faction. In Nagaland 13 MLAs left the ruling party of Congress-I and joined the opposition reducing the Hokishe Sema Ministry into a minority. The 13 MLA's formed a separate party and joined hands with opposition and claimed that the combination be called to form the ministry. Whether formation of a separate group by 13 MLAs as against 21 MLA's still with the Chief Minister amounted to split as
described in the anti-defection law was not clear. In view of the past history of such combinations breaking up soon after coming to power, the opposition claim to form the Government, the Governor was not convinced that a stable government could be possible. A full week was allowed to lapse to enable either party to establish a clear claim of having support of majority.

In 1989 President rule was imposed in the State of Karnataka when eight months old Bommai Ministry was reduced to minority due to defection. In a 222 member Assembly Janata Dal had a strength of 111 members. Out of those 111 members, 19 MLA's had in writing informed the Governor that they had withdrawn their support to the Chief Minister. The Governor was of the view that no party was in position to form a stable ministry and hence he recommended to the President for imposing President Rule in the State.

During the year 1990-91 President rule was imposed in Seven States viz., Jammu and Kashmir, Karnataka, Goa, Pondicherry, Assam and Tamil Nadu. In Jammu and Kashmir President rule was imposed in July, 1990 after the expiry of the Governor's rule. Under the State Constitution the Governor's rule was imposed in the State on Jan. 1990 when the Chief Minister Mr. Farooq Abdullah resigned, following the appointment of Mr. Jagmohan as Governor. Under the J & K Constitution Governor's rule cannot be extended beyond six months. In fact, the State Government was unable to tackle the terrorists activities and the new Governor was appointed with a view to tone up the administration. The Chief Minister found it an alibi and resigned. In Goa, the President rule was imposed on Dec. 14, 1990 when the Chief Minister was reduced to minority due to defection in the ruling party.
President rule was imposed in the State of Karnataka in a peculiar circumstances. Karnataka was placed under the President's rule on Oct. 11, 1990 following a political crisis triggered by Chief Minister V. Patil's refusal to step down in defiance to the wishes of the Congress High Command. The Congress had a strength of 179 in a House of 225. The Congress Legislature party met and elected a new leader. But the Governor said that he would ignore the decision of the C.L.P. as it would be illegal and against the party constitution. He told that under the party constitution only the leader could convene the meeting after giving 7 days notice. As the outgoing Chief Minister did not attend the C.L.P. meeting and claimed that he had the support of majority legislators and recommended the dissolution of the State Assembly. In these circumstances the Governor recommended for the imposition of President's rule in the State. This was a clear misuse of power for political purpose by the Governor. The Congress had the clear majority in the legislature and there was no political instability in the formation of the ministry. The Governor had no business to interfere in the party affairs of the Congress Party. The majority may change its leader at any time. The Governor, Mr. Bhanu Pratap Singh had acted in the similar way in which the previous Governor, Mr. Ram Lal had acted by dismissing the Rama Rao Ministry in the State. The members of N.F. Government at that time had condemned the action of the Governor. But after coming to power they behaved in the similar manner. Ultimately after eight days the President rule was revoked.

In Assam President rule was imposed on Nov. 29, 1990 on the ground that free and fair election was not possible due to the deteriorating law and order situation arising out of L.F.A. activities. The tenure of the
Assembly was about to expire on Jan. 8, 1990. Despite strong advice by the Central Government the Assam Government had refused to declare 8 districts in Upper Assam as disturbed areas to enable the Security forces to deal effectively with the U.L.F.A. activities. The terrorists have links with some members of the Government.

On Jan. 13, 1991, President rule was imposed in Pondicherry where the Chief Minister resigned as his coalition Government was reduced to minority following a split in the Janata Dal with 3 of its four MLA's switching over to the Janata Dal (S).

On Jan. 13, 1991, President Rule was imposed in Tamil Nadu following breakdown of law and order in the State due to activities of Lankan Tamil Militants.

On April 7, 1991, President rule was imposed in Haryana when three M.L.A.'s of Janata Dal (ruling party) were disqualified from the membership of Legislature as a result of which the Om Prakash Chautala ministry was reduced to minority.

On Oct. 12, 1991, President rule was imposed in Meghalaya.

On Jan. 7, 1992, President rule was imposed in Manipur since the ruling United Legislature Front (ULF) ministry had lost its majority with the resignation of 7 Janata Dal legislatures including two ministers.

On April 4, 1992, President rule was imposed in Nagaland even after the Governor had accepted the advice of the Chief Minister and ordered the dissolution of the Assembly. In his report he had said that the ruling party in the State had failed and the law and order had been neglected. The Centre
considered the report of the Government and decided to impose President rule in the State.

On Dec. 1992, President rule was imposed in the State of Uttar Pradesh when the government failed to protect the demolition of the disputed Babari Masjid of Ayodhya and the Chief Minister owing the moral responsibility had submitted the resignation of his government to the Governor.

On March 12, 1993, President rule was imposed in Tripura when the term of the Tripura Assembly had expired and elections could not be held because it was postponed by the Election Commission on the ground that the State Government had failed to ensure proper atmosphere for holding free and fair elections. The Chief Minister had resigned on Feb. 27, a day before the expired of the term of the Tripura Assembly but he was allowed to continue by the Governor as a Caretaker Government.

On Dec. 15, 1992, President rule was imposed in three BJP ruled States of Madhya Pradesh, Himachal Pradesh and Rajasthan and Assemblies were dissolved on the ground that these States were not implementing sincerely the ban imposed by the Centre on religious organisation. The main grounds on which the BJP Governments were dismissed were that the Chief Ministers of these States have connections with the RSS, a banned organisation, and secondly, that these governments had encouraged the Kar Sevaks to go Ayodhya. Thus the basis was mere suspicion that they would refuse to enforce the ban. There were no proof that they were not following
the directions of the Centre. The three Governors had submitted more or less identical report in 24 hours.

After the decision of the Supreme Court in Bommai's case President Rule was imposed in the State of Uttar Pradesh on Oct. 19, 1995 when the BJP withdrew its support to the minority Government of Bahujan Samaj Party headed by the Chief Minister Miss Mayawati. In a House of 425 the BSP had only 59 MLAs, BJP 170, Samajwadi Party 127, Raj Bahadur group of BSP 10. However, the Governor did not dissolve the Assembly and kept it in suspended animation presumably to explore all possibilities for the formation of the Government in the coming days.

On September 19, 1996, President rule was imposed in the State of Gujarat following unruly scenes and violence in the Legislative Assembly amidst of which the Chief Minister Suresh Mehta had proved his majority by 92 votes to nil in the 182 member House. The government was dismissed but the Assembly was kept under suspended animation. In this report the Governor had expressed doubts about the Chief Minister's claim of majority support in Assembly. In Assembly elections in March 1995 BJP had secured a two-third majority in the House and formed the government under the leadership of Mr. Keshubhai Patel. But soon thereafter internal dissensions started in the party and a senior party leader Shankar Singh Vaghela revolted against the leadership. Under the compromise formula, the Chief Minister Keshubhai Patel had to resign and Mr. Suresh Mehta was made the Chief Minister. Inspite of this, Mr. Vaghela continued his anti-party activities. Ultimately, he was expelled from the party. He formed a separate party in the name of Gujarat
Janata Party and claimed the support of 42 MLA's. On Sept. 3 when the House met for considering the vote confidence motion, the Deputy Speaker recognised the breakway 42 MLA's group as a separate group and adjourned the House indefinitely. The Governor summoned the House on Sept. 13 and 14 on the request of the Chief Minister for the purpose of proving his majority. When the House met again, on the Speaker's order, the Deputy Speaker repeated his performance. The Deputy Speaker's action in not allowing the confidence motion to be considered, granting recognition to the group of 42 ignoring the fact that 18 had subsequently returned to the party, was patently illegal. The Constitution gives the power to recognise a separate group to the Speaker only. The Governor had summoned the House on 13 and 14 for the purpose of proving the majority of the Suresh mehta government. When the House met the Chief Minister proposed the name of a MLA of his party for Speaker. This was objected to by opposition and soon after the trouble started and there was unprecedented disturbance inside the House. Amidst this the Chief Minister secured a confidence vote by 92 votes to nil.

President's rule was imposed in the State of Uttar Pradesh on Oct. 17, 1996 on the ground that no party or group was in a position to form a stable government. In a House of 425 members the single largest party BJP and its allies had a strength of 176, Samajwadi Party 134, and BSP and its combine (the Congress) 100. The Centre acted on the report of the Governor that there was no possibility of a Stable Government.

On Feb. 21, 1998 the Governor Mr. Romesh Bhandari dismissed the Kalyan Singh's Government and invited Loktantrik Congress Leader Jagdamika Pal to form the new Government. The Loktantrik Congress and the Janata Dal
(Rajaram Group) informed the Governor that with the withdrawal of support by them Kalyan Singh Ministry was reduced to minority and, therefore, it should be dismissed. The two parties claimed the support of the Congress, Samajwadi Party and Bahujan Samaj Party, Mr. Jagdamika Pal who was elected leader of this group claimed the support of 240 MLAs in the 425 member's House. The sudden development took place at a time when the second phase of parliamentary election were to be held just after two days and done clearly with the object of marring the prospects of BJP in the second phased of parliamentary election. The Governor, in order to please his political masters, acted with connivance of the Centre, the BSP and Samajwadi Party leaders. The President Mr. R.K. Narayanan asked him not to act in haste but he did not pay heed to the President's advice and administered the oath of office to Mr. Pal. Soon after the withdrawal of support Mr. Kalyan Singh met him and told him that he still enjoyed majority and was ready to prove it on the floor of the House. Some of the members of the Lok Tantrik Congress met the Chief Minister and told that they were misled by Mr. Pal and still support him. Some of them were present even when Mr. Kalyan Singh met the Governor. But floating the constitutional norms the Governor dismissed him and administered oath of office to Mr. Pal at 10.30 at night.

The action of the Governor was challenged in the Allahabad High Court by one of the BJP Minister. In a landmark judgement the Allahabad High Court, ordered the restoration of Kalyan Singh's Government in the State as it existed on Feb. 21, 1998.

On July 30, 1998 President's rule was imposed in the State of Goa and the Congress Government of Pratap Singh Rane was dismissed on the
ground that due to defection of 10 MLA's from his party forming a separate party 'Goa Rajiv Congress' the chief Minister was reduced to minority. He had however, proved his majority after the Speaker disqualified 10 break away MLA's under the defection law and restrained them from participating in the proceedings of the House. The leader of the dissident group Wilfred D Souza along with leader of opposition and M.G.P. leader met the Governor and staked claim to form an alternative government. Following this, both the factions of the ruling Congress conducted "parallel" proceedings on motions of confidence on the Rane Government leading to uproarious scene and finally adjournemtn of the House. The Appropriation Bill was to be passed before July 31, but due to the satelmate between the two groups it was not possible.

The rebel MLAs and the opposition members met in the same chamber with expelled Congress members and Deputy Speaker in the chair and conducted the proceedings in which a 'resolution' saying the Speaker had been unseated and the "confidence motion had been defeated" was passed.

In view of this the Governor sent the report to the Central Government and requested for the imposition of the President's Rule in the State.

On Feb. 12, 1999 President's Rule was imposed in Bihar and Rabri Devi Government was dismissed after the two successive massacres of Dalits by the members of Ranvir Sana. The Assembly was, however, kept in a suspended animation as required by the decision in the Bommai's case. The Governor S.S. Bhandari on September 1998 recommended for the imposition of the President's Rule in the State on the ground that there was a complete break down of law and order in the State. The Cabinet recommended dismissal
of the Rabri Devi Government and imposition of President's Rule under Art. 356. The President disagreed with the recommendation and returned it to the Cabinet for reconsideration. The Cabinet decided to drop its recommendations purportedly in deference to the President's views. But several months later on Feb. 12 in the wake of two successive massacres involving Dalits the Central Government chose to reiterate its earlier recommendation. This time the President has to sign the proclamation as the Constitution enjoins him to give his assent if the Cabinet sends it back after reconsideration. The President's Rule was approved by the Lok Sabha. However, the BJP lead coalition Government was in minority in the Rajya Sabha and the Congress Party which enjoyed majority in Rajya Sabha has decided to oppose it. As a result the Government did not go to the Rajya Sabha and revoked the President Rule in Bihar on March 12, 1999.

Recently, Article 356 has been invoked in the state of Uttar Pradesh because it did not appear to be feasible to form a stable government. In the general elections held for the State Legislature, the public gave a fragmented verdict with no party having a majority in the House; and no party wanted to support any other party to form the government. The Leader of the Samajwadi party staked his claim as the single largest party to form the government. He claimed that he would prove his majority on the floor of the house. Implicit in the statement was the fact that being in power, it would be easier for him to engineer defections from the other parties. The Governor was not satisfied with his claim. On the recommendation of the State Governor, the Central Government imposed the President's rule in the state on March 9, 2002. This is an instance of President' rule being invoked in a state because it was not
possible to form a viable government in the State due to the politically fragmental legislature.

**The Agency Role of the Governor:**

As has already been discussed that the Governor in between the centre and state is nominated by the President, he is not elected, therefore he is not a representative of the people of the state. So it is truthfully deducted that he bears loyalty to the ruling party at the centre and appeared to be more political. To diminish the sharpness of such loyalty to the centre government, a prescription of emenancy and a person of a high profile is constitutionally recommended in the interest of the federal principles as called by the President of India, a Governor is to act as an interface between the centre and state governments for faster development backing the view by the Prime Minister Atal Bihari Vajpayee that Governors should play the role of "noble healer" to remove the suffering of the common people. The constitution makers, too meant him to be an important link with the Centre. But for the political reasons, the office of the Governor would not have been controversial. In its report the study team of the Administrative Reforms commission on Centre-State relationship observed "The Governor functions, for most purposes, as a part of the State apparatus; but he is meant, at the same time, to be a link with centre.... the Constitution thus specifically provides for a departure from the strict federal principle, and it is relevant to observe that this departure is not fortuitous or casual". Thus the Governors are required to play a dual role since they are the heads of the State Governments, and at the same time they are the representatives of the Centre.
Hence, it is the relationship to the centre the event of the opposition ruling at the state level that brings the picture into fore. Through such instrument placed for the constitutional purposes becomes the tool of political gain the other aspect which is discernible in such travelling is that now the Governorship is understood a platform for jumping into political field as Surjeet Singh Barnala, and Motilal Vora are sound examples.

So how they assist in the process not only to the ruling party but themselves also in political arena, a discussion for that purposes is required, also the following discussion will show flow the governor during proclamation period assist the political motives which may push for misusing the provision when Art. 356 is impsoed on a state, all powers of governance get vested in the President who usually delegates the executive authority to the Governor. The Ministry ceases to function and the Governor runs the administration on behalf of the President. He, in fact, becomes the Governor and the ministry rolled into one and his functions and responsibilities increase considerably. He attends conferences such as the National Development Council and the Chief Ministers conference. Some Governors like Dharma Vira almost regularly attended the office in the Secretariat.

Normally the Governor administers all the 66 subjects figuring in the state list of the Constitution. Important matters even in this sphere are referred to the functional Ministry at the centre for advice and even direction of all the Union Ministries the states have the more extensive and continuous relation with the Home Ministry, particularly its centre-state relations Division. While a state under President's Rule deals directly with the functional Ministries, copies of important correspondance are despatched to
the Home Ministry. Similarly the Union Ministries dealing directly with the State Government make it a point to mark copies of all the correspondence to the Home Ministry. Thus in the President ruled State's relationship with the centre, the Home Ministry play a co-ordinating role.

During the President's Rule, the Governor may appoint advisers to assist him. Although the institution of advisers owes neither to the constitution nor to any statute, the practice is very old and dates back to the pre-independence period. In Bombay and the United Provinces, where section 93 was imposed during second world war, the Governors appointed advisers, all being members of the ICS.\textsuperscript{64}

Following independence, Punjab, the first state to have been brought under the Central rule in 1951, did not have any adviser. In 1961 when Orissa was placed under President's Rule, the Governor Y.N. Suthankar functioned without the help of adviser. Similarly Dharma Vira did not appoint any adviser in West Bengal (in 1968) and old Mysore (in 1971) when he was the Governor. S.S. Dhawan, the Governor of West Bengal, on the other hand, had as many as five advisers with B.B. Ghosh as Principal adviser in 1970.\textsuperscript{65} The appointment of advisers are formally appointed by the Governor. The initiative is however, taken by the Union Home Ministry which prepares a panel of names for this purpose, subject to the approval of the Prime Minister. The appointment of advisers is accompanied by a formal distribution of portfolios among them, and they in fact take the place of the Ministers, getting official papers directly from the Secretaries to the Government. The Government is thus relieved of routine administrative matters which would otherwise have
shifted to him. The meetings of the advisers, which practically resemble the
cabinet meetings, are presided over by the Governor. Although the Governor
has the authority to set aside any action of his advisers, there were occasions,
as Professor Maheshwari had pointed out when the Governor was 'over-ruled'
by his principal adviser who, of course, had the backing of New Delhi. In
fact, the post which the Governor plays in relation to his advisers during the
President's Rule depends essentially upon his own measure of experience and
interest in administration, his personality and his rapport with the central
political leadership. A 'non-professional' Governor lacking previous
experience of administration tends to depend considerable upon advisers who
have generally happened to be civil servants or retired civil servants. But a
Governor like Dharma Vira with a long administrative back ground is most
likely to involve himself actively in the day to day administration and to
dominate the advisers.

A consideration that might have weighed with the central Government in transferring B.D. Pande from West Bengal to Punjab following
the promulgation of President's rule there was that the civil service
background of the latter could be of much help in overhauling and streamlining
the police and civil administration in trouble-torn state. Even a Governor
without having a civilian background can be effective if he takes a keen
interest in administration. D.C. Pavate, for instance, an educationist Governor
of Punjab, first in 1968 and then in 1971. There is also a recent example of
appointment of retired Supreme Court judge, Fatima Bibi as Governor to State
of Tamil Nadu, in that case, after controversy in regard to appointment of
Jayalalithaa as C.M. tendered her resignation before the President withdrew
his pleasure. Furthermore, there also may be difference of opinion between the adviser and the Governor. In Jan. 1984 G. Jagathpathi, the Senior most adviser to the Punjab Governor, who was in-charge of Law and order, resigned. Although he said that he had resigned merely on health grounds, there was a strong rumour that he had difference with the Governor and/or the Central Government regarding the modus operandi of handling the law and order situations. Whereas Jagathpathi was reported to have preferred a strong line of action in dealing with extremists, the Governor, or even the Central Government, favoured a cautious approach. There are instances when the advisers had been removed by the Governor on the directive of the centre like Harbans Singh, P.G. Gavai advisers to Punjab Governor.

Immediately following the imposition of President's Rule on West Bengal in June 1971 Siddartha Sanker Roy, the Union Education Minister, was appointed minister without portfolio in-charge of West Bengal Affairs. The appointment of a central Minister in charge of a state under Art. 356 was first of its kind in the history of President's Rule in India. The Governor functions directly as the representative of the President, i.e. the Centre during the President's Rule. Simultaneously the Union Minister is also required to function as the representative of the Union cabinet, explaining the nature of his office Ray was reported to have stated that he was to function as a representative of Central Cabinet and to exercise the Presidential power of 'superintendence, control and direction' which the President did on advice of the Council of Ministers, in respect of issues that were within the competence of the Central Government. This innovation of the interposition of a functionary between the President and the Governor had the effect of
undermining the status of the latter as the former's representative under President's Rule. Moreover, it led to the establishment of what may be called, dyarchy. There was also every possibility of power conflict and lack of coordination between the two authorities. No such unfortunate development, however, took place in West Bengal because Siddhartha Shanker Ray was at that time in the full confidence of the Prime Minister and therefore, got the absolute backing of the Centre.

During his Governorship, Dharma Vira raised two pertinent questions. During the President's Rule, is the Governor just a mouth-piece of the centre or has he the duty and the right to speak out if the State's and its people's interests are jeopardized? Dharma Vira was of view that "in such circumstances, regardless of the consequences, it is the moral duty of a Governor to take the cudgets on behalf of the state and its people. A Governor who does not do so would not be 'worth his salt". The second one relates to propriety. How long is senior and busy functionary expected to await even the Prime Minister's pleasure? "Is the Prime Minister" to quote Dharma Vira, "entitled to treat high dignitaries such as governor with scant courtesy and expect him to cool his heels in Delhi for days on end? Does a Governor woe nothing to the maintenance of the dignity of the high office he holds"?

During the President Rule in Gujrat from May 1971 to March 1972, Shriman Narayan, the Governor of Gujarat, played an active role in streamlining the administration, speeding up various development schemes and securing the clearance of the planing commission for a number of pending projects. He adopted some specific measures in maintaining rapport with the people and redressing their genuine grievances the Governor spent three to
four hours everyday in afternoon at Raj Bhawan for meeting the General public and receiving various deputations relating to practical difficulties of the people. In most cases decisions were taken on the spot, and only in a few cases a further study was considered essential before taking a final view. This system of face to face discussions between the members of the public and the officers in the Governor's presence became very popular, and many issues which had been pending for years were sorted out without much difficulty. In this system, a complaint cell was established also the same system had been followed in U.P. as it got popularity naming it as Raj Darbar. Mr. Motilal Vora took daily meeting with public having grievance during the President Rule in U.P.

Thus if the Governor is active, has an imaginative mind and willingness to take interest in the administration, can play a positive role in the economic development and administration of the State and also initiate new policy decisions during the President's Rule. On the other hand, if he is a 'non active', Governor, he will have the natural tendency to leave the entire responsibility to his advisers and the Civil servants. As a consequence, the administration during the President's Rule will be something like a stop gap measure. It will be 'routine oriented', rather than 'development-oriented' administration. Now, within the defence mechanism of the Constitution, there is an ultimate agency - The judiciary - bearing the load of the protection. To what extent, this organ is capable to put a check on politically manufactured situation with an object to bring its own political advantage, is the linkage of the study.
NOTES & REFERENCES

1. 1952.


4. It is only in 1937, that Ministers were named individually, in a statute (Ministers of the Crown Act, 1937) for purposes of their salary. Later, the functions of the Minister of Defence have been laid down in the Ministry of Defence Act, 1946.


6. (1918) cmd. 9230 (Known as the Haldane Committee).


12. Supra note 10.


17. Article 75(5) of the Indian Constitution.

19. The question, whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court".


24. S.P. Gupta Vs. Union of India, AIR 1982 SC 149 (Paras 60, 61).


26. Anything said to the contrary in state of Punjab Vs Sodhi Sukhdev Singh AIR 1961 SC 493: has been overruled by the 7 judges Bench in Gupta's case AIR 1982 SC 149: which again has been considered by a 3 judge Bench in Jain Vs. Union of India (1993) 25 ATC 464 (para 16).

27. At the end of 1961, the strength of the Council of Ministers of the Union was 47, at the end of 1975, it was raised to 60, and in 1977, it was reduced to 24, while in July 1989, it was again raised to 58. The National Front Government (headed by Sri V.P. Singh) started with only 22 Ministers. All the Ministers, however, do not belong to the same rank. The National Democratic Alliance Government (headed by Mr. A.B. Bajpai) has 29 cabinet Ministers and 44 State Ministers (No Deputy Ministers), but later on Deputy Minister also. The Constitution does not classify the members of Council of Ministers into different ranks.

31. Articles 52 and 53 of the Indian Constitution.
33. Chapter I "The Provincial Executive" of the report of PCC.
36. Indeed there did occur some friction between the Governor and the Chief Minister during 1987-89 in Andhra Pradesh and Kerala where they belonged to different political parties. But strikingly there was disagreement between the Governor Govind Narain Singh and the Chief Minister of Bihar (1985); and Governor Smt. Sarala Grewal and the Chief Minister of Madhya Pradesh (1989) even though hailing from the same party.
37. Supra note 35.
38. Supra note 36.
40. Shri Ram Maheshwari, State Governments in India (New Delhi, 1979), p. 35.
42. The Tribune (Chandigarh) 18 August 1967.
43. In Haryana B.N. Chakravarty, an ICS, India's Permanent Representative at the United Nations, was appointed Governor. In Punjab D.C. Pavate, a former Vice-Chancellor of Mysore University, assumed this office.
45. Ibid., C. 2795.

47. Ibid., p. 122.

48. The A.R.C. Study Team on Centre-State Relationship found that many Governors had fallen short of the Standards expected. It recommended that the person to be appointed as Governors should be one who has had long experience in public life and administration and can be trusted to rise above party prejudices and predilections. The Government of India accepted this recommendation.


50. Ibid.

51. Ibid., p. 123.

52. The Administrative Reforms commission, Recommendation 8, Chapter IV of 'Report on Centre-State Relationship'.


54. Only the Governor of Jammu and Kashmir is vested with the power to impose Governor's Rule under S. 92 of the Constitution of J & K.

55. Article 352(1) of the Indian Constitution.

56. This is popularly known as 'President's Rule.


58. Ibid (Paras 28, 39, 40, Beg C.J.).

59. H.M. Seervai, Constitutional Law of India IIIrd Ed., p. 2626

60. 1896 A.C. 348.

61. IX C.A.D. 177 (This view has been accepted by the Rep. of the Sarkaria Commission.

63. Report of the Study Team (appointed by the Administrative Reforms

64. Maheshwari, S.R., *President's Rule in India* (Delhi: The MacMillan
Company of India Ltd. 1977, p. 123.


70. Dharma Vira, *Memories of a Civil servant* (Delhi: Vikas Publishing

71. Ibid., p. 140.