CHAPTER III
THE ROLE OF GOVERNOR UNDER THE CONSTITUTION OF INDIA

a) Introduction:

Governor is a dynamic institution. Though a near complete picture has been portrayed in the constitution of the Indian Republic, this, however, needs to be clarified and or modified in the lights of the debate in the constituent assembly and knew emerging situation. Addressing the Governor’s conference in 1990, the then President Venkatraman stated that Governor is not merely a ceremonial functionary as the political fluidity in some states has put Governor’s to great strain and called for the exercise of their judgment with extreme care and objectivity in the formation of Governments. To him a Governor is a sagacious and vital link between centre and state in federal unity.¹

Going a step further President Dr. S.D. Sharma took initiative to constitute a committee of Governors on the welfare of minorities. This was an attempt to break a new ground in the sense that it seeks to involve the heads of States in the area where no specific or special part is envisaged for them in the constitution.² The President further advised the Governor to go by rule book, rise above party loyalties and act as a representative of the whole state.

In 1946 Sir Frederick Burrows, the Governor of Bengal, asked Mahatma Gandhi that with a popular government in power, what was a governor expected to do. The Mahatma gave a one word reply, “Nothing.” This advice given to a British Governor who wielded considerable executive authority, underscored the fact that even in those days, a Governor was not expected to interfere with the functioning of a popular government. After Independence, there was a strong opinion against continuing the institution of Governor. Biswanath Das a former Chief Minister of Orissa during the debate in the Constituent Assembly stated, “Now we are going to have democracy from toe to neck and autocracy at the head.”

² Ibid, p. 51.
While accepting to retain the office of Governor, the Constituent Assembly ensured that that did not happen. The Constitution clearly defines the role of the Governor. On all matters, he shall act on the advice of the council of ministers except when selecting a Chief Minister. He can recommend President’s rule in special circumstances and in that event, temporarily govern the State. There is even now a section of opinion in the country which feels that Governor is an unnecessary relic of the Raj and we could do without this institution. I feel that besides his role defined in the Constitution, a Governor has other useful roles. He is a State symbol above the cut and thrust of politics.3

According to Article 155 every Governor is appointed by the President; and since according to Article 74, there is a council of ministers, headed by the Prime Minister to aid and advice the President and the advise is binding, there is reason to believe that a Governor is an agent of the President/ Central Government.

Article 156 lays down that a Governor shall hold office during the pleasure of the President. It means that pleasure can be with withdrawn even before the term of 5 year. The Governor can also be transferred from one state to another. This strengthens the argument that the Governor is an agent of President/ Central Government.

The administration of scheduled areas is a difficult task due to so economic conditions of these areas the constituent assembly prefer to give special treatment for this and assigned the task to Governors. A Governor has not only been given the direct responsibility of administration of tribal areas and he is required to send an annual report to the President about the administration of scheduled areas.

Article 356 lays down that on the report of the Governor or being otherwise satisfied that the constitutional machinery has failed, the President can assume all powers of State and transfer the Legislative power to the Parliament.

Today the situation is that different political parties are in power in different States. In other words, the situation obtaining between 1952 and 1967, when one party controlled both the Parliament and State Legislatures no longer continues. In such a situation and because the Governor owes his appointment and his continuation in the office to the Union Council of Ministers, in matters where the Central

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3 Seminar on “Role of Governors” Attended by Shri L.K. Advani, Retired General Sinha and Other Governors at India Habitat Centre Auditorium (Friday, 23 July 2010)
Government and the State Government do not see eye to eye, there is the apprehension that he is likely to act in accordance with the instructions, if any, received from the Union Council of Ministers rather than act on the advice of his Council of Ministers. Indeed, the Governors today are being pejoratively called the ‘agents of the Centre’. It is true that the Central Government is not expected to give any instructions which compromise the status and position of the Governor nor is it expected to remove him for not implementing the instructions given by it, the experience for the last several years belies this hope. As, Seervai, has pointed out in his commentary: “As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because, in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. The removal of the Governor under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution. Article 156(1) was designed to secure that if the Governor was pursuing policies which were detrimental to the State or to India, the President would remove the Governor from his office and appoint another Governor. This power takes the place of an impeachment which clearly is a power to be exercised in rare and exceptional circumstances”.

The role of Governors has come in for severe criticism – sometimes, bordering on condemnation – in the context of reports they submit under and within the meaning of Article 356. Many a Governor has not covered himself with glory in that behalf. Notwithstanding the recommendations guiding the discharge of their functions in the Sarkaria Commission Report (to which we shall presently refer) and the decisions of the Conference of Governors, many Governors continue to behave in a manner not consistent with true spirit of the Constitution. This would be evident from the decision of the Supreme Court in S.R. Bommai V. Union of India (AIR 1994 SC 1918). A few observations from the said judgment may be apposite. In his

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judgment delivered for himself and Kuldip Singh J., Sawant J. commented thus upon the conduct of the then Governor of Karnataka:

“It was improper on the part of the Governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and was written by the said legislators of their free will and volition. He had not even cared to interview the said legislators but had merely got the authenticity of the signatures verified through the legislature secretariat…. We are of the view that this is a case where all canons of propriety were thrown to winds and the undue haste made by the Governor in inviting the President to issue the proclamation under Article 356(1) smacked of mala fides…. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly”.

While dealing with the conduct of then Governor of Meghalaya, the learned judge made similar observations and observed finally:

“The unflattering episode shows in unmistakable terms the Governor’s unnecessary anxiety to dismiss the Ministry and dissolve the Assembly and also his failure as a constitutional functionary to realize the binding, legal consequences of and give effect to the orders of the court”.

The Governor plays a very important role under the Constitution of India. He is a part of the Stale legislature. No bill becomes Act without the assent of the Governor. He also appoints the Chief Minister and Ministers or Council of Ministers on the advice of the Chief Minister. He is also empowered by the Constitution to dismiss the Chief Minister and Ministers of the State Cabinet.

When there is abnormal condition in the State Ministry and the Ministry does not function according to provisions of the Constitution he can make a report to the President and recommend President's rule. In actual practice which we call President's rule, in fact, is the Governors rule because all functions of the State machinery during President's rule are exercised by the Governor under the directions of the President.

5 Ibid. para 76.
b) The role of Governor in appointment of Chief Minister and Other Ministers:

i) Council of Ministers in State Cabinet vis-a-vis Governor:

On lines similar to the Centre, each State has a Council of Ministers, with the Chief Minister at its head. The provision regarding the Council of Ministers is mandatory and the Governor cannot dispense with this body at any time Article 163 (1). This proposition has now been reiterated by the Supreme Court which has held that “the Council of Ministers continues to stay in office even when the Legislature is dissolved by the Governor”.

The Function of the Council of Ministers is “to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion Article 163(1). The phrase "by or under" the Constitution means that the need to exercise discretionary power may arise from any express provision of the Constitution or by necessary implication.

It has been judicially held that the Council of Ministers comes into existence to aid and advise the Governor as envisaged by Article 163(1) as soon as, the Chief Minister is appointed and sworn in by the Governor. More Ministers can be appointed in course of time. But, till then, the Chief Minister alone acts as the Council of Ministers to aid maximum number of Ministers as members of the Council of Ministers. Accordingly, there is nothing in the Constitution to prevent the Chief Ministers from adding and advising the Governor all by himself pending appointment of other Ministers and allocation of business among them. "The formation of the Council of Minister is complete with the swearing of the Chief Minister.”

ii) Qualification for appointment of Minister Chief Minister:

Ordinarily, a Minister should be a member of the State Legislature. A basic feature of the parliamentary system of government is that all Ministers ought to be members of a House of State Legislature. This ensures accountability

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of the Council of Ministers to the Legislature. However, a non-member may also be appointed as a Minister, but he would cease to be a Minister if he does not become a member of the State Legislature within six months Article 164 (4).

Under Article 177, a Minister has the right to speak in, and participate in the proceedings of a House of the State Legislature. This means that a Minister, even though not a member of a House can participate in its proceedings but cannot vote.

Under this provision, a person who is not a member of any House may even be appointed as the Chief Minister as the term 'Minister' in Article 164 (4) covers the "Chief Minister" as well. Therefore, there have been cases when non-members have been appointed as Chief Ministers. For example, Kamraj Nadar was appointed as the Chief Minister of Madras in 1954 although he was not a member of the State Legislature.

### iii) Judicial Articulation regarding the Scope of Article 164 (4):

A few judicial pronouncements on the scope of Article 164(4) may be taken note of here:

Shri T.N.Singh who was not a member of either House of the State legislature was appointed the Chief Minister of Uttar Pradesh. The High Court rejected the challenge to his appointment in view of Article 164(4) of the Constitution and the Supreme Court upheld the High Court. A non-member can be appointed as Chief Minister for a period of six months.10

A question of crucial significance has been considered by the Supreme Court in S.R. Chaudhari v. State of Punjab.11 Shri Tej Prakash Singh was appointed as a Minister in the State of Punjab on the advice of Chief Minister, Sardar Harcharan Singh Brar, on 9-9-1995. At the time of his appointment as a Minister, he was not a member of the State Legislature. As he failed to get elected to the State Legislature, he resigned from the Council of Ministers after 6 months on 8-3-1996. This was in accordance with Article 164(4). During the term of the same Legislature, there was a change in the office of the Chief Minister. The new Chief

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9 For criticism of this practice, see, 13 JILI 376 (1971).
Minister, again appointed Tej Prakash Singh as a Minister on 23-11-1996. He was not a member of the Legislature at that time. A petition was filed for a writ of quo warranto against the Minister. The High Court quashed the Minister's appointment. The Supreme Court stated that Arts. 164 (1) and 164(4) should be so construed as to "further the principles of a representative and responsible Government." The Court refused to interpret Article 164 in a literal manner on the 'plain language of the Article'. Instead the Court argued for a "purposive interpretation of the provision."\(^\text{12}\)

Referring to Article 164, the Court observed that its scheme clearly suggests that ideally, every Minister must be a member of the Legislature at the time of his appointment. In an exceptional case, a non-member may remain a Minister for six months. Such a person must get elected to the House during the period of six months. If he fails to do so, he must cease to be a Minister. He cannot be reappointed thereafter during the life time of the same Legislature by the same or even a different Chief Minister. The Court has observed.

The "privilege" of continuing as a Minister for six months without being an elected member is only a one time slot for the individual concerned during the term to get himself elected to Legislative Assembly. It exhausts itself if the individual is unable to get himself elected within the period of grace of six consecutive months. It is not permissible for different Chief Ministers to appoint the same individual as a change of a Chief Minister, during the term of same Assembly would, therefore, be of no consequence so far as the individual concerned.\(^\text{13}\)

To appoint a person repeatedly as a Minister while he is not a member of the Legislature would amount to subversion of the constitutional and democratic process. The Court further observed criticizing the appointment of a non-member repeatedly as a Minister.\(^\text{14}\)

"By permitting a non-legislator Minister to be re-appointed without getting elected within the period prescribed by Article 164(4), would amount to ignoring the Electorate in having its say as to who should represent it- a position which is wholly unacceptable. The seductive temptation to cling to office regardless of constitutional restraint must be totally eschewed. Will of the people cannot be

\(^\text{12}\) Ibid at 2717.
\(^\text{13}\) Ibid, at 2718.
\(^\text{14}\) Ibid at 2719.
permitted to be subordinated to political expediency of the Prime Minister or the Chief Minister as the case maybe, to have in his cabinet a non-legislator as a Minister for an indefinite period by repeated reappointments without the individual seeking popular mandate of the electorate." Accordingly, the Supreme Court has expressed its “considered option” that “It would be subverting the Constitution to permit an individual, who is not a member of the Legislature, to be appointed a Minister repeatedly for a term of "six consecutive months", without getting him elected in the meanwhile. The practice would be clearly derogatory to the constitutional scheme, improper, undemocratic and invalid."

The Supreme Court has made another momentous pronouncement in B.R. Kapur v. State of Tamil Nadu\textsuperscript{15} in relation to Article 164(4). The matter arose in the following factual context. The nomination paper of

Jayalalitha for election to the State Legislative Assembly was rejected. She had appealed to the High Court against her conviction; the High Court suspended her sentence but not her conviction pending decision on her appeal. Accordingly, she was disqualified to contest an election to the house. As a result of the election, her party (AIDMK) won by a big majority and elected her as the leader. The Governor of Tamil Nadu appointed her as the Chief Minister under Art 164 (4) as she was not a member of the State Legislature at his time. Her appointment as the CM was challenged and the Supreme Court declared the same as null and void.

The crucial question was whether a person who is disqualified to be a member of the State Legislature could be appointed as a Minister or the Chief Minister under Article 164 (4). The Supreme Court argued in the negative. The court has argued that it not a member of the Legislature must seek election to the Legislature and secure a seat therein, within six months of his appointment. If he fails to do so, he ceases to be a Minister, It, therefore, follows from this that a person appointed as a Minister should be one who can stand for election to the Legislature and satisfy the requirement of Article 164 (4). This means that he should be one who satisfies the qualification for membership of the State Legislature Article 173 and is not disqualified form seeking that

\textsuperscript{15} JT 2001 (8) SC 40; (2001)7 SCC 231.
membership by reason of any provision in Article 191 on the date of his appointment as a Minister.

The idea underlying Article 164(4) is that due to political exigencies, or to avail the services of an expert in some field, a person may have to be appointed as a Minister without his being a member of the State Legislature at the time of his appointment. He has 6 months for this purpose. This means that he should be a person who, when he is appointed, is not debarred from being a member of the Legislature. This means that he should be qualified to stand for the election to the Legislature and is not disqualified to do so. Art 164 (4) is not intended for the induction into the Council of Ministers of someone who is intelligible to stand for election to the State Legislature.

The Court has stated that it would be "unreasonable and anomalous to conclude that a minister who is a member of the Legislature is required to meet the constitutional standards of qualification and disqualification but that a Minister who is not a member of the Legislature need not, “Logically the standards expected of a Minister who is not a member should be the same as, if not greater than, those required of a member."

If the Governor appoints a disqualified person to a constitutional office, the discretion of the Governor may not be challengeable because of Article 361, but that does not confer any immunity on the appointee himself. The qualification of the appointee to hold the office can be challenged in proceedings for quo warranto. If the appointment is contrary to any constitutional provision, it can be quashed by the Court.

The Supreme Court rejected the argument that Jayalalitha had people's mandate to become the Chief Minister of the State as is evidenced by her party having won at the election. The Court's reply to this argument is:

"The Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution."16

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16 JT 2001 (8) SCC at 66.
c) **Appointment of the Chief Minister by the Governor and related controversies and issues:**

The Chief Minister is appointed by the Governor Article164. As a matter of a well-established convention the leader of the majority-party in the Lower House should be appointed as the Chief Minister. In normal circumstances the Governor has no doubt as to who is the leader of the majority party in proper person, i.e., leader of the majority party in the House. There is no dearth of examples in India. In fact, this had happened in many States after the Third General Election, when there was no recognized leader in the House of either parties claiming majority without having such majority. In such circumstances the Governor may have to exercise his discretion in selecting the Chief Minister.

Unfortunately, in exercise of their discretion Governors have not followed any uniform practice. In some States the Governors had invited the leader of a United Front (Rajasthan, election or after the election. On the other hand, in some States the Governors had given preference to the leader of a United Front over the leader of the single largest party (in the Centre in 1979, Punjab in 1967, Bihar in 1968, West Bengal in 1970, Maharashtra in 1978).

It is generally recognized that the Governor's discretion in appointing the Chief Minister should be guided on the following principles: first, in the normal circumstances he should invite the leader of majority party, second, he should invite the leader of the alliance or coalition or front it was formed before the election and returned with majority; third, he should invite the leader of the single largest party; fourth, he should invite the leader of the front formed after elections. If these guidelines are followed, it is submitted that the exercise of Governor's discretion would be free from controversy.

After the Fourth General Election in 1967 the exercise of the Governor's discretion to appoint a Chief Minister became a matter of great controversy.

In 1951 Mr. Sri Prakash, the Governor of Madras, had invited the leader of the single largest party to form the Government although the Congress had a strength of 155 only in a House of 375 members. He rejected the claim of T. Prakasam who had formed a new party under his leadership having strength of 167 members. Rejecting his claim, Governor said, “I am not going to recognize the combination of groups. I am going to
absolute majority part of biggest party”. In 1967, in Rajasthan no party could get Majority in the Legislature. The Congress was single largest party in the Assembly. Against this, there was a coalition of non-congress parties, who claimed a majority support in the House.

Both the groups claimed the support of the independents and they requested the Governor to invite their leaders to form the Government. The members of the coalition group even paraded before the Governor and the President to prove their majority. But the Governor excluded the independents for the purpose of ascertaining the majority and invited the leader of the largest single party to form the Government. The coalition criticized the action of the Governor. According to them, action of the Governor was politically motivated and it was done in order to install the Congress Ministry. In support of his action the Governor cited the precedent of Madras.

But this precedent was not followed uniformly by the Governors. In 1965, though the Communist party was the largest single party in Kerala, yet it was not invited to form the Government.

In 1967, in Punjab after the fall of the United Front Government headed by Gurnam Singh, the Governor first invited the leader of U.F. to form the ministry. In Bihar in 1968 after the fall of the U.F. ministry headed by M.P. Sinha the Governor first invited leader of Congress, and on his refusal B.P. Mandal (Soshit Dal) to form Government, though the Dal had only 38 members in a House of 319. In 1978, in Maharashtra the Governor invited leader of the Congress- Congress (I) coalition to form the government and rejected the claim of the Janta Party which was the largest single party in the House. Again after the fall of the Congress coalition in Maharashtra the Governor invited Mr. Sharad Pawar of Progressive Democratic Front (a breakaway group from Congress (I) to form the government ignoring the largest single party's claim (Janta Party) to form the government.

In 1982, in Haryana, in 90-member House the Congress (I) had 35 members and the Lok Dal, BJP alliance had 36 members. The Governor Mr. G.D. Tappasse first invited Mr. Devi Lal, the leader of Lok Dal-B.J.P. alliance, to parade his supporters. But suddenly he changed his mind and invited Mr. Bhajan Lal the leader of the single largest party to form the Government. The Governor justified his
decision to invite Mr. Bhajan Lal to form the new ministry on the ground that the Congress was the single largest party in the assembly and in support of his action. He quoted past precedents (i.e. Madras in 1952 and Rajasthan 1967). He gave one month's time to Mr. Bhajan Lal to prove his majority in the Assembly. Although his invitation to the leader of the single largest party could not be challenged because it was generally recognized that if no party had secured majority in the House the leader of the single largest party should be invited to form the ministry. But the manner in which he acted in first inviting the alliance leader and then suddenly changing his own decision and inviting Mr. Bhajan Lal created a lot of controversy. Had he initially invited Mr. Bhajan Lal he could have saved him from the charge of acting at the dictates of ruling party in the Centre. Even on the ground of two past precedents his action could not be justified because that precedent was not followed uniformly. In 1979, although Janta Party was the single party in the Centre but its leader was not invited to form government. In 1982, in Kerala, Mr. Karunakaran, the leader of the Untied Democratic Front, was invited to form the ministry which survived due to the casting vote of the Speaker for 60 days only.

In the matter of appointment of the Chief Minister, the Governor is not required to act on the advice of the Council of Ministers. However, the over-all affective limitation on his discretion is that he is to appoint a person as Chief Minister who will be able to enjoy a majority support in the Assembly. If the Ministry is not able to command a majority support in the House, it will fall. If a party enjoys a clear majority in the Assembly, the Governor's task is more or less mechanical and non-discretionary, as he has to call upon the leader of the majority party to form the government.

His task, however, becomes difficult, and even controversial, when no party has clear majority in the Assembly, and when loyalties of the legislators undergo frequent changes making the political picture in the State fluid and confused. In such a situation, the Governor's role may become crucial as it often becomes a matter of importance as to who is invited first to form the government, for the party in power could hope to gain accretion to its strength by winning over the loyalties of some legislators with a flexible conscience. In such a fluid situation, the Governor has to take a decision, after making such enquiries as he thinks proper, as
to the person who the Government.\textsuperscript{17} For example, the role of the Haryana Governor in appointing the leader of the Congress (I) as Chief Minister came in for a lot of criticism. Congress (I) was not the largest group in the Assembly but its leader was appointed as the Chief Minister; he was later able to attract a few members from other parties and thus managed a majority for himself.

At times, while appointing the Chief Minister, the Governor imposes the restriction that he should seek a vote of confidence from the House concerned. A question has been raised whether the Governor can do so because the Constitution does not specifically refer to anything like a vote of confidence. Does the Governor act beyond his powers while imposing any such condition? The Patna High Court in *Sapra*\textsuperscript{18} has answered the question in the negative. The court has invoked two constitutional features to support such a condition, viz., first, collective responsibility of the Council of Ministers to the House and second, discretionary nature of the Governor's power to appoint to the Chief Minister. The principle of collective responsibility includes within its ambit the rule that the Council of Ministers must enjoy majority support in the Legislative Assembly and it includes both a vote of confidence and a vote of no confidence for or against the Ministry. Where there is doubt about the Chief Minister enjoying the majority support in the house, the Governor is entitled to call upon him to prove his majority in the House. This serves two purposes, viz. (I) it assures the Governor that his choice of the Chief Minister was right; and (2) it satisfied the electorate that the Chief Minister enjoys majority in the Assembly. The High Court has observed that\textsuperscript{19} -

"...the Constitution does not make any reference either to a vote of confidence or to a vote of no confidence, and it would indeed be preposterous to suggest that since the Constitution does not refer to these, in a parliamentary form of Government there can be no vote of confidence or vote of no confidence for or against the Government with a cabinet system would be defeated if such a construction is put on the provision of Article 164 of the Constitution..."

\textsuperscript{17} See, Report of the Governors’ Committee, 14. 28 (1971)
\textsuperscript{18} *Sapra Jayakar Motilal CR. Das v.Union of India*, AIR 1999 Pat 221.
\textsuperscript{19} AIR 1999 Pat, at 228.
i) **Crux of the report given by Committee of Governors in 1971 regarding guidelines for guidance of the Governors in the matter of appointing the Chief Minister:**

On November 26, 1970, the President appointed a Committee of Governors, to study certain aspects pertaining to the 'Role of Governors'. The Committee submitted its report in 1971. The crux of the same as follows:

1. Where a single party commands a majority in the Assembly, the Governor is to call upon its leader to form the government.

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

3. If before the election, some parties combine and produce an agreed program and the combination gets a majority after the election, the commonly chosen leader of the combination should be invited to from the government.

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

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

6. Ordinarily, an elected of the Legislature should be chosen as the Chief Minister. A non-member or a nominated member of the Legislature ought not to be appointed as the Chief Minister except in exceptional circumstances. In any case, he should become an elected member of the Legislature as soon as possible.

ii) **Recent Controversy in Goa and Bihar vis-a-vis Governor's role in 2005 and related issues:**

A controversy has erupted over Governor Syed Sibtay Razi’s decision to invite the leader of the Jharkhand Mukti Morcha, Shibu Soren, to form a government in Jharkhand. The argument cannot be over democratic principles but
only with respect to the Governor's arithmetic. In Jharkhand, the B.J.P is the single largest party-just like Mr. Lalu Prasad's RJD in Bihar. It claimed a coalition of 36 including six members of the JD (U). But as the figures added up on the evening of March 1, 2005, the strength of the Congress-led, post-poll alliance was also a clear 36 in an 81-member list of the BJP alliance competed with a 42-member list of the Congress-led combine.

After going through the various tests such as the 'list' test, the 'parade' test, the Governor upheld the Congress' claim. This is very much in his discretion. He has imposed a confidence vote on the new Government has a strategic advantage. But the answer now lies on the floor of the Jharkhand Assembly.

Unfortunately, like any other disgruntled political party denied the promise of power, the BJP has decided to resort to agitation. Taking up the issue with President A.P.J. Abdul Kalam is nothing but political showmanship. The President has no rule to play in the appointment of a Chief Minister. Indeed it would be wrong for him to do so. Nor can the President impose President's rule without the advice of the Prime Minister. Typically, the BJP has also decided to disrupt proceedings in Parliament.

Parliament, too, has no role to play in the appointment of the Chief Minister. These are all political tactics- and, all the more ungainly for being so. The only constitutional option before the BJP is to challenge the Governor's action by defeating the confidence vote sought by Mr. Soren on the floor of the Assembly.

It would be sad and disturbing if Indian democracy went back to the situation of 40 Years ago when governments at the Centre misused their Governors. Even now, Governors must put their house in order. The BJP's attempt to draw political mileage by comparing the Goa case with that of Jharkhand is without foundation. The Goa decision stands apart and has no bearing on the Jharkhand or Bihar situations. In the latter cases, the Governor is tinder a constitutional duty to examine which of the contesting claimants can form a stable government. In Jharkhand, he has made his decision. The decision has to be tested on the floor of the Assembly, not in courts of law.

Political parties should refrain from brining constitutional governance to a halt simply because the Governor's discretion was not exercised in their favour.
Democracy cannot survive if unelected State Governors play games with post-election scenarios to please the party in power at the Centre that appointed them to office. The practice was evident in the aftermath of the general elections in 1967, when Governor after Governor used his discretion to choose Chief Ministers. In 2005, such abuse of power by Governors is once again being called into question. On February 2, 2005, Goa Governor S.C. Jamir sacked Chief Minister Manohar Parrikar in doubtful circumstances to peremptorily install the Congress in power. Now suspicion is being cast on the way Governor are handling post-election claims by parties to form governments in Jharkhand and Bihar.

Politically, all these manoeuvres are part of a larger canvas. The Congress is part of a secular front that does not want to see the Bharatiya Janta Party return to power- either at the Centre or in any of the States. Having lost power at the Centre in 2004, it is imperative for the BJP to re-capture power in as many States as possible to build a national image to return to power at the Centre. It is relatively easy to analyse our present discontents in consequential list terms.

Politically, it is a straight choice between the secular front and the non-secular BJP alternative. The secular front accuses the BJP and its supporters of exploiting Communal sentiments to capture power-most recently in Gujarat and elsewhere in 2002-2003. For those who support the secular front over communal alternatives, keeping the BJP and its allies out of power represents the triumph of secularism, which is basic to the Constitution.

However, such a consequentiality approach undermines rather than fulfils the goals of the Constitution. After 1967, Congress Governors played havoc with the constitutional enterprise. The worst example was that of Governor Sampuranand who, in 1967, refused to recognize a United Front post-poll alliance in Rajasthan and gave preference to the Congress which did not have a clear majority. After this, few Governors have concerned themselves with constitutional propriety.

It was thought that matters might get better after the Supreme Court judgment in the S.R. Bommai case (1993). It was laid down that the correct procedure was to test the majority of a government on the floor of the legislature. But there was no respite from political subterfuge. A disagreement between
Governor Motilal Vora and Chief Minister Mulayarn Singh over the date of the confidence vote led to the latter's dismissal in 1995. In 1996, Governor Romesh Bhandari refused to allow the BJP, as the largest party, to form a government in Uttar Pradesh and President's Rule was imposed to further throttle democracy.

iii) Dismissal of Chief Minister vis-a-vis Governor's discretion in doing so, an appraisal:-

A very controversial question regarding the Governor's discretion is his power to dismiss the Ministry. As at the Centre, so in a Slate, the Council of Ministers is collectively responsible to the Legislative Assembly and holds office during the Governor's pleasure.

A non-controversial use of the Governor's power is the dismissal of a Minister who has lost the confidence of the Chief Minister, or the dismissal of a Ministry which has demonstrably lost majority support in the Legislative Assembly, but, instead of respecting the verdict, refuses to vacate the office. Such a step indicates the normal working of the parliamentary form of government as well as promotes constitutionalism as it is against democratic norms that a cabinet which has lost confidence of the majority in the House should continue to remain in power.

This also amounts to a breach of Article 164(2) which insists that the Council of Ministers is collectively responsible to the Legislative Assembly. How can a Ministry which has lost confidence of the House be said to be collectively responsible to the House. Here the Governor is not really exercising any personal discretion for the decision has already been taken by the House and he is merely implementing the same. Such a use of the Governor's power will be very rare in practice for a Ministry losing majority support usually resigns except when the Ministry is defeated in the House on a snap vote.

The Calcutta High Court has ruled that if the Council of Ministers refuses to vacate the office of Ministers, even after a vote of no confidence has been passed against it in the Legislative Assembly of the State, it will then be for the Governor to withdraw the pleasure during which the Council of Ministers hold
When a Ministry enjoying the majority support, however, acts to thwart the Constitution, or makes a mockery of the democratic and parliamentary institutions, or infringes a specific constitutional obligation. e.g., it fails to convene the legislature within six months of the last session, recourse may be held to the Presidential power under Article 356. It may not be possible for the Governor to use his own power to dismiss the Ministry in such a situation, for then he will have to install another Council of Ministers and it may not be possible for him to do so when the dismissed Ministry had majority in the House.

There is also the knotty problem of options open to a Governor when the government in office, enjoyed majority support once, but loses that in between the two sessions of the Legislature. Should the Governor take action to dismiss the Ministry, or wait till the Assembly meets and votes the Ministry out?

The most dramatic exhibition so far of the Governor's discretionary power to dismiss the Ministry has been in West Bengal. A United Front Ministry, a conglomeration of 14 parties having no common policy or programme, took office in March 1967 with Ajoy Mukherjee as the Chief Minister. The parties had fought elections separately, but combined together after the elections with the dominant purpose of keeping the Congress (which had been in office since 1947) out of power.

On November 2, 1967, a few members defected form the UF, formed a new party under the leadership of Dr. P.C. Ghosh and informed the Governor that they had withdrawn support from the Ministry. The Congress Party informed the Governor that it would extend support to a new Ministry if formed by the leader of the new party. Doubts about the majority support the UF Ministry were now raised. The Governor impressed on the Chief Minister the imperative need of calling an early session of the Assembly, but the Ministry wanted to delay convening the House by six weeks. Consequently, the Governor dismissed the Ministry and installed another Ministry November 21, 1967, under Ghosh as the Chief Minister. The Governor based his action on the Ministry losing majority support in the Assembly. He emphasized that it was constitutionally improper for a Ministry to continue in office after losing confidence of the majority in the

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Assembly. In case of doubt on this point, the proper course for the Ministry would have been to seek a vote of confidence on the floor of the House without delay. The Governor could not appreciate the reasons advanced by the Chief Minister to delay calling the Assembly to test the standing of the Ministry. He felt that to deal effectively with the multifarious problems faced by the State, it was imperative that a Ministry clearly enjoying majority support should be in office.

Dharm vir, the Government of West Bengal played a sordid, and a highly prejudicial role. He took a prominent part in arranging and coordinating the confabulations of insinuating nature between the Congress leaders sent on a toppling mission by the centre and Ajoy Mukherjee, the Chief Minister of the state. In planning and executing the highly nefarious and intriguing exercise, intended to disentangle. Ajoy Mukherjee from his alignment with the united front and thereby topple the Government, he rather played a prominent role. The worst part of the invidious exercise was that he allowed the sanctity of the Raj Bhawan to be desecrated where the intriguing talks were held.21 Falling hand in gloves in a deep political nexus with the Congress party he had come in determined bid to disentrench United Front from power. He had served some trump-cards to be played in the event of the deal, struck with Mukherjee, went awry. Simultaneously, he was holding talks with Dr. P.C. Ghose, a Minister in the U.F. Ministry to install him as Chief Minister, if his talks with Mukherjee did not materialize. When, on second thought, Mukherjee extricated himself from the sordid deal, the dismissal of his Government stands in testimony of the fact that the Governor had taken an active part in behind the scene activities and when they did not fructify, in the last resort, he took the desperate step of dismissing the Government. The dismissal of the government on the simple ground that the Chief Minister did not agree to the date dictated by the Governor and wanted the House to be summoned at a later date, which tell only 18 days later, was highly untenable and betrayed the fact that the Governor wanted a ground, howsoever, unjustified, and he found out one, which does not find support in the theory and practice of the parliamentary system. The Governor had instructions from the central Government and, to take them, he had made air-dash to Delhi, twice. Mr. Santhanam’s comment bears it out. He says, “it is difficult to believe that the (the

Governor) had to travel twice to Delhi to make up his own mind.22

The case of Ajit Prasad Jain, the Governor to Kerala, is another instance where all principles of propriety were recklessly made to fritter away. After Lal Bahadur Shastri’s tragic death Smt. Indira Gandhi and Morarji Desai came pitted against each other in a grim struggle for succession. The Governor, relegating all principles of propriety, jumped into the party political fray and took to canvassing for Mrs. Gandhi. The Statesman, under the caption, ‘Impropriety Plus’ wrote an editorial strongly condemning Mr. Jain’s unbecoming conduct, commented “Mr. Jain was canvassing for a contender of the contest for Prime Ministership while still the Governor of a state. If it is not deplorable departure from the non-existent but widely understood code of conduct for the Governor it would be interesting to know what it is?”23 The editorial further said, “Mr. Jain crowned his grave impropriety with something indistinguishable from irresponsibility, he took plane to Delhi at a time when the rice ration for the people of Kerala had come down to four ounces a day, which is well below the subsistence level. Distress was spreading fast, this was the moment chosen by Mr. Jain, the chief Executive under the President rule, for political work in the capital, not even a party political work but partisan political work.” The least that the Congress party, of which he claims to be a humble worker, should do is to register its total disapproval of Mr. Jain’s conduct. Others need not be told that, by his action, Mr. Jain rendered himself disqualified for any responsible post, political or administrative, during the rest of his career, such as may be. He has forfeited popular confidence, so will those who condone his reprehensible behaviour.24

In the public controversy, stance that Mr. Jain took was more in defence of his highly improper conduct than an expression of regret and repentance. He sough to justify his conduct taking grounds, which were grotesquely pre-posterous and smacked of a desperate bid to wriggle out from the vortex of controversy, by trotting out highly untenable arguments. Defending his conduct he shifted the whole onus of the blame on the appointing authority - The Central Government. He said, “I could not say ‘No’ (to his appointment) but I made it clear that well before the general elections I would be laying down the reins of office to re-enter politics. Thus it would

24 Ibid.
be seen that the politician in me is not dead and when major political decisions are involved such a person cannot afford to be a mere spectator. If any mistake was committed, it was at the limit of appointment and what has followed is a corollary.25 One plausible question that can be asked from Mr. Jain is, why did he accept the appointment when he was conscious of the fact that a ‘politician’ in him was not dead and he could not resist the temptation of taking part in active politics? Did he not know that the acceptance of the office needed complete detachment from politics? Did a man like Mr. Jain, of a long standing in public life, needed to be taught in the lessons of the code of conduct enjoined with the office? Accepting the office, while fully conscious of this irritable temptation for politics, is itself an acceptance of the guilt. The argument invoked by Mr. Jain can hoodwink the gullible people but one who knows the fact, that one who sits in the neutral office at once forfeits basis choice of indulging into politics, cannot exonerate him from the misdemeanour. As far as the central Government is concerned, looking at the Governor as their political agent, they needed such men like Mr. Jain who could obsequiously yield to their political expediency and hence had appointed such men who could sell out their conscience and barter their independence for party loyalty. Both the central Government and the Governor, instead of setting correct precedents of acting in a spirit of impeccable and scrupulous rectitude as required under the constitution, set up bad and ominous precedents which went to cut at the roots of the constitution.

Another instance is of the Lt. Governor of Himachal Pradesh who went all his way, in extending clandestine support to the Congress party in making its candidate to win a bye-election which otherwise he was bound to lose.

Another case, in point, comes from Nagaland. The Governor of the state, Mr. M.M. Thomas in his independent judgement, exercised in strict conformity with the parliamentary conventions, granted the request of the Chief Minister to dissolve the Assembly. According to the Governor the Government was in command of a majority support and hence the advice could not be rejected.26 After the Governor had dissolved the Assembly under Article 174 (2) (b), the Central Government which however, did not look his action with equanimity, advised the President to dissolve

25 Ibid.
26 Laski says, “The precedent, indeed, make it clear that no Government which wishes to consult the electorates will be prevented from doing so if, at the time of its request, it has majority in the House of Commons” Parliamentary Government in England, p. 410.
the state Assembly under Article 356. The President, acting on the advice, dissolved
the Assembly and imposed the President’s rule. The Central Government, taking
umbrage at the Governor for ignoring them and not taking instructions from them
while taking such an important decision, dismissed him. The central Government,
however, to clothe their arbitrary and mala fide action with legitimacy, cooked up
charges against him that he was protecting corrupt officers and promoting
communalism. It cannot convince a man, who does not look at the whole
lackadaisical and oblique exercise with tainted spectacles, that the dismissal of the
Governor should have come soon after he had dissolved the house. What streaks out
most prominently, from the whole sordid exercise, is that the Governor had to not
suffer the ignominy of dismissal only for having gone against the wishes of the
Central Government. The Governor with his feelings deeply hurt said that the
imposition of President’s rule once after the Assembly was dissolved under Article
172 (2) (b) was unprecedented. He also said that while exercising his prerogatives he
was not acting as an agent of the Central Government and the charges trotted out
against the Central Government and the charges trotted out against him were excuses
to have him dismissed. Thus, it comes into broad relief that so long a Governor,
obsequiously, yielded to act according to the convenience of the Central Government
he found favour with them and if any of them, in appreciation of his constitutional
duties, acted independently in correct perspective he was shown the exist gate.

In Madras the installation of largest single party Government, without
commanding a majority support, against the claim of the coalition commanding a
majority support went to go to set up a wrong precedent. In support of the utterly
preposterous action it was said that a coalition coming into existence after the
elections, even if it commanded a majority support, could not be considered for being
set in power. Equally fantastic was the view taken in support of setting up the largest
single party government as in evident from the state of the Governor. He said, “as it is
well known, there are many persons everywhere, not excluding the legislators, who
are willing to join whosoever might be put in power. With a large number of
independents in the Assembly it was quite on the cards that the party in power would
be able to attract a sufficient number of them as well as members of other groups to
give it a majority. It was clear if any party was to be given a chance it must be one
that has the largest number of members at its command.” From the statement it comes into broad relief that the Governor depended on prospective defections to vindicate his prima facie mala fide action. Nobody can support the evil practice of defection because it promoted political opportunism and also reduced ideological allegiance an essential postulate of democracy to insignificance yet the Governor based his vital decision on prospective but dubious defections. The decision was taken after consulting the Central Government and the Congress High Command. It is difficult to appreciate that the Governor entered into consultation with the Central Government and the Leaders of the Congress party, in the matter of appointment of the Government with which they did not have even remotest concern, and allowed himself to be dictated by them. From the moves and manoeuvres it comes out quite prominently that the Governor, dictated by the central Government took a patently mala fide decision.

In Rajasthan the four non Congress parties Swatantra, Jan Sangh, SSP and Janta including the Independents, together, claimed a strength of 92 in House of 183. If the Governor had taken a cue from the principle that is followed in Great Britain that, “when a government is defeated either in Parliament or at the polls the Queen should send for the leader of the Opposition” and “before sending for the leader of the Opposition the Monarch should consult no one. If he takes advice first, it can only be for the purpose of keeping out the Opposition or its recognized leader. To try to keep out the Opposition is to take side in party issue. To try to defeat the claim of recognized lead is to interfere in the internal affairs of the chief Opposition party.”

The appointment of largest single party Government in Rajasthan sparked of an acute controversy which compelled the Central Government to circulate a letter to eminent jurists to elicit their expert opinion on the issues involved. In this respect three questions were formulated which are as follows. First, should a largest single party be summoned to form the government irrespective of the fact that it does not command a majority support? Second, if the party in power has failed to secure a majority at the pools should it be called to form the government? Third, whether non-counting of Intendments supports, in the determination of strength of different parties, was proper?

27 Sri Prakash, State Governors in India, p. 35-36.
29 Subhas Kashyap, Politics of Power, Appendix 1, p. 630.
Regarding the first question the jurists, in one voice, made a dig at the largest single party principle. Gajedragadkar was of the opinion that in a situation where no party has emerged in a majority Governor’s satisfaction, as to which party should be put in power, is a important factor but putting the largest single party in power and then asking its leaders to seek a vote of confidence from the House is highly improper. He said, “under the present conditions in India, the appointment of leader of such a party as Chief Minister gives him an unfair advantage in securing the support of Independent members. Such support should be secured by the party in questions before the leader is invited to be the Chief Minister.”

He also said the command of majority support by whosoever is invited to form the Government is the prerequisite which cannot be relaxed in any circumstances, whatsoever. He also disapproved the idea of inviting the leader of the largest single party if it had been the ruling party because doing as such would be against the mandate of the people. A.K. Sarkar, however, does not support the view that the ruling party, if loses majority and is reduced to the position of a largest single party, should be thrown out of reckoning for power. He holds the view that whosoever satisfies the Governor of being in command of majority support, should be installed in power. He stands opposed to the view that the largest single party, simply by virtue of emerging as the largest party, without being supported by majority of the members of the house, should be put in power because the only test of a party or combination getting in power is majority support. According to him, “it would be absurd and futile and also against basic Constitutional concepts. It may be said that the Governor might hope that the largest single party, after being put in office, might acquire outside support and thereby command the majority. If it can acquire support after being put in office, why can it not do before.” Mehr Chand Mahajan, stand opposed to appointing a largest single party government in violation of the mandate of the people. He observes, “There is a sound constitutional convention that the mandate of the electros should be respected and if a political party in power has failed to obtain an absolute majority, the Governor should respect the mandate of the people and call the leader of the Opposition to form the government, provided the Opposition or a coalition of the

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30 Ibid., p. 623.
31 Ibid.
32 Ibid., p. 624.
33 Ibid., p.630.
Opposition parties are in such a number as to be able to form a stable government.”  

The opinion of the Jurists is against any discrimination being made between a coalition coming into existence before the elections and the other coming afterwards. M.C. Setalvad has observed, “The Governor must, normally, call upon the leader of the party or group commanding a majority to form a government. It would be immaterial whether the party is single party, or a coalition, whether formed before or after the elections.”  

H.M. Seervai also holds a similar opinion. He says, “It may, however, be that the possible coalition is announced after the election and not before. Even so, if the coalition commands the majority it must be called to form the government because it commands a majority.”

As regards to the third question as to whether the Independents support to whichever side they extends, should be counted. Gajendragadkar has said, “… It would be unreasonable not to take into account the fact that after being elected as Independent members, they choose to join one party or another. If press reports are to be believed, Mr. Sampoornanand, the then Governor of Rajasthan declined to take into consideration the fact that some Independent members wanted to join the Non-Congress groups, That, to my mind, was neither fair nor proper.

Thus, from the cases cited above the patent fact that streaks out from the shroud of secrecy is that the ruling party at the centre had exploited the Governor’s office for petty political ends. From time to time, the role of Governor has made Indian citizens feel that they are living in a very fragile democratic realm which can be shaken effortlessly by the Governor. It is a well known fact that the Governors have played a dictatorial role many a time and transcended all the democratic limits. Different political parties have misused the role of the Governor at different times for their partisan interests, thus proving that Indian society has yet to achieve the state of political modernisation and political culture.

It is not out of the place to mention here that such of the Governors, who, in appreciation of their neutrality, refused to fall in nexus with the ruling party at the centre and acted independently earned the umbrage of the central Government and

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34 Ibid.
were sought to be dispensed with. The case of the Governor of Bihar, Anathswamy Iyyangar, is in point. In the state, after the defection of B.P. Mandal and few of his followers from the SVD, the Congress party, which was behind the toppling exercise, came to put pressure on the Governor to dismissive Government which he refused to do.\textsuperscript{39} Then they came to insist upon the immediate summoning of the Assembly but that demand was also turned down.\textsuperscript{40} The Governor, for the reasons that he did not yield to the political expediency of the Congress party and projected an impartial image, was not allowed a second term despite the state Governments recommendation that he should be given a second term. Not only Iyyengar was refused a second term rather N.N. Kanoongo, a front rank and staunch Congress man and former Union Minister, was appointed much against the wishes of the state government.\textsuperscript{41} Mr. Iyyengar on the eve of his retirement said, “Governor must keep himself behind the scene projecting only the image of a constitutional government” and “that if we started giving credit to the Governor for their actions, the time is not far off when there would be a dictatorship at the centre.”\textsuperscript{42}

In reply to the criticism made against him by some Congress leaders about the way he acted, with his feelings outraged he said, “his only folly was that he did not act as other Governors were doing. If he had acted as other Governors did, he would have been allowed to continue in his present post for five to fifteen years.\textsuperscript{43}

Jennings has stated the principle thus, “Where no party obtained a majority at general elections there are two possibilities only, the formation of a coalition Government or the formation of a minority Government with Opposition support; for another dissolution is not practicable.”\textsuperscript{44} It means that in the first instance, in a situation as such, the coalition, if it exists, should be set in power. If it does not exist, a largest single party government can be set up on the condition that it comes to command a majority support. To set up a largest single party government without it being in command of a majority support does not square up with the responsible system. Similarly it is alien to the theory and practice of the parliamentary system to discriminate between a coalition formed earlier than elections and one coming into

\textsuperscript{39} Subhas Kashyap, Politics of Power, p.317-18.
\textsuperscript{40} Ibid, p. 319.
\textsuperscript{41} Ibid.
\textsuperscript{42} The Hindu, December 2, 1967, p. 10.
\textsuperscript{43} Ibid.
\textsuperscript{44} Jennings, Cabinet Government, p. 30-31
existence after it. What is material is the command of a majority support and to adopt any other norm is destructive of the parliamentary system. Expressing his opinion on this point A.K. Sarkar said, “If (it largest single party government) can acquire support after being put in office, why can it not do so before? That answer must be that once in office if can offer inducements for the acquisition of support which it could not before. A procedure which opens the door to such states of affairs would be destructive of healthy and clean democracy. The majority should come into existence as a result of considerations of policy by which the country is to be governed and not to be brought about by power politics or even less honourable considerations.”

It did not behove the Governor to take a cover of the politics of defection has reached appalling height and put on the highest niches of Indian democracy, completely subduing the democratic clan, only because the Governors had sought to encourage it by setting up largest single party governments.

As to the view held by the Governor that the coalition inspite of commanding a majority support did not have a claim of being put in power for the simple reason that it had come into existence only after the elections and not before it, was a perverse and tainted decision because command of majority support and nothing else, according to parliamentary principles, could be the basis of setting up the government. H.M. Seervai an eminent jurist, holds the opinion as follows, “It may, however, be that the possible coalition is announced after the elections and not before. Even so if the coalition commands the majority it must be called upon to form the government because it commands a majority.” M.C. Setalyad also holds a similar opinion. He says, “There have been a number of instances in England where coalition governments have been formed consisting of two or more groups. The combinations may exist at the time of election nor may be formed later.”

The Committee of Governors, with regard to the appointment of government, has recommended, “The leader of the largest single party in the Legislative Assembly may be invited to head a government if he is able to satisfy the Governor that, in combination with other parties or with the support of other members in the Assembly, he is in a position to command a majority in the Legislature. He has however, no absolute right as the leader of the largest single party or groups to claim that he

45 Subhas Kashyap, Politics of Power, Appendix 1, p. 630.
46 Ibid., Appendix 1, p. 636.
47 Ibid., p. 628.
should be entrusted with the task of forming the government to the exclusion of others. The relevant test is not the size of the party but its ability to command the support of the majority in the Legislature. 48

The constitutional crisis did not, however, come to an end with this step. To test whether the new Ministry enjoyed majority support in the house, the Governor convened the House on the advice of the Chief Minister, but the Speaker adjourned the House when it met. Ultimately, President's rule had to be imposed in West Bengal.

The Governor's action in dismissing the UF Ministry naturally raised a hue and cry in the country. Opinions about its constitutional propriety were divided. The Central House Minister asserted in both Houses of Parliament. On November 30, 1967, that it was within the constitutional competence of the Governor to dissolve the Council of the Assembly. He also maintained that be Governor had acted in his discretion and not under any directive from the Centre. This statement was approved by both Houses of Parliament on December 4, 1967.

From a purely legalistic angle, on February 6, 1968, the Calcutta High Court dismissed a petition for a writ of quo warranto against the new Chief Minister Ghosh on the ground that under Art 164(I), the Ministers hold office during the Governor's pleasure and no restriction or condition has been imposed upon the exercise of the Governors’ pleasure. The Governor has "an absolute, exclusive, unrestricted and unquestionable discretionary power to dismiss a minister and appoint a new Council of Ministers". The Court asserted that the "withdrawal of the pleasure by the Governor discretion by the Governor in withdrawing the pleasure cannot be called in question in this (writ) proceeding." 49

The High Court clarified that the provision in Article 164(2) that the Ministers shall be a collectively responsible to the Legislature does not fetter the Governor's pleasure answerable to the assembly and a majority in the Assembly cant at any time express its want of confidence in the Council of Ministers. But this is as far as the Assembly can go, it has no power to remove or dismiss a Ministry. If a Ministry does not vacate office, after the passage of a vote of no confidence against it by the Assembly, it is then for the Governor to withdraw his pleasure

48 Ibid.
during which the Ministry holds office and the discretion of the Governor is “absolute unrestricted”.

This legislate position has been confirmed by other High courts that the Governor has discretionary power to dismiss the Chief Minister. Thus, the Gauhati High Court has held that under Article 164(1), Ministers hold office during the pleasure of the Governor. “The exercise of the pleasure has not been fettered by any condition or construction or restriction.” The Governor as the appointing authority can withdraw his pleasure and dismiss a Chief Minister. The power to appoint or dismiss the Chief Minister or the Ministry are exclusive pleasure-cum-discretion of the Governor. The Constitution lays down no procedure or imposes no fetter as regards the dismissal of a Chief Minister hold office, is “absolute, unrestricted and unfettered”. Withdrawal of pleasure is entirely in the discretion of the Governor and the Governor alone. The Assembly can only express its want of confidence in the ministry; the assembly cannot go further than that; it has no power to remove or dismiss the ministry. “The power of removal or withdrawal of pleasure is entirely and exclusively that of the Governor.” This is an area which is prohibited to the court because of Article 163(2).

In Karopoori Thakur v. Abdul Ghafoor, the Patna High Court refused to issue a writ against the Chief Minister asking him to resign because he had lost the confidence of the House. The petition was filed by a few members of the House. The High Court said that the Council of Ministers was responsible to the whole House and not to a few members only. Also, there is no rule of law that a Ministry must resign on being defeated in the House. That is a political matter and the Governor has power to dismiss the Ministry.

The Bombay High court has come to a similar conclusion. The Governor of Goa dismissed the incumbent Chief Minister (P) and appointed (W) as the new Chief Minister. The ex-Chief Minister P challenged the Governor's order through a writ petition alleging mala fides on the part of the Governor. The High Court refused to interfere. Dismissing the writ petition as not maintainable. The High Court said that the matter of dismissing and appointing the Chief Minister is one which the

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51 AIR 1975 Part I.
Governor discharges in his own sole discretion and without the aid and advice of the Council of Ministers and is, therefore, not open to judicial review. Governor's discretion is restricted only by the paramount consideration of command of majority in the House. With regard to the action pertaining to the Governor's sole discretion, his immunity under Article 361 is absolute and beyond the writ jurisdiction of the Court. The Governor is not answerable to the court even in respect of a charge of male fides in connection with his official acts. The court pointed out that as the Governor holds office during the pleasure of the President (Article 156), the President may conceivably go into any allegation of mala fides against the Governor. An effective check is that the Ministry will fall if it fails to command a majority in the State Legislative Assembly.

This, however, is the legalistic position. In practice, the Governor must keep certain matters in view while exercising the power, the basic consideration being that the Governor is to use his powers to promote, not to thwart, responsible government in the state.

The Bengal episode can hardly be regarded as healthy in a parliamentary system as it creates an unfortunate precedent that the Governor may dismiss a Ministry in his discretion. Such episode ought to be avoided in the interest of smooth working of the Constitution. It is thus necessary to evolve certain conventions in this respect. The crisis would have been averted had the Ministry resigned, or called an early session of the House to test its strength as was suggested by the Governor. Had the Ministry followed any of these courses, the democratic tradition and values would have been strengthened in the country. Undoubtedly, it is unconstitutional for a Ministry to remain in office after losing majority support, and it is under an obligation to remove the cloud of doubt on its support in the House by seeking its verdict at the earliest. But the important question still remains whether the Governor should invoke his discretion in such a situation or bide his time till the Assembly meets and decides the issue one way or other.

On plausible view may be that it is unconstitutional for the Governor to keep a Ministry in office about which he feels sure that it no longer enjoys majority support, and he is under an obligation to dismiss it and put another Ministry in office instead. The Governors Committee has asserted that "where the Governor is satisfied, by whatever process or means, that the Ministry no longer enjoys majority
support, he should ask the Chief Minister to face the Assembly and prove his majority within the shortest possible time. If the Chief Minister shirks this primary responsibility and fails to comply, the Governor would be in duty bound to initiate steps to form an alternative Ministry. A Chief Minister's refusal to test his strength on the floor of the Assembly can well be interpreted as prima facie proof of his no longer enjoying the confidence of the Legislature. If then, an alternative Ministry can be formed which, in the Governor's view, is able to command a majority in the Assembly, he must dismiss the Ministry in power and install the alternative Ministry in office."

But this course of action is full of many hazards and pitfalls and places a heavy responsibility on the Governor. Whenever a Governor takes any such action, he is bound to become the centre of a big political controversy. His action may be characterized as politically motivated. He may make an error of judgment. Not only the Governor, but the Central Government also is drawn into the vortex of political controversy. If the newly installed Ministry fails to secure majority support in the House, the Governor's action would be politically indefensible, and he may have no other choice but to resign his office. Such an action on the Governor's part may also encourage defections from one party to another as the defectors may hope to become ministers in the new Ministry. In the final analysis, it is the House which is the ultimate arbiter on the question of confidence of majority support of a Ministry and it is there that the Governor's action has to be vindicated.

In the Bengal case, when fresh elections were held, the UF won a majority and again formed the Ministry and this led to the Governor's resignation from office. A Governor should, therefore, act with extreme care and circumspection in such a crucial matter. All said and done, the soundest democratic convention in this regain would appear to be that, but for the extreme and exceptional situations, the Governor may not use his discretion and wait till the Assembly gives its verdict. At times, even minority Ministry may remain in office with the support or sufferance, of some groups in the House. Lastly, there cannot be a gap of more than six months between the two sessions of the Legislature and, therefore, the fate of the Ministry in the House cannot remain in suspense for longer than six months in any case.
The Administrative Reforms Commission has suggested that when a question arises as to whether the Council of Ministers enjoys majority support in the Assembly, the Governor may suo motu summon the Assembly to obtain the verdict if the Chief Minister does not advise him to convene the Assembly. The Central Government has refused to endorse this suggestion.53

On February 21, 1998, the U.P. Governor dismissed the Kalyan Singh Government and installed in office another person (Jagdambika Pal) as the Chief Minister. The Governor's plea was that the Kalyan Singh Ministry had lost its majority in the Legislative Assembly because of defection of some of its supporters. There was no vote of no-confidence passed against the Kalyan Singh Government nor was the Government asked to go to the Assembly to seek a vote of confidence. The action of the Governor was widely criticized as amounting to trampling upon democratic conventions and the Governor misusing his position for partisan ends.

A writ petition was filed in the Allahabad High Court on February 23, 98, challenging the action of the Governor. Following Bommai. The Allahabad High Court overturned the Governor's action, restored the Kalyan Singh Government and left it open to the Governor to convene a session of the State Legislative Assembly to prove its majority.54 Then, the newly installed Chief Ministry approached the Supreme Court. The Court directed that a special session of the Assembly be summoned which would have the only agenda to have a composite floor test between the two contending parties in majority in the House.55 The floor test was held as directed by the Supreme Court and Kalyan Singh won the day.

T.T. Krishnamachari had told the Constituent Assembly that Governor was not an agent of the Central Government,56 yet what came to confront us was that he was no more than an agent of them. The Governor as an agent on the Central Government would not have wrought much damage if the Governor had not come vested with unlimited discretionary powers. Some members, who did not have an

53 Report on Centre-State Relationship, 28.
56 T.T.K. said, “I would atonce disclaim all ideas, that we in this House want the future Governors to be nominated by the President to be in any sense an agent of the central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of government we envisage for the future” CAD, Vol. VIII, p. 460.
axe to grind, saw a potential danger in the proposal and, took up cudgels against it and insisted that his discretionary powers should be catalogued and specifically defined in unequivocal terms. Looking at the validity of the objection Dr. Ambedkar assured the agitated members that he would pin-point and specify the discretionary powers at an opportune time because at that stage he did not exactly know as to what those powers should be. At that stage he only hinted at the nature of powers Governor would be invested with. He said, “Governors will reserve certain things in order to give the President the opportunity to see that the rules, under which the provincial governments are supposed to act according to the constitution or in subordination to the central Government, are observed.” At it H.V. Kamath asked, “is the general conferment of this power is equal to the specific occasions when he will exercise his discretion.

Dr. Ambedkar appreciating the view replied that he was prepared to accept the amendment if he knew as to what were those Articles where the Governor should be given discretionary powers. He, however, promised to revise the provision in the light of the above at the proper time. Inspite of it the assurance was not fulfilled and the provision, in terms it was originally conceived, went on the statute-book which opened the flood gate of subversion of the constitution.

The process of perversion was made to culminate in the provision of Article 361 which granted immunity to Governor. It is fantastic that he was vested with unlimited discretionary powers yet the necessary guarantee, against mala fide and prejudicial exercise of powers, particularly, when he was appointed by the Central Government and conceived to be an agent of them, in terms of judicial review, was not imposed. In England the King enjoys immunity for the reason that he can do no wrong whereas in the Indian constitutional system the Governor, inspite of being vested with unlimited discretionary powers, has not been made responsible to any authority except the central Government, which being a party government, is apt to promote him to take mala fide decisions to subserve the convenience of them rather than allow him act from the position of a constitutional head of state. Thus, the immunity enjoyed by the Governor made him to exercise his pre-rogatives in

58 Ibid.
59 Ibid.
60 Ibid.
violation of the recognized parliamentary norms because in doing so he could stand in good stead to the expediency of them whose agent he was.

It becomes clear from the above-mentioned decisions of the High Courts and the Supreme Court that the Governor's discretion to dismiss the Chief Minister is exercisable only if the Chief Minister loses his majority in the Assembly and this has to be ascertained only on the floor of the House and not in the chambers of the Governor. It is very clear now that the Governor's pleasure is to be exercised for promotion, and not for supplanting, the democratic parliamentary system. The Governor ought not to exercise his pleasure at his own whim and fancy but only after a floor test in the Assembly.

Thus, the Governor's discretion to dismiss the Ministry has been effectively restricted by judicial pronouncements.

In the year 2005, the Governor of Jharkhand was ordered by the Supreme Court for holding a floor test to determine which party/political alliance commanded a majority in Jharkhand. The Court made it clear that the discretionary power under Article 164(1) of the Governor is subject to judicial review. And the exercise of such power can constitutionally be insured by conducting floor test. Thus, the democratic principle propounded in Bommai case was again sounded in this case and so as with Arjun Munda v. Governor of Jharkhand.

In Rameshwar Prasad and oths v. Union of India, Supreme Court held that “It is a unique case. Earlier cases that came up before this Court were those where the dissolutions of Assemblies were ordered on the ground that the parties in power had lost the confidence of the House. The present case is of its own kind where before even the first meeting of the Legislative Assembly, its dissolution has been ordered on the ground that attempts are being made to cobble a majority by illegal means and lay claim to form the Government in the State and if these attempts continue, it would amount to tampering with constitutional provisions.”

It was further observed in the above case that like in Bommai’s case, there is no material whatsoever except the ipse dixit of the Governor. The action which results in preventing a political party from staking claim to form a Government after

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62 (2005) 3 SCC 399
63 2006(2) SCC, p. 1.
election, on such fanciful assumptions, if allowed to stand, would be destructive of the democratic fabric. It is one thing to come to the conclusion that the majority staking claim to form the Government, would not be able to provide stable Government to the State but it is altogether different thing to say that they have garnered majority by illegal means and, therefore, their claim to form the Government cannot be accepted. In the latter case, the matter may have to be left to the wisdom and will of the people, either in the same House it being taken up by the opposition or left to be determined by the people in the elections to follow. Without highly cogent material, it would be wholly irrational for constitutional authority to deny the claim made by a majority to form the Government only on the ground that the majority has been obtained by offering allurements and bribe which deals have taken place in the cover of darkness but his undisclosed sources have confirmed such deals. The extra-ordinary emergency power of recommending dissolution of a Legislative Assembly is not a matter of course to be resorted to for good governance or cleansing of the politics for the stated reasons without any authentic material. These are the matters better left to the wisdom of others including opposition and electorate. It was also contended that the present is not a case of undue haste. The Governor was concerned to see the trend and could legitimately come to the conclusion that ultimately, people would decide whether there was an 'ideological realignment", then there verdict will prevail and the such realigned group would win elections, to be held as a consequence of dissolution. It is urged that given a choice between going back to the electorate and accepting a majority obtained improperly, only the former is the real alternative. The proposition is too broad and wide to merit acceptance. Acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dissolutions and has far reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignments and realignments on the ground of same being unethical, plunging the country or the State to another election. This aspect assumes great significance in situation of fractured verdicts and in the formation of coalition Governments. If, after polls two or more parties come together, it may be difficult to deny their claim of majority on the stated ground of such illegality. These are the aspects better left to be determined by the political parties which, of course, must set healthy and ethical standards for themselves, but, in any case, the ultimate judgment has to be left to the electorate and the legislature
comprising also of members of opposition.\cite{64}

Rameshwar Prasad case\cite{65} has reiterated the principles enunciated in State of Rajasthan\cite{66} and Bommai case\cite{67} with more constitutional conscience. The Court made it clear that Article 356 contains an emergency power and this emergency power should be used not as normal power. “Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355”. By referring Articles 74(1) and (2), the Court held that due to Bommai case\cite{68} Article 74(2) is not a bar against scrutiny of materials on the basis of which the President has issued Proclamation under Article 356. This approach shows objectivity even in subjectivity. Constitutionalism or constitutional system of Government abhors absolutism—it is premised on the rule of law by which subjective satisfaction is substituted by objectivity, provided for by provision of the Constitution itself.\cite{69}

Recently, THE Governor of Karnataka, H.R. Bhardwaj, put the Government of India in a most embarrassing position by recommending imposition of President's Rule in the State. In the process, he exposed, once again, his unfitness for the office he holds.

The rejection of his recommendation means that his prestige, none too high at any time, will suffer a terrible blow. Had the recommendation been accepted, it would have landed not only the Government of India but also the President in a most embarrassing situation in the Supreme Court. The court would be entitled to examine the material on the basis of which the Council of Ministers advised the President, and the onus of justifying the reckless action would not be on the petitioners but on the Union of India.

\begin{thebibliography}{99}

\bibitem{64} Ibid.
\bibitem{66} State of Rajasthan v. Union of India, (1977) 3 SCC 592.
\bibitem{68} Ibid.
\bibitem{69} Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1 at pp. 94 & 96, paras 96 & 100.
\end{thebibliography}
d) The Role of Governor in appointment and Dismissal of Ministers:

i) Appointment:

According to Article 164 (1) "the Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of Chief Minister and the Ministers hold office during the pleasure of the Governor.

"Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister incharge of tribal welfare of the Scheduled Castes and backward classes or any other work.

"(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

"(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.  

"(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the Slate shall at the expiration of that period cease to be a Minister

"(5) The salaries and allowances of Minister shall be such as the Legislature may from time to time by law determine and, until the legislature of the State so determines, shall be as specified in the Second Schedule."

This Article shows that the Ministers are to be appointed only on the recommendation of the Chief Minister and the expression "shall" in clause (1) of Article 164 is mandatory and not directive. It is not necessary for a minister to a member of either House of the State Legislature at the time of his appointment as a Minister. In case if any person appointed as a minister of the Slate Legislature, who is not a member of the State Legislature, he will cease to be Minister after the expiration of six months unless he becomes the member of the State Legislature within this period.

70 I, A.B. swear in the name of God that I will hear true faith and allegiance to the Constitution of India by law established, (that I will uphold the sovereignty and integrity of India) that I will faithfully and conscientiously discharge my duties as a Minister for the State of... and that I will do right to all manner of people in accordance with the Constitution and law without fear or favour, affection or ill will"

71 "The Constitution says there “shall be a Council of Ministers”. Normal grammatical meaning of "shall" is mandatory”. J. Hedge, Statesman, February 16, 1971, p.6.
On February 21, 1998, the U.P. Governor dismissed the Kalyan Singh Government and installed in office another person (Jagdambika Pal) as the Chief Minister. The Governor's plea was that the Kalyan Singh Ministry had lost its majority in the Legislative Assembly because of defection of some of its supporters. There was no vote of no-confidence passed against the Kalyan Singh Government nor was the Government asked to go to the Assembly to seek a vote of confidence. The action of the Governor was widely criticized as amounting to trampling upon democratic conventions and the Governor misusing his position for partisan ends.

A writ petition was filed in the Allahabad High Court on February 23, 98, challenging the action of the Governor. Following Bommai. The Allahabad High Court overturned the Governor's action, restored the Kalyan Singh Government and left it open to the Governor to convene a session of the State Legislative Assembly to prove its majority.\(^{72}\) Then, the newly installed Chief Ministry approached the Supreme Court. The Court directed that a special session of the Assembly be summoned which would have the only agenda to have a composite floor test between the two contending panics in order to ascertain who out of the two competing claimants of Chief Ministership enjoys a majority in the House.\(^{73}\) The floor test was held as directed by the Supreme Court and Kalyan Singh won the day.

It becomes clear from the above-mentioned decisions of the High Courts and the Supreme Court that the Governor's discretion to dismiss the Chief Minister is exercisable only if the Chief Minister loses his majority in the Assembly and this has to be ascertained only on the floor of the House and not in the chambers of the Governor. It is very clear now that the Governor's pleasure is to be exercised for promotion, and not for supplanting, the democratic parliamentary system. The Governor ought not to exercise his pleasure at his own whim and fancy but only after a floor test in the Assembly. Thus, the Governor's discretion to dismiss the Ministry has been effectively restricted by judicial pronouncements.

About the appointment of Ministers, the question arises, how far is it possible for the Governor to influence the Chief Minister in his appointment of other

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\(^{72}\) The Hindu int’l Ed. Dated February, 28, 98, p.1.

Ministers. Ordinary, when one of the political parties had a clear cut majority and a clearly recognized leader, the Governor will have no say, when the Governor and the party in power belong to different political parties unless, however, the Chief Minister allows him to suggest some names.\textsuperscript{74} If the Governor and Chief Minister belong to the same political party, then it will, to a great extent, depend upon the personal equation of the Governor with the Chief Minister.

If none of the political parties had a clear cut majority in the Assembly and hostile coalition comes into power, the Governor may not in a position to influence appointment of Ministers for the ministers are usually the nominees of the political parties. But if there is no pre-existing coalition and none of the political parties had a clear cut majority in the Governor gets a chance to assessing the claims and counter claims of various contenders for the office of the Chief Minister. While doing so that Governor may have some influence on the appointment of the ministers. In this sense in a very rare and exceptional circumstances Governor may play a negative role.

At the state of administering oath to the ministers the Governor plays a very constitutional important role. When Governor is convinced that the further expansion of the Ministry will make the size of the ministry ridiculously large, may refuse to administer oath of office and secrecy as a minister to a person recommended by the Chief Minister. Big size of the Ministry was recommended by the Chief Minister. Big site of Inc Ministry was considered as a misuse of the Constitutional powers according to Shri B.N. Chakravarti, the former Governor of Haryana and there may be some justification for it.\textsuperscript{75}

\textbf{ii) Dismissal of a Minister:}

A Minister after his appointment holds office during the pleasure of the Governor. According to the British practice "not only is the Prime Minister sun, around whom the planets revolve, he has also got the power of designating who the planets should be and then to change the interplanetary position of the various planets or to drop them out of the solar system."\textsuperscript{76} In England “If the Prime Minister finds a particular minister unsuitable for

\textsuperscript{74} For example, Annadurai, when he formed his first ever DMR. Ministry in Madras. in 1967, discussed his list of Ministers with Ujjal Singh, then their Governor and accepted some of the suggestions made by him in this respect. Journal of the Society for Study of State Governments. Vol. IV, Nos.3&4, July-December 1971, p.354.


\textsuperscript{76} J.L. Kapur, former Judge of the Supreme Court, National Herald, July 20, 1970, p.6.
the task for which he is appointed or is a person who is likely to rock the boat, it is the prerogative of the Prime Minister to ask that Minister to resign."\(^77\)

But what is the position in India. According to the Punjab High Court “it is open to the Governor under the Constitution to dismiss an individual minister at his pleasure."\(^78\) Ordinarily in India, the pleasure of the Chief Minister for when the Chief Minister asks a particular Minister to resign\(^79\) and if he does not do so, then he can advice the Governor to dismiss him. But this practice may not always be followed in all the cases and there is an example where the Governor has refused to dismiss some of the Ministers on the recommendation of the Chief Minister. This happened in U.P. in Charan Singh’s case. Charan Singh formed the Ministry after the fall of the Ministry of C.B. Gupta because of the split of the Congress. It was a Single party minority government and with coalition of BKD came into existence. But after some time there were differences between the WM and the Congress and as a result there of Charan Singh asked the Ministers of Congress party to resign but they refused to do so.\(^80\) Thereupon Charan Singh advised the Governor to relieve them and to handover, their departments to him.\(^81\) The Governor accepted the advice of transferring the departments or these Ministers to the Chief Minister but did not relieve the Ministers of their officials and allowed them to stay as Ministers without portfolio.\(^82\) This instance has no precedent\(^83\) But the question is: Should it become a precedent for the future?

The constitutional provisions also do not warrant any interpretation of than what has been the practice. The Constitution imposes a collective responsibility upon the ministers towards the legislature and collective responsibility is assured by the enforcement of two principles: first, no person is nominated to the Council except on the advice of the Chief Minister, secondly, no person is retained as a member of the Council if the Chief Minister demands his dismissal.\(^84\)

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\(^77\) Ibid., July 21, 1970, p.5.


\(^79\) U.P. Governor, G D. Tapax accepted resignations of 13 Ministers on the advice of R.N. Yadav, the then Chief Minister on 11 Feb,1979.


\(^81\) Ibid.

\(^82\) Ibid.

\(^83\) M.P. Singh, Governors’ Power to dismiss Ministers or Council of Ministers — An Imperial Study, 13 JILI 626.

\(^84\) Dr. B.R. Ambedkar cited in Kaul and Shokdher, Practice and procedure of Parliament (1968) p.537. A similar view has been expressed by Dr. V.N. Shukla, 2 J.C.P.S.No. 58, (1968).
Therefore, the pleasure of the Governor is to be exercised in the light of the collective responsibility of the Ministers and not “exclusively in his discretion”. The position being what it is in our constitution, the pleasure of the Governor to dismiss ministers cannot be interpreted otherwise than as the pleasure of the Chief Minister.

Very recently in Punjab, Minister of State for forests, Harbans Lal was dismissed by the Governor on the advice of Chief Minister Capt. Amarinder Singh.

e) The Role of Governor in Summoning the State Legislature:

According to Article 174(1): "The Governor shall from time to time summon the House or reach House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and date appointed for its first sitting in the next session."

Whether both the Houses of Legislature are to be summoned simultaneously or separately? The Governor has discretion in this respect for Article 174(1) of the Constitution empowers him to summon each House of the Legislature of the State from "time to time" and under Article 175(1) of the Constitution the Governor may address “either House of the Legislature of the State or both Houses assembled together and may for that purpose require the attendance of the members.” Moreover, the explanatory note given in Article 213(2) clearly says that both the Houses can be summoned on different dates. But Article 176(1) makes it mandatory on the part of the Governor to address both the Houses assembled together at the commencement of "the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year." According to the decision of Calcutta, Orissa and Mysore High Courts session cannot be commenced without the address of the Governor. Therefore, it is clear that the Governor have no alternative but to summon both the Houses of the State Legislature simultaneously for there is no provision in the Constitution for a

85 The opinion expressed in Mahavir Prasad V. PC Ghosh, A.I.R. 1969 Col 198 seems to be wrong and cannot be followed as law. For a discussion of that opinion, see KC. Joshi the Governors’ power to dismiss the Ministers, 12 J.I.L.I.127.
86 The A.R. Committee has made also a similar recommendation in its report on the State administration at p.11.
87 Syed Abdul vs. West Bengal Legislative Assembly, AIR 1956 Calcutta. 369.
88 Sardhakar v. Orissa Legislative Assembly. AIR 1952, Orissa 234.
separate Governor's address to each House of the State Legislature.

In respect of summoning the Houses or House of the Legislature of the State, the role of the Governor is controversial one. One school of thought says that Governor cannot summon the State Legislature without the advice of the Chief Minister. Other school of thought says that Governor has discretion to summon the legislature or summon the legislature without the advice of the Chief Minister.

There are certain functions which have been expressly and specifically vested in the President and the Governor by various provisions of the Constitution. They cannot be delegated to any other person. D.D. Basu has stated that "the result is that though all the executive powers of the union is also vested in the President by Article 53(1), a distinction is to be maintained which are vested in the President by Article 53(c) generally, and the other provisions of the Constitution such as articles 123, 124, 217, 268-79, 309, 310, proviso(c) to Article 311(2), 338, 340, 344, 356, 360, which specifically vested particular functions in the President. The latter powers cannot, according to the Supreme Court, be delegated by the President to other person or authority, but must be exercised by the resident personally."90

Since article 85(1) of the Constitution which empowers the President to summon each house of Parliament, belongs to the category of the articles mentioned above and article 164(1) is a carbon copy of article 85(1), therefore, it is a power given to the Governor, which he can exercise independently, at least in extraordinary circumstances. This contention is further supported by the fact that the power of summoning the State Legislature has been given by the same article which has given the Governor, the power of proroguing and dissolution and that too in the same unambiguous language.

f) **The Role of Governor in proroguing the State Legislature:**

Besides summoning the State Legislature, the Governor has the power to prorogue the Legislative Assembly under article 174(2)(a). Regarding the power of prorogue, the question arises whether the Governor should exercise his individual judgement or he should always act on the advice of the Chief Minister while exercising this power. On this point there are two schools of thought, according to the first school of thought, the Governor should always act on the advice of the

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Chief Minister but according to the other school the Governor may in exceptional circumstances exercise his individual judgement. For example, K.C. Reddy, B. Gopala Reddy, Y.B. Chavan, Govinda Menon and A.K. Sen, were of the opinion that the Governor should exercise this power on the advice of the Chief Ministers. The Madras High Court also agrees with this view. But persons like N.G. Ranna, N.C. Chatterjee, Nath Pai, Acharya Kripalani and C.K. Dhaptary were not agree with this view. Ordinarily, the power to prorogue the House should be exercised by the Governor on the advice of the Chief Minister provided he had a majority in the Legislative Assembly. But the problems arises when the Chief Minister Advices the Governor to prorogue the House in order to prevent a vow of no confidence against himself or against the speaker on the floor of the House. Whenever, such a situation develops, how far will it be constitutionally proper on the part of the Governor to accept the advice of the Chief Minister to prorogue the House in the middle of the session. K.C. Reddy, the Governor of Madhya Pradesh defended his action on the ground that “he was sure that under the Constitution, he was required to accept the advice of the Chief Minister. This was the practice in UK and in many other democracies.” He said that in UK even when a defeated Prime Minister had asked for dissolution of Parliament, almost on all occasions the advice had been accepted by the Monarch."

The contention that the Governor is to go by the advice of the Chief Minster in proroguing the House cannot be accepted in toto. The Governor can exercise his own discretion in this respect at least in certain extra-ordinary situations and this position has been accepted even by the Governor's Committee itself, when it says that "as regards prorogation, the Governor should normally act on the advice of his Council of Ministers. But if a Chief Minister advises prorogation of the Legislative Assembly when a notice of motion of no confidence is pending, the Governor should first satisfy himself that notice of no confidence motion is "not frivolous and is a genuine exercise of the Parliamentary right of an opposition to challenge the Government

94 Ibid., Col. 13437.
95 Ibid.
96 Ibid.
majority.” 97 This contention is supported by the Mysore High Court which has held that "the power of proroguing a session of the Legislative is exclusively that of the Governor in whom rests the power to summon the same." 98

Supreme Court agrees with this view when it says that "Article 174(2)(3) which enable Governor to prorogue the legislature does not indicate any restriction on this power." 99

g) The Role of Governor in dissolving the Assembly:-

The Supreme Court has imposed curbs on the power to dismiss governments in the states. The abuse has ended. But the reign of abusive governors has not. It will not so long as the present constitutional scheme lingers without effective reform. The court’s recent ruling helps governors who face the sack when the regime at the centre changes. They do not help chief ministers harassed by governors appointed to do that job.100

The institution of the Governor was misused to a great extent especially after 1967 to gain political mileage because of two reasons: (a) there was one-party dominance at the Centre, and (b) the lack of political power and awareness on the part of the Opposition.101

The contemporary period has witnessed a shift in the political party system. It has moved from one-party dominance to a multiparty system, thanks to the growth of regional parties. The trend of the multiparty system, which we have been noticing today in Indian society, is making political institutions more and more democratised. This process of democratisation is also making its impact upon the role of the Governor. The multiparty system has replaced one-party dominance; as a result the party, which is in the power, cannot afford to use the Governor as its instrument. If any party tries to misuse the institution of the Governor, the Opposition parties put pressure upon the government to reverse the undemocratic and dictatorial decision.102

98 Siddaveerappa & others vs. The State of Mysore, AIR 1971, Mysore, 200.
100 ‘Role of Governor’ by ‘A.G. Noorani’ on June 5, 2010 at “DAWN.COM”.
101 Ibid.
102 Ibid.
Though India has suffered many setbacks from the federal point of view, it has been quite successful in reaching consensus and settlement. This has been possible because of its capacity to develop harmonious conditions of federal polity. So, the question arises: what are the means which help us reach an agreement? The answer is: a federal model of government and the human actors who make this model a success with the help of political parties which are the backbone of democratic societies-they are the main vehicle of representation of the people.\textsuperscript{103}

Direct democracy is not feasible in modern nation-states because of their big size and complex social arrangements. There must be an agency to make decisions on the behalf of the people. Political parties shoulder the responsibility to perform this task. So the political parties play an absolutely vital role in making democracy a success and they are the lifeblood for democratic societies; without them no one can even think of establishing a democratic society.\textsuperscript{104}

In the recent past Indian society has seen a sea-change in the nature of the party system. It has shifted from one-party dominance to a multi-party system. The year 1989 was a landmark in the Indian political system because the people of India witnessed for the first time the introduction of a multi-party system. The Indian citizens kept this trend alive in 1996 when the United Front assumed power at the Centre. Thereafter the BJP formed the government at the Centre with the help of its regional allies in 1998 and in 1999 thereby giving the Indian federal model a new shape. It manifested a substantive degree of cooperation between the Central Government and regional parties. The 2004 elections have also compelled leaders of different parties to form a coalition government at the Centre. The political environment which India has developed in the last 17 years proves the point that now India is probably taking steps towards cooperative federalism. Earlier there were conflicts between the party at the Centre and regional parties in the States. But it was felt after 1996 that Indian politics was shifting towards consensus politics. This shift has also affected the position of the Governor. The role of the Governor has been one of the important reasons of conflict between different political parties. With the change in the nature of the political party system, there are changes in the institution of the Governor. Earlier there was one-party dominance; as a result, the

\textsuperscript{103} Ibid.
\textsuperscript{104} Ibid.
Congress was in a position of making political use of the institution of the Governor. In the post-1967 period the Congress had to face a difficult time because it lost power in eight States and immediately the Congress started using the Governor for its political interests. But democracy did not succumb to the tendencies of totalitarianism. The Opposition parties put pressure upon the Congress not to use the Governors for political benefit. Besides, the Opposition parties also hit back at the Congress in 1977 by suspending Congress Ministries in eight States. After 1980 the politics of pressure increased as we have seen in cases of Andhra Pradesh and Jammu and Kashmir.\(^{105}\)

The more political parties we have, the more political pressure upon the party in power to reverse its undemocratic decisions. We also noticed tactics of pressure in Bihar and Jharkhand in the beginning of 2006. Pressure politics forces politicians to reach the politics of consensus.\(^{106}\)

The multiparty system in the recent past has helped evolve the politics of consensus regarding the role of the Governor and this system will put a check upon undesirable misuse of the institution of the Governor. Absence of one-party dominance will lead to more democratic values concerning the role of the Governor and inspire the governments in power to make the Governor the protector of the Constitution and the Governors will work in the same way as the Constitution-makers wanted.\(^{107}\)

Besides summoning and proroguing the session of the Legislature, the Governor has the power to dissolve Legislative Assembly of the State under article 174(2)(b) of the Constitution. In this connection it may be asked as to how far the advice of the Chief Minister to dissolve the Legislative Assembly is binding on the Governor. This controversy started from Madhya Pradesh, when in July 1967, G.N. Singh along with 30 supporters defected from the Congress party and thereby reduced the Ministry of D.P. Mishra to a minority in the Assembly. The Chief Minister getting the session prorogued and declared that he would advice the Governor to dissolve the Assembly and the then Home Minister Y.B. Chavan came forward with a theory that "a defeated Chief Minister had the

\(^{105}\) Ibid.  
\(^{106}\) Ibid.  
\(^{107}\) Ibid.
Constitutional right to ask for a dissolution of the Legislature and the Governor had no discretion to refuse it. Even Mrs. Gandhi, the Prime Minister, told the Press Correspondents that "Governor has a constitutional obligation to accept the advice of his Chief Minister with regard to dissolution of the Assembly whether the Chief Minister at the time of giving such advice enjoyed majority support or not.

There are others who do not agree with this view. Dr. J.R. Siwach says that "it seems that the Home Ministry expressed these views are just to pressurize the legislators so that under the threat of dissolution, the defectors may come back to the Congress fold and the further defections from the Congress may stop."\(^\text{108}\)

There is no doubt that the Governor had a discretion so far as the dissolution of the legislative Assembly is concerned and there is no ambiguity in this respect. This is also the opinion of the Committee of the Governors.\(^\text{109}\)

K.C. Reddy, the Governor of Madhya Pradesh agreed with this view when he said that:

"In normal circumstances the Governor, as the Constitutional Head, was required to act with the aid and by the advice of his Council of Ministers. But on certain occasions he had to exercise his functions in a discretionary manner. The question of recommended dissolution of the Assembly and invoking Presidential proclamation under the relevant Article or the Constitution called for the exercise of the Governors discretion, he said the question of the Governor acting on the of the Council of Ministers did not arise in such a case and therefore, was no reason for accepting the outgoing Chief Minister’s advice. If the Governor decides, while exercising his individual judgment, not to accept such advice then his decision cannot be challenged in any court of law."\(^\text{110}\)

Further article 174(2)(b) is a carbon copy of article 85(2)(b) which empowers the President to dissolve the House of the people. While speaking on article 85(2)(b) Dr. B.R. Ambedkar said that “the President of the Indian Union will test the feelings of the House whether the House agrees that there should be

\(^{108}\) J.R Siwach. Siwach, op.cit.


\(^{110}\) Article 163(2) says: If any question arises whether any matter is or not a matter as respect which the Governor is by or under this question required to act in hit discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought not to have acted in his discretion.
dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution…”

Therefore, B.R. Ambedkar agrees with the view that the President is not bound by the advice to dissolve the House of the people. The position Governor is also the same in this respect.

Further, "There are, however, circumstances which a sovereign may be free to seek informal advice against that of the Prime Minister. If the sovereign can be satisfied that (I) an existing Parliament is still vital and capable of doing its job, (2) a general election would be detrimental to the national economy, more particularly if it followed closely on the last election, and (3) he could rely on finding another Prime Minister who was willing to carry on his Government for a reasonable period with a working majority, the sovereign could constitutionally refuse to grant a dissolution to the Prime Minister in office." In 1939 all the three conditions were satisfied when the Governor General of South Africa refused a dissolution to his Prime Minister. Similarly the Governors of the Indian States in the similar situation, if arise, constitutionally oblige to adopt such convention.

h) Status of the Ministry after dissolution

What is the status of a ministry when the Assembly has been dissolved under Article 174(2)(b)? Will the Ministry be known by the name of a care-taker Ministry or will it be known by any other name? After dissolving the Assembly under Article 174(2)(b), the Governor of Haryana said that It would be wrong to call it a care-taker Government. There is no provision for a care-taker Government in the Constitution. Normally this term is used only for a Government which has resigned and which is asked by the Governor to carry on till alternative arrangements are made. In this case no minister has resigned. The Government had full authority, though in normal circumstances such a Government does not bring forward any controversial piece of legislation through ordinances. There is of course no legal bar but it is not desirable to do so. But how far will it be constitutional on the part of the Ministry to get the Assembly dissolve under article 174(2)(b) without submitting its own resignation? Will it not be a violation of article 164(2) of the Constitution? This point came up for hearing in the

Supreme Court which decided that "when an Assembly is dissolved there is no failure of the Constitutional Machinery within Article 356. Article 164(2) which provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State has to be read in the same manner as we have read article 75(3)."\(^{113}\)

Article 75(3) was interpreted by the Supreme Court in U.N. Rao v. Shrimati Indira Gandhi which observed that: "provision of article 75(3) which envisage the doctrine of Ministerial responsibility has to be harmoniously construed with provisions of article 74(1) and article 75(2). This Construed, article 75(3) applies only when the House of the people does not stand dissolved or prorogued. It cannot, therefore, be said that on the dissolution of the House of the people, the Prime Minister and other ministers must resign or be dismissed by the President."\(^{114}\)

Therefore, even after the dissolution of the Legislative Assembly of the State, the Council of Ministers does not cease to hold office.\(^{115}\)

i) **The Role of the Governor in Legislation**

According to article 168 of the Constitution the State Legislature consists of the Governor and the Legislative Assembly of the State where there is a unicameral legislature and when there is a bi-cameral legislature, it consists of the Governor, the Legislative Assembly and the Legislative Council. The Governor, therefore, is an integral part of the State Legislature and as such plays quite a significant role in legislation under article 200.\(^{116}\)

i) **Powers of giving assent to Bills:**

**Assent to Bills** – (Article 200) When a Bill has been passed by the


\(^{116}\) According to Article 200: “When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withhold assent there from or that he reserves the Bill for the consideration of the President. Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments at he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent there from. Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High court as to endanger the position which that court is by this Constitution designed to fill.”
Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

When a bill has been passed by both the Houses of the Legislature of a State, it shall be presented to the Governor, who may take one of the following four courses:

i) He may assent to the bill,

ii) He may withhold his assent,

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

iv) He may return the Bill to the Houses, if it is not a money bill, with a request that the bill or any specified provision of it may be considered again and emphasise, in particular, the desirability of introducing any such amendments as he may recommend.

In the event of the Governor taking the fourth course, namely, returning the bill for consideration, it shall be the duty of the houses to reconsider it. But if the
bill is passed again by the Houses and presented to the Governor for assent, he shall not withhold assent there form. He must either give the assent or reserve the Bill for the sanction of President.

In law the Governor can refuse to give his assent to a bill, i.e. he can veto a bill. If he does so, the Bill cannot become an Act. But in the form of Government set up under the constitution it would be politically impossible for a Governor to refuse his assent to a Bill, after it has been passed by the Legislature, for he acts in this matter, as in all other public matters, on the advice of his cabinet, and no bill could pass through both the Houses and come before the Governor for his assent, if it was opposed by the cabinet. The position of the Governor in this respect is analogous to that of the king of England. In theory the king can also refuse to give his assent, but the right of veto has not been exercised since the reign of Queen Anne. It may be said to have fallen into disuse as a consequence of ministerial responsibility. The veto could only be exercised on ministerial advice and Governor would wish to veto Bills for which it was responsible or one for the passage, of which it had afforded facilities through the Ministry.\(^{117}\)

It has been held in Purshothaman v. State of Kerala (AIR 1962 SC 694) that there is no time limit for granting the assent. This decision lays down the following further propositions: (a) A Bill pending in the Legislature (either House) does not lapse on proroguing of Assembly, (b) A Bill pending before the Governor or the President for his assent does not lapse on dissolution of the Assembly and (c) Only the Legislative Assembly can be dissolved but not the Legislative Council.\(^{118}\) The Constitution does not furnish any guidance to the Governor - in which matters he should accord his assent and in which matters he should withhold assent.

**ii) Reservation of the Bills for the Consideration of the President:**

The second proviso to article 200 of the Constitution empowers to the Governor to reserve the Bill for the consideration of the President. This proviso intended to preserve the independence, dignity and status of a High Court. Under the Constitution the Stare Legislatures have exclusive law-making power on matters touching the jurisdiction and powers of all Courts within the State in respect of matters within their exclusive competence. The powers might be used by the State

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\(^{118}\)
Legislature to deprive the High Court of much of its jurisdiction and power and thus to lower the prestige and influence of the High Court. As a safeguard, the Governor has been directed by this proviso not to assent to, but to reserve for consideration by the President, any bill which would, in the opinion of the Governor, if passed into law, so derogate from the powers of the High Court as to endanger the role which it is designed to fulfil under the Constitution.

“The power vested in the Governor to reserve a Bill for the consideration of the president is discretionary. It is his discretion whether the Bill should be reserved for the consideration of the President, and in this respect the Governor becomes an important link between the Union and the States thereby enabling the union to exercise some kind of control over the Legislative activities of the State. For example, the Kerala Education Bill of 1957 and the Kerala Agrarian Reform Bill of 1957, passed by the State Legislature were reserved for the consideration of the President and later returned by him for reconsideration, by the state Legislature the former in the light of the advisory opinion of the supreme court and the latter in the light of changes suggested by him. The Madhya Pradesh panchayat Bill of 1961, was reserved by the Governor for the consideration of the President but it was returned on the ground of some of its provisions being undemocratic and opposed to the Directive Principles.”

Besides reserving the Bills for the consideration of the President under the second proviso of article 200, the Governor can also reserve the Bills for the consideration of the President under article 254(2).

The Supreme Court in Shamsher Singh v. State of Punjab (AIR 1974 SC 2192). The decision lays down the following propositions:

“We have extensively excerpted from various sources not for adopting ‘quotational jurisprudence’ but to establish that the only correct construction can be that in constitutional law the ‘functions’ of the President and Governor and the ‘business’ of Government belong to the Ministers and not to the head of State, that ‘aid and advice’ of ministers are terms of art which, in law mean, in the Cabinet

119 V.N. Shukla, Constitution of India, p. 338.
120 This article says: “Where a law made by the Legislature of a State with respect one of the matters enumerated in the concurrent list contains any provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the legislature of such state shall, if it has been reserved for the consideration of President and has received his assent, prevail in that State.”
context of our constitutional scheme, that the aider acts and the adviser decides in his own authority and not subject to the power of President to accept or reject such action or decision, except, in the case of Governors, to the limited extent that Article 163 permits and his discretion, remote controlled by the Centre, has play”.

As rightly pointed out by Sri M.C. Setalvad, the first Attorney General of India, when consulted by Dr. Rajendra Prasad (in connection with the Hindu Code Bill controversy): “It (Article74) applies to every function and power vested in the President, whether it relates to addressing the House or returning a Bill for reconsideration or assenting or withholding assent to the Bill”.

“Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, save in the tiny strips covered by Articles 163(2), 371-A(1)(b) and (d), 371-A(2)(b) and (f), VI Schedule para 9(2) (and VI Schedule para 18(3), until omitted recently with effect from 21.1.1972). These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions. Again, a minimal area centering round reports to be despatched under Article 356 may not, in the nature of things, be amenable to ministerial advice. The practice of sending periodical reports to the Union Government is a pre-constitutional one and it is doubtful if a Governor could or should report behind the back of his Ministers. For a centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly – these are unconstitutional faux pas and run counter to parliamentary system. In all his constitutional ‘functions’ it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammeled by the State Ministers’ acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions”.

When deciding a dispute under Article 192(1), the Governor acts on the advice of the Election Commission and not on the advice of the Council of Ministers.
“The omnipotence of the President and of the Governor at State level is euphemistically inscribed in the pages of our Fundamental Law with the obvious intent that even where express conferment of power or functions is written into the Articles, such business has to be disposed of decisively by the Ministry answerable to the Legislature and through it vicariously to the people, thus vindicating our democracy instead of surrendering it to a single summit soul whose deification is incompatible with the basics of our political architecture”.

In this connection, reference may also be made to the Constituent Assembly Debates, Vol.9. At page 61, the following extract from the speech of T.T. Krishnamachari may be noticed: “I would ask him (Dr. Shibanlal Saxena, a member of C.A.) to remember one particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The Governor is no longer with any discretion. If … the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers”. (The speech of Dr. Ambedkar referred to by T.T. Krishnamachari is at page 41 of the same volume.)

It has been held by the Supreme Court in Hoechst Pharmaceuticals v. State of Bihar (1983 SC 1019) that the Governor’s power to reserve for the consideration of the President cannot be questioned in court. The following observations in the judgment, though made while dealing with a question posed from a different angle, are relevant:

“A Bill which attracts Article254(2) or Article304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Article31(3) as it was then in force, or falling under the second proviso to Article200 has necessarily to be reserved for the consideration of the President. There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a
Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts.”

In the matter of granting or withholding his assent or in the matter of reserving a Bill for the consideration of the President, the Governor must act according to the advice tendered by his Council of Ministers except in rare and exceptional cases, for example, where the provisions of the Bill are patently unconstitutional or are beyond the legislative competence of the State Legislature or where they derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation or where they clearly violate Fundamental Rights or other constitutional limitations. The practice of reserving Bills for the consideration of the President may be stopped except where it is required by one or the other provisions of the Constitution or to meet some other constitutional purpose. A reference of the Bill to the President must also contain the material facts, the points for consideration and the grounds upon which the reference has been made. A convention must be established whereunder the President should dispose of a Bill sent to him for his consideration within four months. The President should not withhold his assent except on the ground of patent unconstitutionality, etc. as pointed out hereinabove. In matters where his assent is required by the constitutional provisions, he shall keep in mind the constitutional provisions and the interests of the nation and the State for granting or refusing his assent. The Commission, however, recommended that the Constitution itself should not prescribe any time limit either for the Governor or the President and that the matter should be allowed to be governed by conventions and good sense of the relevant persons.121

iii) Previous recommendation for introducing certain bills:

“(1) A bill or amendment making provision for any of the matters specified in sub-clause (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor.

(2) A bill which, it enacted and brought into operation, would involve

121 *Added*
expenditure from the consolidated fund of a state, shall not be passed by a house of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill."  

Besides this "No demand for a grant shall be made except on the recommendation of the Governor."  

iv) **Ordinance Making power of the Governor:**

The Ordinance making power of the Governor under Article 213 is similar to that of the President under Art 123. The Governor can issue Ordinance only when two conditions are fulfilled:-

1. The Governor can only issue Ordinances when the Legislative Assembly of a State is not in session or where there are two Houses in a State both Houses are not in session.

2. The Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action. The court cannot question the validity of the Ordinance on the ground that there was no necessity or sufficient ground for issuing the Ordinance by the Governor. The existence of such necessity is not a justifiable issue. The exercise of ordinance making power is not discretionary. The Governor exercises this power on the advice of the Cabinet.

An Ordinance shall have the same force and effect as an Act of the Legislature. It can override the judgment of the High Court under Article 266.

The Ordinance shall be laid before the Legislative Assembly of the State or where there is a Legislative Council in the State, before both Houses and shall cease to operate at the expiration of six weeks form the re-assembly of the Legislature, unless it is approved earlier by the Legislature. The Ordinance may be withdrawn at any time by the Governor. The Ordinance-making power of the Governor is extensive with the Legislative powers of the State legislature. He can only issue Ordinance on the subjects on which the State Legislature is empowered to make laws e.g., State list and Concurrent List. Both Central and State Legislatures can make laws on subjects mentioned in the Concurrent List. According to Article 213

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122 Article 207.
123 Article 203(3).
125 State of Orissa v. Bhupendra Kumar, AIR 1962 SC 945.
(3) therefore, an Ordinance will be invalid to the extent, it makes any provision which would be invalid if enacted by the State Legislature. But such an Ordinance will not be invalid if it has been issued by the Governor in pursuance of instructions from the President.

The Governor cannot issue an ordinance without the instructions from the President in the following cases: a Bill containing the same provision would have required the provisional sanction of the President for its introduction into the Legislature (b) he would have deemed it necessary to resent a Bill for the consideration of the President. (c) all Act of the Legislature of the State containing the same provisions would have been in valid unless having been reserved for the consideration of the President and had received the assent of the President.

The ordinance-making power vested in the executive is meant to be exercised in exceptional circumstances i.e where immediate action is necessary. It is not difficult to imagine the cases when ordinary law-making powers may not be able to deal with a situation which may suddenly arise. The fears expressed by members of the Constituent Assembly that the ordinance-making powers might be abused by the executive is not unfounded.

In Satya Pal Dang v. State of Punjab\textsuperscript{126} on March 8, 1968 the Speaker of the Punjab Legislative Assembly adjourned the House for two months making it impossible to pass the Appropriation Bill before the end of the financial year. The Governor, in order to overcome the crisis prorogued the Assembly on 11\textsuperscript{th} March and promulgated an Ordinance on March 31, prescribing the procedure for passing the budget and the Appropriation Bill, purporting to make the law for the timely completion of financial business contemplated by Article 209. The Ordinance provided that the House could be adjourned by a resolution of the House. Assembly was re-summoned to meet on March 18. When the House met in session the Speaker ruled the session to have been illegally called and that his adjournment order of March 8 was still good. He then left the Chamber. Thereafter the Deputy Speaker occupied the chair and estimates and the Appropriation Bill were passed. The Deputy Speaker certified the Appropriation Bill which was considered by the Legislative Assembly and approved. The Bill was

\textsuperscript{126}AIR 1949 SC 903.
then assented by the Governor. The questions involved were:

1. Whether a law contemplated by Article 209 can be prescribed by an Ordinance?
2. Whether the Speaker had power to question the validity of the Ordinance?
3. Whether the Appropriation bill passed by the Legislature could be challenged on the ground that the proper procedure had not been followed?

The Supreme Court held that the two Appropriation Acts passed by the Legislative Assembly on March 18, 1968, and the Governor's Ordinance regulating the proceedings of the House were constitutionally valid. The power of the Governor to prorogue the House under Article 174 of the Constitution was absolute. This power was invoked by the Governor in order to overcome the Speaker's ruling adjoining the House which was delaying the business of the House. If there was an occasion for the regulation of financial business by law under Article 209 of the Constitution it was this. The Legislature could not be allowed to hibernate for two months while financial business and the constitutional machinery and democracy itself wrecked.

The Governor's re-summoning the Legislature immediately after the prorogation was also a step in the right direction as it set up once attain the democratic machinery in the State which had been immediately disturbed by the action of the Speaker. This action of the Governor respected the democratic right of the Legislature.

The power of the Governor to prorogue the House and promulgate an Ordinance was untrammeled by the Constitution. In the present case, an emergency had arisen and the action was perfectly understandable. The position in Punjab was that the Assembly was in session, but it was in a state of inaction due to the Speaker's ruling. As the lime was running out, to pass the budget the Governor had to act quickly to put back the Legislative machinery of the State into life and he could do so only by the constitutional powers vested in him. Commenting on the ruling of the Speaker that the House could not be resummoned by the Governor when the House was adjourned the Supreme Court said 'this ruling was based on the wrong assumption'. The speaker cannot pronounce upon the validity of the Governor's ordinance. It can only be challenged by the Legislative Assembly by a resolution.
The case of D.C. Wadhwa v. State of Bihar\textsuperscript{127} furnishes a glaring example of the abuse of the ordinance-making power by the Executive. The petitioner, a professor who carried a detailed research in the matter challenged the practice of the State of Bihar in promulgating and re-promulgating ordinances on a large scale without enacting them into Acts of the legislature and keeping them alive for an indefinite period of time. He pointed out that the Governor of Bihar had promulgated 256 ordinances between 1967 and 1981 and all these were kept alive for periods ranging between 1 to 14 years by repromulgating them from time to time. Out of these 256, 69 were repromulgated several times and kept alive with the prior permission of the President of India. The five-judges bench of the Supreme Court held it, "colourable exercise of power and amounted to fraud upon the Constitution and, therefore, unconstitutional". The Court called it "usurpation by the executive of the law-making function of the legislature". The power to promulgate an ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be "perverted to serve political ends."

The judgment of the Court would go a long way in preventing the Government's "manipulative practice" of circumventing the provisions of the Constitution regarding maximum time limit for the continuance of ordinance.

\textbf{j) The Role of Governor in granting Pardon etc.}

According to Article 161 of the Constitution, the Governor has "the power to grant pardon,\textsuperscript{128} reprieves,\textsuperscript{129} respites\textsuperscript{130} or remission of punishment or to suspend, remit or commute\textsuperscript{131} the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends."

\textsuperscript{127} (1987) I SCC 378.
\textsuperscript{128} Pardon: Pardon, according to Chief Justice Marshall is "an act of grace, proceeding from the power entrusted with the execution of laws which exempts the individual on whom it is bestowed from the Punishment, the law inflicts for a crime he has committed." Bernard Schwartz, A commentary on the Constitution of the United States, 1963. Vol. II, p. 85.
\textsuperscript{129} Reprieve: Reprieve means stay of the execution of a sentence or of the enforcement of the penalty for temporary period. For example, if a pregnant women is sentence to death, a reprieve may be gamed to her till the birth of a baby. D.D.Basu, commentary on the Constitution of India. 5th ed, Vol. II, p.408.
\textsuperscript{130} Respite: It means awarding a sentence lesser than the one which has been prescribed by law, in view of the fact that the accused had no previous conviction.
\textsuperscript{131} Commutation: Commutation is a change from a heavier penalty to a lighter one. For example a sentence of death may be commuted to a like imprisonment.
The powers conferred under article 72 and 161 to grant pardons, suspend, remit or commute sentences, etc. of any convict are not judicial in nature and they are to be exercised by the President or the Governor in the exercise of executive functions and that also not be accordance with rules of natural justice. There is no obligation to heal the parties concerned before rejecting or granting a mercy petition.\textsuperscript{132}

\textbf{Nanavati's Case and Governor's power under article 161:}
Kowas Moneckshaw Nanavati, subject to Naval Law, was convicted for murder by an ordinary criminal court and was sentenced to imprisonment for life. After the judgment was pronounced, the accused made an application for leave to appeal to the Supreme Court. Before the warrant issued for the arrest of the accused could he executed, the Governor issued an order under article 161 of the Constitution suspending the sentence subject to the condition that the accused was to remain in naval custody till the disposal of the appeal to the Supreme Court. The question how was:

Should Nanavati surrender to his sentence as required by 0.21, R.5 of the Supreme Court Rules before his application for special leave could be considered?\textsuperscript{133}

It is open for the Governor to grant a full pardon at any time even during the pendency of the Case in the Supreme Court in exercise of what is ordinarily called 'Mercy jurisdiction'. But the Governor cannot exercise his power of the suspension of the sentence for the period when the Supreme Court is seized of the case. Where the Governor in the exercise of his powers under article 161 had passed an order granting suspension of the sentence of a convict on this ground that he intended to file an appeal before the Supreme Court, the order could only operate until the matter became sub-justice in the Supreme court on the filing of the petition for special leave to appeal. After filing of such a petition it will be for the Supreme Court to pass such order as it though fit. The petitioner for special leave cannot be exempted from the operation of 0.21 R.S. Supreme Court Rules by reason of the order of

\textsuperscript{132} Tara Singh v. Director AIR 1958. Punj, 302.
\textsuperscript{133} See for Bombay High Court view before the matter was disposed of by the Supreme Court, AIR 1960, Bom. 502.
suspension of sentence passed by the Governor under Article 161.\textsuperscript{134}

The power of the Governor to suspend a sentence would include the power to attach lawful condition to it. The conditions should not be illegal, immoral or impossible of performance.\textsuperscript{135}

The court cannot examine the wisdom or expediency of exercise of the power of remission by the Governor in a particular way or on the ground that it has been improperly refused.\textsuperscript{136} The court can interfere if he exceeds his powers under the Constitution e.g., if he exercises his power of pardon or remission in respect of an offence against a law relating to a matter to which the executive power of the State dots not extend or in a case of punishment by Court martial.\textsuperscript{137}

About the power to grant pardon, it should also be remembered that the Governor of the State has the power to suspend, remit or commute a sentence both under article 72(3) and under article 161 of the Constitution. V.N. Shukla explained thus:

“Article 72 can be reconciled with article 161 by limiting the power of the Governor to grant pardons to cases not covered by article 72. If so read the president alone has the exclusive power to grant pardons reprieves, and respites in 211 cases where the sentence is a sentence of death and both the President and the Governor have concurrent powers in respect of suspension, remission and commutation of a sentence of death. In other matters, i.e. in respect of offences against any law relating to a matter to which the executive power of the State extends, the Governor has all the powers enumerated in Article 161 of the Constitution, including the power to grant pardons, reprieves and respites. To put it shortly, the power of the Governor to grant pardons, reprieves and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of arty parson is coextensive with the executive power of the State”\textsuperscript{138}

\textsuperscript{134} K.M. Nanavati v State of Bombay, AIR 1961 (S.C.)112.
\textsuperscript{135} State v. K.M. Nanavati, AIR 1960 Bom. 502.
\textsuperscript{138} V.N. Shukla. op.cit., p.303.
(k) **Indispensability of Governor's Office**

Among the various political institutions that many would like to see reformed that of the Governor would probably lead the list. This is mainly because Governors in the recent past have very often misused their powers and served as an instrument in toppling the opposite party government on one pretext or the other.

Since 1984, when it became a victim of the machinations of the then Governor, the ruling Telugu Desam Party in Andhra Pradesh has looked upon the Governor as an agent, if not a spy, of the Centre and the Congress (I). It has gone on record as suggesting that this "post of luxury" should be scrapped. While participating in a discussion on the Governor’s (emoluments, allowances and privileges) Amendment Bill, 1988, opposition members, Mr. M.S. Gurupadaswamy (Janata) and Mr. P. Upendra (T.D.), in the Rajya Sabha (on May 11, 1987) demanded the abolition of the office of Governor which they charged was used by the ruling party at the Centre to further its partisan interest. The Akali Dal leader, Mr. Badal also pleaded for the abolition of the institution of Governor. Replying to a special discussion on the recommendations of the Sarkaria commission in Trivandrum on April 25, 1988, Keral Chief Minister, E.K. Nayanar asserted that "the time has come for the abolition of the post of Governor". Similarly, the West Bengal Government in its response to the Sarkaria Commission’s questionnaire on the Centre-State relations, opined that the post of Governor be abolished and in place of the Governor alternative institutional arrangements be made to maintain the channels of communication between the Centre and the States. The State government said that if the post of the Governor had to be retained, he should be allowed only some “symbolic functions” and he must act according to the advice of the State council only. Mr. Mostafa Bin Qasim CPI (M) had also pleaded for the office of the Governor, a legacy of the foreign rule to be replaced with an alternative

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It must be remembered that the demand for the abolition of the Governor is not something new. Even in the past similar views had been expressed though on account of different reasons. For instance, Mrs. Vijaya Lakshmi Pandit, after resigning as Governor of Maharashtra, expressed the opinion that the office of the Governor was entirely useless and should be abolished. She felt that the only thing that induced a person to accept a Governorship was the salary that the post carried. She expressed her dissatisfaction with almost everything that the Governor and his Raj Bhavan stood for. In the course of the Lok Sabha debate on April 11, 1969, Vasudevan Nair and Ganesh Ghosh of CPI (M) urged for the abolition of the office. On April 16, 1974, R.M. Karunanidhi, the Chief Minister of Tamil Nadu, moved a resolution in the Legislative Assembly for abolition of the post of the Governor.

However, the opposition demand for the abolition of Governor’s post seems to be based on a misconception of the constitutional obligation of the Union to States. It is the constitutional obligation of the Union to protect States at the time of disorder like communal disturbances etc. The abolition of the post of Governor would leave a void in the constitution. The Governor can play a useful role in aiding and advising State Governments and in serving as a link between the administration and the people, as well as with the Centre, in an open and constructive manner. Quite some Governors have played such a role and their mediatory efforts have been lauded by Chief Ministers and the people alike. To substantiate this argument, it is necessary to examine the importance and utility of governor for the State as well as Central Government.

Basically, there is an erroneous impression in general on the role and the powers of a Governor. It is true that the Governor is appointed by the President and

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144 Abolish Governor’s office: Opposition, *Indian Express*, May 12, 1987. Mr. Gurupadaswami, opposition party leaders, also said in the Rajya Sabha on May 11, 1987 that “as long as the office of governor was not abolished, no Supreme court, High Court Judge the Chief Election Commissioner or bureaucrat should be appointed as a governor, as such an appointment lends to affect the impartiality of a Governor. (See Abolish Governor’s office: Opposition, *Indian Express*, May 12, 1987).

145 *The Times of India*, November 22, 1965. Sri Prakasa states that two events have happened which have brought the position of Governors very much to the fore. One is the resignation, more or less in disgust, of Mrs. Vijaya lakshmi Pandit from the Governorship of Maharashtra, and the other resignation of Mr. Ajit Jain from the Governorship of Kerala in very peculiar circumstances. (See Sri Prakasa, *State Governors in India*, Meenakshi Prakasham, Meerut, 1975, p. 69.)
holds office during the pleasure of the President. As the President acts in accordance with the advice of the Union Cabinet, it is assumed that the Governor is an employee and agent of the Centre and should consult the Union government before taking decisions even in matters where the Governor has discretionary powers.

It is of interest to note here that apart from the considered views of the constitutional experts and commissions of study, the Supreme Court specifically went into the constitutional position of governorship. In Hargovind Pant v Dr. Raghukul Tilak\(^{146}\), a Constitution Bench comprising five Judges of the Supreme Court observed: "Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office, which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State".

In his monumental work, Constitutional Law of India, eminent jurist H.M. Seervai\(^{147}\) said: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. The removal of the Governor under such circumstances would otherwise mean that the

\(^{146}\) AIR 1979, SC 1109.

Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution.

One has to be clear about the role and constitutional position of the Governor before finding fault with the action taken by Governor.

The Constituent Assembly started with various proposals, ranging from direct election of Governor to selection of a person from a panel submitted by the State legislature. The drafting committee finally accepted the proposal that the Governor should be appointed by the President. When the draft articles came up for discussion, members of the Constituent Assembly, most of them from the Congress party, were alert to point out that an appointment by the President would mean an appointment by the Union government and it would place the Governor inevitably under the control of the ruling party at the Centre.

Biswanath Das (Congress, Orissa) was forthright: "If I were to have my leaders in office continuously, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely no complaint... there is no knowing which party will be in power (in the future). It may be that a party absolutely different from that in the Centre may be functioning in office in a province. What would then be the position? The Governor, who is the constitutional head under the Act, has to be appointed on the advice of the Prime Minister of India, leader of another party. I would have cited how the Governor, who was the agent of the British Imperialism, had all along been attempting to smash my Party. What was being done by the British Imperialism may also be repeated by the Party (at the Centre)".

Dr. B.R. Ambedkar, the chairman of the drafting committee, said: "Under the parliamentary system of government, there are only two prerogatives which the King or the Head of the State may exercise. One of them is the appointment of the Prime Minister and the other is the dissolution of the House. With reference to the Prime Minister, it is not possible to avoid vesting the discretion in the President." To a query about the position of the Governor in a State, Ambedkar said: "The position of the Governor is exactly the same as the position of the President."

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Having decided to adopt the British system of Cabinet government not only for the Union but also for the States, every State had to reflect the West minister model with a Governor substituting the monarch. Thus in a parliamentary system the Governor in normal times is the constitutional head, but he is also the repository of power, to whom power comes back after a ministerial crisis. Even as a constitutional figurehead he has to be active and vigilant because he may be required to exercise his discretion and individual judgment at any time.

Part VI of the constitution deals with the powers of a Governor. The Chief Minister and other ministers can remain in office as long as they enjoy the Governor's pleasure. In the absence of Governor the Chief Minister would have unfettered powers to remove any minister or ministers and he could do this on any arbitrary or unjustified grounds.

The question also arises as to who will summon, prorogue and dissolve the Assembly in the absence of a Governor? Of course, it could be argued that the Chief Minister will discharge this function. But in that case there is a possibility that the Chief Minister may not summon the legislature when he has the apprehension that he may have lost the confidence of the majority in the Assembly. Secondly, if the ruling party loses majority in the Assembly who will form an alternative government? The Governor plays a crucial role when there is an unstable coalition government. The Chief Minister acting as Governor may refuse to give assent to those Bills which he does not like and he may issue ordinances which may make him autocrat.

In this connection what Mr. V.K. Varadachari has said is worth mentioning. According to him, "one part of Article 200 empowers the Governor to 'return a bill' for reconsideration by the legislature. This ‘return’ is not made on the advice of the ministry as several have argued. The return of the bill can be conveniently called “a feedback” to employ an American terminology. A feedback is a process through which the policy makers are apprised of the shortcomings of their policy, its loop-holes, its failures and its unintended by-products. Feed-backs then obligate the Government to formulate new policies by modifying or repeating the existing policies or to once again go through the deliberate process or to confirm the existing ones. No one is better suited to perform the feedback function than the Governor who has with him adequate information through representations and public
memorial."

Vishnu Sahay, himself a Governor, writes: "From what I have heard, there were occasion during the latter part of this period (referring to Pre-1967 period) when the Governors did Intervene informally and with some success specially if the proposals needing reconsideration was one in which a reluctant Chief Minister was being dragooned into acquiescence by a rival clique in his party. On such occasions, a little support from the Governor was not unwelcome." Similarly K.M. Munshi, who was the Governor of Uttar Pradesh between 1952 and 1957 said that during his term, in some cases where he felt that minister’s decision required reconsideration, he had asked the Chief Minister to refer it to the Council of Ministers.

It is for the Governor to advise the Ministry, to warn them to suggest to them alternative policies and actions and to ask for their consideration and reconsideration of accepted policies and programmes. These duties of the Governor are similar to the rights and duties of the British sovereign as a constitutional monarch. These rights are, according to Bagehot, the right to be consulted, the right to encourage and the right to warn. Bagehot had said, "A king of great sense and sagacity would want no others". Pavate points out that 'When on June 15, 1970, the government sent the State legislature (prevention of disqualification) ordinance, 1970, to remove the disqualification attached to an M.L.A. on being appointed as a member or a chairman of a corporate body, like the .Punjab Agricultural Marketing Board, Ware Housing Corporation etc., he persuaded the Chief Minister to drop the' measure on the ground that it was against sound public policy.'

In the judicial field, in the absence of a Governor, the Chief minister, being a political man, may pardon or commute the sentence of a convicted person who belongs to his party or is rich and influential. Again if there were no governors who would report to the President that the State Government had failed to provide effective administration in the State.

154 Pavate, My Days as a Governor, quoted by V.K. Varadachari, op. cit., p. 28.
Another function of the Governor is to recommend a panel of names for appointment of judges of the High Court to the President. If there is no Governor, the Chief Minister will pick men of his choice to sub serve his interests. Moreover, the officials in the State Secretariat run the administration in the name of the Governor. The Secretaries, Joint Secretaries, Deputy Secretaries or Assistant Secretaries in the Secretariat are secretaries to Government and not to the Chief Minister or the Ministers. In their service matters, the Governor is the final authority. If the Chief Minister is given this power the secretaries and others can be intimidated by the politician Chief Minister who can compel them to dance to his tune.

It is perhaps due to important functions which the governor performs, that Mr. Ashoke K. Sen argues that "our constitution never meant the office of the Governor to be merely ornamental. For the functioning of the constitutional Government in a State, the Governor provides the king-pin on which the entire machinery of the State must revolve. The Governor forms a stable link between the Central Government and the State Government and embodies in his office the machinery through which Government in a State my function in accordance with the constitution." Similarly, Sri Prakasa says that "I do no regard the office of Governor as at all the useless. He has to fulfil some very definite purposes which have to be fulfilled in any case whether they are done so by a functionary called Governor or by any other nomenclature. If Governor is abolised, one inclined to ask as to how the purposes that Governor fulfils in as much as he is the watch-dog of the interest of the Centre vis-a-vis the happenings in the state; and of the state vis-a-vis the Centre, will be fulfilled. Then the Governor has to represent the State before distinguished foreigners. Somebody will have to do it."

Reacting to the charge that the Governor is a luxury and the exorbitant expenditure on him, Sri Prakasa observes: "they draw a salary which after the deduction of income-tax is really not very much higher than that of a judge or a Secretary. If, therefore, the Governorship is abolished and all the paraphernalia maintained, then the saving to the public exchequer will be very little, if at all".

157 *Ibid.*, p. 12. Explaining the reasons why the office of Governor is regarded useless, Sri Prakasa points out that formally a great deal of negotiations between the Centre and the State Government.
Highlighting the importance of Governor, Prof. N.R. Despande argued, "The Governor was visualized to be a constitutional head, a sagacious councilor and adviser to the ministry, one who can throw oil over troubled waters. Apart from being a symbol of the State, the Governor could if he were active, by means of getting into touch with opponents of the party in power, reconcile them to a good number of measures and generally, by tours and other means, make the administration run smoothly. In short, the Governor would act as a lubricator in the Government of the States."  

It can be said that if, the office of Governor is to be retained; the duties and responsibilities of Governors should be clearly defined so that all may know what is expected from them and how they are to conduct themselves. At the same time impartiality on the part of Governor is also very essential and can be a great source of strength. It can go a long way in making the State Governments have faith in and trust their governors. Mr. K. Varadachari cites examples which show how the non-partisan image of the Governor helps in critical situations. In Lucknow, it is said Sarojini Naidu did much to comfort the Muslim community which was in a State of trauma after the migration of most of the leaders to Pakistan. Padmaja Naidu, as the Governor of West Bengal, is stated to have effectively supplemented the efforts of the Rehabilitation Ministry. So did Akbar Hydari, who by his work in integrating the Hill States and in getting the nine point agreement of Union signed by representatives of Nagas, Considerably lighten the burden of the Central and State Governments.

Little wonder then that the Sarkaria Commission which thoroughly examined the role of Governor in Centre-State Relations, turned down the demand made by

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went through Governors. However, gradually, the centre started keeping direct relations with the State Governments. Far from being consulted as to the persons who should constitute the ministers, Governors are not even informed as to who are being thought of as ministers. Whatever Sri Prakasa has said long back applies to a large extent to the present day circumstances. (See for details Sri Prakasa, op. cit.).


159 Mr. Varadachari also cites two instances one of the West Bengal and another of Punjab, when the speakers of Legislative Assemblies obstructed the legislative process and tried to paralyse the administration. But the Governors played crucial role in resolving those issues. (See for details V.K. Varadachari, op.cit.).
the leaders of opposition parties and others for the abolition of the office of Governor. Besides, it must be remembered that if the occupant of an office behaves wrongly, it should not mean that the office itself has lost its utility. As long as we have a parliamentary system of government it is very difficult to abolish the post of Governor who is a constitutional head of State. If a Chief Minister is made the head of the State, he is likely to become despotic. A Chief Minister, being a politician cannot be the eyes and ears of the people with his partisan outlook.

**Conclusion & Suggestions**

In order to enable the Governor to successfully discharge his functions under the Constitution, an agreed 'Code of Conduct' approved by the State Governments, the Central Government, the Parliament and the State Legislatures should be evolved. This code of conduct should first of all lay down 'norms and principles’, which should be evolved. This 'Code of Conduct' should first of all lay down certain 'norms and principles’, which should guide the exercise of the Governor's 'discretion' and his powers which he is entitled to use and exercise on his personal judgement.

The Governor's Role being not merely formal or ornamental there are circumstances in which he might be called upon (and in fact recent experience in the State has shown that he may frequently be so called upon) to exercise his own judgement and in some situations the exercise of his judgement can be crucial particularly when his functions relate to matters in which the Central Government may be vitally concerned. It is, therefore, important that the Government must be enabled to exercise his Constitutional functions with a clear understanding and on the basis of principles which are accepted by the State Governments and the Central Government and on the basis of agreed conventions.

Further, it is equally important that the Governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgement. The Report of the special Study team of the Administrate Reforms Commission raises four questions for the purpose of assuring that the Governor may properly exercise his functions:

(i) questions relating to the appointment of Governor to ensure that persons of the requisite caliber are appointed:
(ii) questions relating to the conditions, arrangements and procedures enabling the Governors to perform their duties;

(iii) questions relating to the power and procedures for keeping the Centre informed of happenings in the States;

(iv) questions relating to the clarification and need for extension of areas involving the exercise of his own judgement by the Governor.

As regards (i) above, there can be no doubt that person of high caliber and quality must be appointed to fill up the high office of the Governor. Everything that is necessary to find the best man for filling this office should done. In selecting the person to be appointed as the Governor, the choice should not be confined to the party in power at the centre and the field of selection should extend much beyond the political arena.

Regarding (ii) above, the 'procedure for appointment of Governors should be clearly laid down' and once laid down it should never be deviated from the like the appointment of the judges of the High Courts. The prescribed procedure must provide for consultation with the Chief Minister at the time of appointment of the Governor. The conditions of appointment must also he laid-down and must assure a fixed tenure for the Governor so that the Governor is not under the constant threat of removal by the Central Government. The Constitution prescribes the term of five years for the Governor but subject to his removal at any time by the President. The procedure must ensure that a Governor should normally be allowed to function for five years unless there are overwhelming reasons for transferring him or removing him.

The changes suggested by the Commission in Articles 200 and 201 seem essential if the arbitrary action on the part of the Governors is to be checked. It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government. It is necessary to make him the Governor of the State in its full and proper sense and to enable him to live up to his oath truthfully. His loyalty must be to the Constitution and to none else and his commitment to the well-being of the people of his State.
He must command respect by his conduct. Only then any 'vice given by him will be respected by the Council of Ministers and the Legislature. Where he finds that a situation has arisen here the government of the State cannot be carried on in accordance with the provisions of the Constitution, he must Report the same to the President as contemplated by Article 356. This is also a requirement of the oath taken by him viz., to "preserve protect and defend the Constitution". The Central Government should also desist from undue interference with the State Governments and should indeed respect the powers of the States. The State's powers, few they are, should not be whittled down further. On the contrary, the effort should be to preserve the federal nature of our Constitution. The interest of our nation is in "cooperative federalism" and not in confrontational politics or politics of domination.

The former Governor Karnataka Chief Minister, Mr. Ramakrishna Hegde, presented a white paper in the Karnataka Assembly in the third week of January 1983 on the Role of the Governors and seriously alleged that the Governors have always acted at the "instigation" of the ruling party at the centre, "dabbling" in politics and thus becoming victims of "political perversion. This charge against the Role of Governor is also proved in the preceding pages of this study.

It is submitted that during the President's Rule, the Governor really becomes 'function officio', and it is only by the President's specific order that he becomes an Agent of the Centre. Even in normal times i.e. when the president's Rule has not been imposed in a state, the Governor generally as a spokes person of the centre. It seems that the Governor has now become a tool in the hands of the ruling party at the centre to control the State Governments.

The Governor is supposed to be the Constitutional Head of a State. He is dignified part of the Government. He is highly respected and is supposed to be a non-partisan functionary. He is so a necessary and useful part so Parliamentary system of government. But how for he would be useful and respected depends upon himself- to what extent he makes himself useful, dignified and non-controversial.

Hence to make the Role of the Governors really meaningful in centre-state relations and for maintaining the principles and spirit of parliamentary government, it is suggested that the exercise of 'discretionary powers' by the Governors should
be 'guided by the healthy and democratic conventions' which may grow from time to time in the working of the Constitution.

The Governor should not only be neutral but also seem to be neutral. Much depends upon the political integrity of the Governor. Be should not allow himself to be misled by the vested interests. "A Governor can do a great deal of good if he is a good Governor and be can do a great deal of mischief if he is a bad Governor inspite of the very little power given to him under the Constitution."

He should not work against the State Government which represents the popular will. So, if he stands against the wishes of the Ministry, it will be an undemocratic Act. Such a Situation warrants a rethinking about his status and position. The discretionary powers of the Governor should not lead to the butchering of duly elected Governments, as it would hasten the death of democracy.

To conclude it can be submitted that it is necessary to invest the office of the Governor with requisite independence of action and rid them of bane of 'instructions' from the Central Government. It is also necessary to make him the Governor of the State in its full and proper sense and to enable him to live up to his oath truthfully. His loyalty must be to the Constitution and to none else and his commitment to the well being of the people of his State. He must command respect by his conduct. Despite everything an ideal Governor need to act in caution.

The suggestions are as follows:

First, the verdict of the electorate should be respected. If the ruling party has failed to secure a majority yet has emerged as a largest single party it cannot be put in power. The Governor, in a situation as such, should first summon the leader of the Opposition to get the know if he is in command of majority? If he is satisfied that the opposition is in command of majority he will invite it to from the government. Only after sounding the opposition and finding that it is incapable of forming a government the claim of the largest single party can be entertained, and it can be set in power subject to command of a majority support at the point of time of appointment and not on consideration of coming to command such support on some future date. Command of majority support, at the time of being put in power, is the quintessential principle, which cannot be overlooked and overridden in any circumstances.
Second, nod discrimination can be made between coalition existing before the elections and one coming after it. Irrespective of the time factor, both have a locus standi for being put in power, subject to commanding a majority support. To put a coalition out of reckoning for power, which had come into existence after the elections is extraneous to parliamentary principles, arbitrary, prejudicial and uncalled for.

Third making a discrimination between party members and Independents is grotesquely abuser and irrelevant because both category of members, in the face of low, are full-fledged members and possess equal rights for the fact of being elected and representing their constituencies. Non counting of Independents support, while assessing the strength of the two sides, III accords with the democratic system. The supports of all elected members, whether party men or Intendments, should be counted in the assessment of strength of different groups and parties.

The judgment delivered in Bommai Vs Union of India categorically rejected the philosophy invoked in deciding State of Rajasthan vs. Union of India. Justice Ahmadi held, “Having noticed the nature of the federal structure under the constitution, the possibility of different political parties ruling at the centre and in one or more states cannot be ruled out. The constitution clearly permits it. Therefore, the mere defeat of the ruling party at the centre cannot by itself entitle the newly elected party which comes to power at the centre to advise the President to dissolve the Assemblies of those states where the party in power is other than one is power at the centre, even with a thumping majority, is no ground to hold that, a situation has arisen in which the Government of the state cannot be carried on in accordance with the provision of the constitution, which is the requirement for the exercise of power under Article 356 of the constitution. To exercise power under the said provision and to dissolve the state Assemblies solely on the ground of a newly elected party having come to power at the centre with a sweeping majority would to say the least, betray intolerance on the part of the central government clearly basing the exercise of power under Article 356(1) on considerations extraneous to the said provision and therefore, legally malafide.

From the above it is established that the judgment that was given in the State of Rajasthan Vs. Union of India was erroneous and the one delivered in Bommai vs. Union of India was correct and hence the dismissal of 18 state Governments, nine in
1977 and the same number in 1980 was wrong exercise of power under Article 356(1) of the Constitution.

The Governor is appointed by the Centre but is not its agent. A wrong perception of his being so has gained currency, largely on account of many Governors acting in a blatantly biased manner. A Governor is a constitutional authority, who, derives his powers from the Constitution. He should be carrying out his duties like a Judge on the basis of his own judgment and in accordance with the provisions of the Constitution. He is not required to act on directions from the Centre.\textsuperscript{160}

The Governor working as an agent of the Central Government is the root cause of the aberration coming in the working of the constitution. It sticks in the gullet of the Indian system as a inconvenient fish bone and unless that is extricated the elegance of the constitution is bound to suffer further making it to go beyond recognition. The Supreme Court judgment in Bommai vs. Union of India is a trend setter in the right direction and the skullduggery, which till now was made.

\textsuperscript{160} Seminar on "Role of Governors" Attended by Shri L.K. Advani, Retired General Sinha and Other Governors at India Habitat Centre Auditorium(Friday, 23 July 2010).