Conclusions and Suggestions
A long journey - more than a half century - of our constitutional set up in terms of governing the country discloses the fact that a coalition governing process in the system as a reality in itself. During June 96 - April 97, the Government headed by H.D. Deve Gowda, was a kind of curiosity in the World of political History. The Prime Minister's party has got only 44 MPs and all the parties having formed the government put together do not account for more than 150 MPs in the Lok Sabha having a total strength of 545 members. So the major political challenge that India faces today is how to make coalitions a viable proposition of government while in states like Orissa, West Bengal, Kerala and Tripura, the coalition formula has worked reasonably well, the experience of the centre has proved to be a total fiasco. The experience of coalition and Minority governments has widened the horizone of political leaders and have enlarged the participating space for a large assortment of parties and regions in the process of governance. Though on an average coalition governments are less stable than on party system governments. Yet under certain conditions, they have shown more stability. However, it is considerable situation in which the pre-condition to extend the support by the party - national or regional happens to be not only unideological but unethical with the tone of constitutional morality, who will know the fate of such government, this is not a hypothetical situation but a live example of our coalition era. The creditability of such alliances as could be seen from the attitude of AIADMK which came up with certain conditions including the arbitrary dismissal of the then government by opposition for according support to the B.J.P.
The small parties which have come together to form the minority government have only their smallness in common. They have fought elections against each other. Any strife between two reasonal parties forming part of the combine or a controversy over an action or omission of the Prime Minister or another Minister, or an internal calamity or disturbance, or an external event affecting deeply the country may bring down the government.

What is disturbing is that in case the Government falls, the prospect of a strong majority emerging is dim, if elections are held without some reforms for that purpose. We may again get a hung Parliament! However, a stability is very much required for the efficiency of the Government and also to inspire confidence to the external financial world. For the present Parliamentary system to work properly two parties almost equally strong sharing the power alternatively, are required. But such a pattern is the result of historical factors in a few countries. We can not expect such a situation to spring up to its own in India.

After Independence, we had the rehearsal of democracy with one giant party along the miniscule parties was growing to be a challenge to the old depository of power, the old party weakened by way of successive splits. The new big party developed cracks even before it could achieve majority in the country as a whole. Simultaneously we have been witnessing the growth of strong regional parties which stand in the way of the development of being national parties. So the historical trend in independent India is not towards the emergence of big and disciplined national parties, essential for stability. Some steps have to be taken towards that end. Of course we can not create artificially a two party regime, but we can certainly create conditions
favourably for its emergence or at least for reaching a stable majority in Parliament.

The first thing to be done to make the present system work is to regulate the political parties. The present system is a government by parties; parties offer a choice for the representation of the people in parliament; the party is the meeting point of the majority and the government. However, the constitution which is quite elaborate and consists of not less than 395 articles does not contain any provision in respect of political parties. The Representation of the People Acts, 1950 and 1951 also did not embody any substantive provision in respect of parties, which appear only in schedules and nomination forms. It fell on the Election Commission to prescribe the particulars to be given by political parties for getting themselves registered which it did in the Elections Symbols (Reservation and allotment) order 1968.

For some check on split, we had to wait for 52nd Amendment of the Constitution in 1985, known as the Anti-Defection Law and till 1989, for insertion in the Representation of the People Act 1951, of section 29A containing elaborate provisions for the registration of the parties. But the internal functioning of parties was not adverted to.

So it is high time that the lacuna is filled up by adequate statutory provisions regarding the constitution and mode of functioning of parties in order to ensure their commitment to democracy throughout in order to create democracy within the parties.³

With the fundamental step to be taken even before parties are regulated is to prescribe that a party would be entitled to fight the Lok Sabha
elections only if it presents candidates in all the constituencies in the country. These provisions will have the following effect -

(A) The effect of reducing the number of parties present in the Lok Sabha, there will be a regrouping of political forces. The proliferation of parties on account of negligible difference of opinion or on account of personal friction or out of unbridled ambition will curbed.

(B) Such provisions will help the formation of parties of truely national character taking into account problems of all the various parts of the country and adverting to them in a national perspective.

(C) It will bring about a true national integration and not the artificial one which is being attempted by all kinds of administrative measures and incentives.

(D) It will bring about a true national integration and not the artificial one which is attempted by all kinds of administrative measures and incentives.

Since on the other side the present system may lead soon to a Parliament with the majority belonging to one part of the country and the opposition to another part. Such a geographical divide, if it takes place, would be a real danger to our nation marked by diversity and majority and opposition should be prevalent all over the country. The electoral law should be conducive to it.

In addition to enacting new laws conducive to bring the healthy party system, the Representation of the People Act 1951, need to be amended. Another thing needs to be done is that the politics of defection, which has
drained out the whole ethos of the system, should be jettisoned lock, stock and barrel. The existing Act on the subject is defective because it gives premium to defection. Defection, by its very nature, is destructive of the principle of mandate, party system; parliamentary government and political stability.

Though it is not much purposeful to compare the number of occasions on which the President's rule were imposed during the period of coalition government with that of non-coalition counterpart. Yet it is analysed that the demand within the government by coalition formation found inherent based condition of supposition. However, the rate of success remained lesser due to the coalition factor in opposition. In fact it was the period of single dominant party enjoying majority the Parliament, that laid a treck for running its successor in dismissing the government in the State. During whole period, either the government was dismissed due to the factor of opposite party ruled state or settle the internal differences within the party. The same political motivation is more or less reflected in the whole dismissal episode but it is a new phenomenon reflected during coalition age as a demand of allies.

The controversy in relation to the Article, shivers the very roots of constitutional institutions in the system. The conferment of the power to exercise the provision is coupled with the constitutional duty to protect the constitution. The institutions which are under bounden-duty to defend the constitution are the President, the Parliament, the Governor and the judiciary. Among them a long history of misuse of the provision implicate not only President and Governor but Parliament also. Till the judgement was delivered in state of Rajasthan Vs. Union of India, holding that if the facts, forming the
basis of declaration of emergency, were known and malafides are alleged the court could entertain the petition but before this case was decided the states High Court had held that it was none of its concern to sit in judgement on action taken by the President. Interpreting the Constitution these courts had held that the Parliament was the only authority intended to have a decisive say in the matter, either by approving or rejecting the resolution and the exercise of judicial review was not permitted by the Constitution. The Parliament is though an exalted and dignified institution yet, by its nature, character and complexion is highly partisan and hence the Parliament, strictly controlled by the centre government, is thoroughly incompetent to perform judicial function because the overtones are highly political and the consequences to the State government are very serious.

Now it is not difficult to discern an outrageous praradox, made to project from the powers and position, stipulated to be conferred both on the President and the Governor. The President being the head of the Federal State, has to do much of the balancing between the centre and the States to fulfil his sacred trust of defending and protecting the Constitution and the Governor, on the other hand, had none of such function to perform yet the former was stripped of his powers conferred by the law of the Constitution while the later was made vested with unlimited discretionary powers. It did not accord with the system envisaged by the Constitution yet every thing came to be manipulated with a view to make the system subservient to the petty and paltry expediency of the Central Government.

However, on the point the presidential act done by K.R. Narayanan consequently halted an errant government in its tracks by using his
Constitutional authority and influencing it with his own high moral stature in context with the dismissal of the Rabri Devi government in Bihar. In this case the Union government bypassed the Supreme Court's guidelines and ignored its own commitment not to misuse Article 356. Mr. Narayanan's second return of a government recommendation for dismissal of an elected state government should persuade political parties - all inveterate sinners while in office and convenient crusaders while in opposition to get together and agree on a minimum set of rules for the imposition of President's rule in any state. Hence, precedent set by the President ought to be respected by the subsequent one.

To extricate the system from other factors of subversion it is called forth that the procedure and method of Governor's appointment should be changed and brought in line with the requirements of the federal parliamentary system. He should be appointed by the President on the joint recommendation of the Prime Minister, the leader of the opposition and the Chief Minister of the state where he is being appointed. In addition to it his discretionary powers, which are unlimited and paradoxical to the Parliamentary system should be spelled out and catalogued in articulate terms lest he should have the freedom to act in a lackadaisical way.

Now in relation to the Provision, since the time of its framing, Article 356 has generated serious controversy because the founding fathers apprehended that there was possibility of this Article "being abused or employed for political purposes" or being resorted to for "unnecessary or intolerant action through political prejudice." Also they apprehended that the Centre might "intervene in petty provincial matters" on the "slightest pretext"
"on the pretext of resolving ministerial crisis or on the pretext of purifying or reforming maladministration obtaining in a particular State" or on the ground of "mismanagement or inefficiency or corruption in a province," or for resolving "a mere crisis or a vote of no-confidence in the Ministry by the Legislature," or for ensuring "good government" thus "reducing the autonomy of the States to a farce. In fact Dr. Ambedkar echoed the sentiments of the framers when he said: "The proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter."

The main reason for the incorporation of this Article was that the founding father recognised the fact that in a country of sub-continental dimensions, immense dimensions, immense diversities, socio-economic disparities and multitudinous people, with possible divided loyalties, security of nation and stability of its polity could not be taken for granted. External aggression in Jammu and Kashmir, the emergence of disruptive forces and widespread violent disturbances in the wake of partition made them feel the imperative need for bestowing the Union with overriding powers to control and direct all aspects of administration and legislation throughout the country during an emergency arising out of external aggression, internal disturbance or the breakdown of the constitutional machinery in a State. The Constitution gives plenary authority to the States to make laws and administer them in the field assigned to them. That being so, pointed out Dr. Ambedkar in the Constituent Assembly, the Centre's interference in the administration of provincial affairs must be 'by and under' some constitutional obligations, so that the 'invasion' by the Centre in the provincial field "must not be an invasion
which is wanton, arbitrary and unauthorised by law".\textsuperscript{5} This constitutional obligation and authority, as stated by Article 356, was considered essential in order to contain the activities of desintegrating and divisive forces.

The provisions relating to the imposition of President's Rule constitute an important exception and limitation to the principle of constitution and limitation to the principle of constitutional Governments in the States. President's Rule brings to an end, for the time being, a duly elected Government, A responsible Government in the State, during the period of proclamation, is replaced by a responsible government at the Centre in respect to matters falling normally in the State's sphere. It may be argued that a larger democracy temporarily takes control of a smaller democracy. This because the Constitution does not suspend the constitutional machinery in the State concerned.

There is however, a shift in the power structure. And this shift in the power structure does constitute federal coercion. This is a very tricky power. Exercised correctly, it may operate as a safety mechanism for the system. Abused or misused, it can destroy the Union and the States. A wide literal constitutional distribution of powers between the Union and the States. A wide literal construction of Article 356 (1) will reduce the constitutional distribution of powers between the Union and the States to a licence dependent on the pleasure of the 'Union Executive. Further, it will enable the Union Executive to cut at the root of the parliamentary form of government in the State and will act against the idea of federation.
It may be recalled that Dr. Ambedkar also told the Constituent Assembly "when we say that the Constitution must be maintained in accordance with the provisions contained in this constitution we practically mean what the American Constitution means, namely that the form of the Constitution prescribed in this constitution must be maintained." In view of the different interpretations given by Dr. Ambedkar, it appears that he himself was not quite clear about the true meaning of the term, "failure of the constitutional machinery." This led the study team of the Administrative Reforms Commission to comment that what constitutes a failure of the constitutional machinery and calls for the use of this Article has not been and will not be authoritatively defined. As a result, the Governors in various States interpreted and applied Article 356 in different ways under analogous situations.

Although it was expected that these extraordinary provisions would not be invoked for any extraneous purposes other than in the case of a breakdown of the constitutional machinery, in practice it has been the other way round. Since the Constitution came into vogue, this Article has been invoked on 111 occasions (upto March 2002). The very fact that Article 356 was resorted to even during the Nehru period to thwart the formation of non-Congress Ministries or to resolve an internal crisis in the ruling party became a trend-setter for the post-Nehruvian period as well.

Different Committees and Commissions, such as the Administrative Reforms Commission, the Governors' Committee, the Sarkaria Commission did not suggest deletion of this Article. The Sarkaria Commission felt that the Article should remain as an ultimate constitutional weapon to cope with
situations having a bearing on the preservation of unity and integrity of the country and upholding the Constitution. Article 356, has, indeed, solved many seemingly intractable problems. Given the right political conditions, it might be possible for any Governor to avoid turning to this Article. Actually, the problem lies not in the constitutional provision but in its application. What is required is delineating proper safeguards against its arbitrary, partisan and malafide use.

The Sarkaria Commission has made comprehensive and wideranging recommendations to guard against the abuse and misuse of this Article by the party in power at the Centre:

1. Article 356 should be used sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State.

2. A warning should be issued to the errant State, in specific terms that it is carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.

3. When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation that drifts towards a political breakdown of the constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 356 should be exhausted to contain the situation.
4(a) In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker Government and then dissolve the Legislative Assembly.

(b) If the important ingredients described above are absent, the Governor should recommend the proclamation of President's rule without dissolving the Assembly.

5. Every Proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two-month period contemplated in clause (3) of Article 356.

6. The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation has been laid before Parliament and its has had an opportunity to consider it. Article 356 should be amended to ensure this.

7. Safeguards corresponding, in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a Proclamation.

8. To make the remedy of Judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that the material facts and grounds on which Article 356(1) is invoked should be made an integral part of the Proclamation issued under the Article.
9. The report of the Governor should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

10. The Governor's report should be given wide publicity in the media and in full.

11. Normally, President's Rule in a State should be proclaimed on the basis of the Governor's report under Article 356(1).

12. In clause (5) of Article 356, the word 'and' occurring between sub-clause (a) and (b) should be substituted by 'or', so that if either condition is satisfied, the Proclamation can be continued even beyond one year with the approval of Parliament and repeated amendments of the Constitution avoided.

13. President's Rule should not be imposed on the grounds of 'maladministration,' 'corruption,' 'stringent financial exigencies of the State' or to sort out internal difference or intra-party problems of the ruling party or on the ground that in the General Elections to the Lok Sabha, the ruling party in the State has suffered a massive defeat.

14. In choosing a Chief Minister, the Governor should be guided by these principles:

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
(ii) The Governor's task is to see that a Government is formed and not to try to form a Government which will pursue policies that he approves.

15. The Governor should not risk determining the issue of majority support, on his own, outside the Assembly. The prudest course for him would be to cause the rival claims to be tested on the floor of the House.

These recommendations, submitted more than fourteen years earlier, are yet to be accepted. Meanwhile, the Supreme Court, in the S.R. Bommai case has decreed that the Assembly should not be dissolved before parliamentary approval and that the floor of the House is the constitutionally ordained forum of testing a Ministry's strength. Even this dictum of the Supreme Court is not being honoured. Political parties of all hues and of all shades of opinion had tasted power at the Centre and all of them had most unabashedly used this Article as a panacea for all evils. Having realised the immense potential of this Article, it is really doubtful whether the political parties are at all serious about their poll promises regarding this Article.

In view of the growth of sub-nationalism which has tended to strengthen the divisive and secessionist forces and weaken the unity and integrity of the country, it will not be prudent to scrap this Article. Instead, the recommendations of the Sarkaria Commission with some modifications in the light of the Supreme Court judgments and experience, may be accepted.

With the introduction of necessary amendments to this provision and the formulation of a "Code of Conduct" for the President and the Governors under Articles 356 and 357, much of the sting of criticism against this provision could be blunted. The political climate will be much better and
the people, in general, and the political parties, in particular, will be well aware of the exact circumstances which would lead to the promulgation of President's Rule in the State, Parliament will then be able to play a meaningful role in overseeing the functions of the Executive Government and act as a watchdog in defence of democracy and federalism.
NOTES & REFERENCES

1. The present NDA Government consisting twenty two allies at the Centre is closed to the completion of its term proving the fact that Indian polity has absorbed the reality of its own.

2. B.R. Kapur Vs. State of Tamil Nadu 2001, the Court has extended the Basic Structure theory to the 'Constitutional Morality'.


5. CAD Vol. IX, pp. 175-165.