Chapter - IV

The President and his powers to Appoint and Dismiss the Prime Minister

In this chapter, we have taken up for discussion the power of the President to dismiss the Prime Minister since the Parliament has not paid any attention to his pleadings. But any discussion of the power to dismiss the Prime Minister necessarily involves a discussion of the President's power to appoint the Prime Minister - since the former flows out of the latter. Hence the first section of this chapter will deal with the President's power to appoint the Prime Minister.

I. The President's power to Appoint the Prime Minister

The President has been given the power to appoint the Prime Minister under Article 75(1) of the Constitution of India which provides that, 'the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister'. ¹ He exercises this power either immediately after the election or whenever there is a mid-term vacancy² in the office of the Prime Minister. Dr. Ambedkar, our Constitution maker, recognised this power of appointment

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2. In India vacancies in the Prime Minister's office were caused by natural death in 1964 and 1966, by resignation in 1979 and 1990 and owing to the Prime Minister's assassination in 1984.
as a prerogative of the Head of the State. He, himself, favoured the idea of investing the President with the discretion in the matter of appointment of the Prime Minister. On December 30, 1948, he said:

"With regard to the (appointment of) Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or resolution, the President should proceed to appoint the Prime Minister ... Therefore one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President".

But it does not mean that the President has been given unlimited power in the matter of appointment of the Prime Minister. Since the institution of parliamentary government under our Constitution is mostly patterned on the British model, the practice followed in India in the appointment of the Prime Minister is same in some respects as in England. According to the English convention the leader of the majority party who is able to command the support of the House of Commons is asked to form a Government

3. Presidential prerogative may be described as the inherent power of the Head of the State which emanates from the nature of his office.

by the King. As Prof. Laski has said:

"where the wishes of the party are unmistakable and the political circumstances normal, convention now requires that the king shall act upon the wishes of the party".5

In India also, the President cannot exercise his discretion in the matter of appointment of the Prime Minister if a party secures a clear majority in the Lok Sabha and has a recognised leader. This viewpoint is reinforced by the fact that Article 75(3) of the Constitution provides for the collective responsibility of the Council of Ministers to the lower House of the Parliament.

(a) **Constituent Assembly Debates**

In the Constituent Assembly, when the report of the Union Constitution Committee regarding President's power to appoint the Prime Minister came up for discussion on July 28, 1947, Shri N. Gopal Swami Ayyangar moved an amendment proposing that the Ministry would be collectively responsible to the House of the People.6 He explained that by convention

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6. The Union Constitution Committee, at its meeting held on June 9, 1947 decided that a provision on the following lines should be made in the Constitution on the matter of appointment of the Ministers:

"The President ... will ordinarily invite the person (for prime ministership) who in his judgement is likely to command the largest following in that House to accept the office ..." But this decision did not find a place in the Report of the Union Constitution Committee. That is why Shri N. Gopalaswami moved an amendment to this effect. Cited in B. Shiva Rao (ed.), *The Framing of India's Constitution: A Study* (New Delhi: The Indian Inst. of Public Administration, 1968), pp. 371-72.
the President would appoint as Prime Minister the leader of
the party which by itself or together with the support of
other groups in the House of the People would be able to
command a fairly stable majority. The amendment moved by
him was eventually adopted.

(b) Discretion of the Head of the State in the matter of
Appointment of the Head of the Government

Before taking up the question of discretion of the
Head of the state in the matter of appointment of the Head
of the Government, we feel that it would be proper first to
take up the question - to which House the Head of the
Government should belong?

In England there is a convention that the Prime
Minister should ordinarily belong to the House of Commons.
This convention was established in 1923, when the King
appointed Mr. Baldwin instead of Lord Curzon as the Prime
Minister. Though Lord Curzon appeared to have better
claim than Mr. Baldwin because of his experience and party
standing but even then his claim for prime ministership was
by passed simply because he was the member of House of Lords.
Similarly in 1940, Mr. Winston Churchill was preferred to

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7. Constituent Assembly Debates (New Delhi: Lok Sabha
9. Cited in Ivor Jennings, Cabinet Government (London:
Lord Halifax as Prime Minister. Sir Ivor Jennings also supported the convention i.e. the Prime Minister should be from the House of Commons and said:

"The Prime Minister is not merely Chairman of the Cabinet; he is also responsible for the party organisation. That organisation matters in the House of Commons and does not matter in the House of Lords... It is, in practice essential that the Prime Minister should have his finger on the pulse of Parliament; and that is in the House of Commons".11

But in October 1963, Earl of Home became the first conservative Prime Minister from the House of Lords since Lord Salisbury resigned at the end of the Boer war in South Africa in 1902.12 In deference to the past practice, the Earl of Home disclaimed his earldom and other peerages on becoming Prime Minister in succession to Mr. Harold Macmillan and was elected in a by-election in November, 1963 to the House of Commons and thus moved from the House of Lords to the House of Commons.13 Thus, Earl of Home strengthened the already established convention that the Prime Minister should belong to the lower House.

The Constitution of India does not say whether the Head of the Government should belong to the Upper House or

13. Ibid.
the Lower House of the Legislature. However, responsibility of the Council of Ministers to the Lower House presupposes that he (Prime Minister or the Chief Minister) would preferably belong to this House only. But in exceptional circumstances the Head of the state may appoint the Head of the Government from the Upper House also. For instance in 1952, the Governor of Bombay appointed Shri Morarji Desai as Chief Minister when he was a member of the Legislative Council. This action of the Governor was criticised by many. The critics argued that to invite a member of the Upper House to head the Government may not be unconstitutional but it appears contrary to the convention of the parliamentary system. But Sri Prakasa, ex-Governor of Madras, criticised the convention of having the Chief Minister only from the lower house of the Legislature. As he said:

"I, for one, see no reason why chief and other important Ministers should necessarily be members of the lower House and not the upper. I do not think we need follow the conventions of the British Constitution at all in this regard."

In 1966, the President of India also appointed Mrs. Indira Gandhi as the Prime Minister when she was a


15. Ibid.

member of the Council of States. After her appointment as Prime Minister, the question whether the Head of the Government should only be from the Lok Sabha was raised in both the Houses of Parliament. On April 1, 1966, Shri H.V. Kamath introduced a Constitutional Amendment Bill providing, interalia, that the Prime Minister should only be a member of the Lok Sabha and the Chief Minister that of the Legislative Assembly but the Bill was rejected.

It is evident from the above stated examples that the British convention, i.e., the Prime Minister should belong to the Lower House of the Legislature has not been strictly followed in India because in England the House of Lords is a hereditary body, while the upper houses of the Legislatures (State Legislatures as well as Parliament) in India are representative in character.

Moreover, it is not only the elected members of the Upper House of the Legislature who can be appointed as Prime Minister or Chief Minister, but the nominated members can also be so appointed. For instance in 1952 in Madras, the


18. Lok Sabha Debates (New Delhi: Lok Sabha Secretariat), 53(32), April 1, 1966, c. 9140.

Governor nominated Shri C. Rajagopalachari as a member of the Legislative Council and then invited him to form the Government.20

Later, the Governor's action was challenged in the Madras High Court by Mr. P. Ramamoorthi. He alleged that the Governor's action of nominating Rajaji was 'unconstitutional for he had no discretionary power to nominate member, as the Governor under the Act of 1935 possessed. He (Governor) could have nominated members to the Legislative Council on the advice of a newly constituted Council of Ministers responsible to the newly elected Legislature, but not otherwise'.21 But the High Court dismissed his petition and observed that they had grave doubts whether the allegation of Mr. Ramamurthi could be the subject matter of a petition in a Court of Law.22

Though the Madras High Court upheld the decision of the Governor of Madras, but it can be said that to nominate a person to the Legislature in order to make him the Chief Minister or the Prime Minister is against the spirit of the Parliamentary system because a nominated member has no electoral


22. Ibid.
support and therefore no mandate from the people. As the Committee of Governors in its report observed:

"We (Governors) are of the view that to nominate a person to the Legislature in order to make him Chief Minister and to lead the Government is contrary to the basic concept of parliamentary Government".23

The Constitution of India also does not make it obligatory that the Head of the Government must belong to the Legislature at the time of his appointment. However, he is required to enter the Legislature within six months of his appointment as a Prime Minister or Chief Minister. In 1970, the Governor appointed Mr. T.N. Singh, who was not a member of the State Legislature, as a Chief Minister of Uttar Pradesh and he continued in office until he contested an election in which he was defeated.24 Similarly in 1980, Mr. A.R. Antulay and


24. Constitutional Precedents : Non member Chief Minister; Journal of the Society for study of State Governments (Varanasi), 4(1), January-March 1971, pp. 51-2; See also B.L. Padia, State Politics in India (New Delhi : Radiant Publishers, 1984), pp. 240-41; Whether a person who is not a member of the state Legislature can be so appointed as a Chief Minister or not was contested before the Allahabad High Court in H.S. Verma vs. T.N. Singh, Chief Minister, U.P. in civil appeal No. 2205 of 1970, D/16.3.1971. The High Court dismissed the petition of Mr. H.S. Verma on the ground that the Constitution did not prescribe any qualification for the person to be selected by the Governor as Chief Minister or a Minister and hence there was no force in the appeal. Cited in J.R. Siwach, Office of the Governor: A Critical Study (1950-73), (New Delhi : Sterling Publishers, 1977), p. 30; Later Mr. H.S. Verma filed an appeal in the Supreme Court against the decision of Allahabad High Court and it held that "appointment of a person as Chief Minister cannot be challenged on the ground that he was not a member of either House of the Legislature of the State at the time of his appointment; see The All India Reporter (Nagpur), Vol. 58, 1971, Supreme Court 1331 (1332).
Mr. Jagan Nath Pahadia took over as Chief Ministers of Maharashtra and Rajasthan respectively, when they were ministers at the Centre and thus did not belong to the State Legislature.  

In June 1991, the President also appointed Shri Narasimha Rao, who was not a member of Parliament, as the Prime Minister of India. Shri Rao, who was required by the Constitution to enter Parliament within six months of his appointment as Prime Minister, won a by-election in November, 1991 from the southern state of Andhra Pradesh.

(1) Convention in other countries regarding Right to Appoint the Heads of the Governments

As stated earlier, when no single party or a combination of parties gets a clear majority in the election, the Head of the State may play an influential role in the appointment of the Head of the Government. Moreover, when the Head of the Government resigns or dies a natural death or is assassinated and the vacancy is created, the Head of the State may be called upon to play an important role in the selection of the head of the Government.

26. Hindustan Times (New Delhi), 22.6.91
In England, the clearcut instance of the exercise of Queen's discretionary power in regard to the selection of the Prime Minister took place in 1894 when the Prime Minister Mr. Gladstone resigned from his post. It was expected that the Chancellor of Exchequer, Sir William Harcourt would be chosen as Prime Minister. Mr. Gladstone who wanted to recommend Lord Spencer as his successor, was expecting that his advice as retiring Prime Minister would be taken. But this did not happen. Queen Victoria, on her own responsibility and without consulting the Prime Minister, sent for Lord Rosebury, the Secretary for foreign affairs, and entrusted him with the formation of the new Ministry.28

Another instance of this sort arose in 1957 when Mr. Anthony Eden resigned as Prime Minister on grounds of ill health. It was almost universally held that the Queen would ask Mr. Butler who had deputised for Sir Anthony Eden during his absence, to form a new Conservative government.29 But instead she appointed Mr. Harold Macmillan, the Chancellor of Exchequer in Eden's Cabinet, as the new Prime Minister and thus imposed her own choice upon the Conservative party as was pointed out by the Labour leaders:

"The Queen, by naming the Premier before the Conservative Party had elected its leader, had imposed her choice upon the party and had thus involved the Crown in a political controversy in as much as the Conservatives had no alternative but to elect Mr. Macmillan as their leader since a failure to do so would be construed as implied disobedience to the Queen. 30

The role played by President of Germany also provides an illustration in this respect. When the elections were held in Germany in 1924, none of the parties could obtain an absolute majority in the Reichstag. The German National People's Party, being the largest, claimed the right to form the Government. 31 But the President refused to oblige. Instead he appointed Marx and remarked:

"The National Constitution leaves the appointment of a man who is to establish and direct the National Cabinet to my free decision". 32

These precedents indicate that on various occasions, the Heads of the States in different countries have exercised their prerogative right in appointing the Heads of the Governments in an effective manner.

30. Ibid.
32. Ibid.
(ii) The Practice in Indian States regarding Governor's Right to Appoint the Chief Ministers

We will now look into the practice with regard to the role of the Governors of Indian States in the appointment of Chief Ministers and the scope of discretionary power, if any, enjoyed by them in this area—to find out parallels for the subject of our study.

In 1952 in Madras, after the general election, a situation had arisen where no party was in possession of absolute majority in the state Assembly. In a House of 375 members, the largest party after the elections was the Congress with 155 members. On the other, Mr. T. Prakasam had sent a list of 167 members of the Assembly to the Governor informing him that a new party known as United Democratic Front had been formed and requested that he as its leader should be invited to form the Government. Rejecting his claim, the Governor said, "I could not recognise a new party which is formed after the election and before the Legislature meets. I must go by the nomenclatures that different parties gave themselves at election time ...." Ultimately, the Governor asked the Congress party to form the Government and thus acted on the principle that the


34. Sri Prakasa, f.n. 16, p. 37.
single largest party should be preferred rather than a rag-tag coalition.

Similarly in Rajasthan also, immediately after the general election of 1967, none of the political parties had a clear cut majority in the Assembly. Both Mr. Mohan Lal Sukhadia, the leader of the Congress Legislature party and Mr. Lakshman Singh, the leader of the Samyukta Dal claimed majority. Dr. Sampurnanand, the then Governor of Rajasthan, assessed the claims and counter claims and interviewed some members of the Legislative Assembly of the state whose names appeared in both the lists. Thereafter he invited Mr. Mohan Lal Sukhadia to form the government and said "I had left the reported views of the 15 independent members of the Legislative Assembly out of reckoning as they had no policy and no party or group". Thus he exercised his discretion in the matter of appointment of the Chief Minister.

In Haryana also, no party had secured a clear cut majority in the Assembly after the general elections of 1982. The Congress (I) had 35 members and Lok Dal - Bhartiya Janata Party alliance had 36 members in a House of 90 members. The Governor, Shri G.D. Tapasse, first invited Shri Devi Lal, the leader of the Lok Dal - Bhartiya Janata Party alliance, to parade his supporters. But suddenly he changed his mind and invited Mr. Bhajan Lal, the leader of the Congress (I) to form

36. Ibid.
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.

Contrary instances also exist where the Governors have rejected the claims of the leader of the largest single party to form the Government. This situation occurred in Orissa after the mid-term poll in 1971. No party was in a position to claim an absolute majority, though the Congress (R) was the largest party. Shri S.S. Ansari, the Governor of Orissa consulted Shri H.K. Mahtab, the leader of the Congress Party but he failed to substantiate his claim of commanding the majority in the House. Hence, the Governor invited Mr. Biswanath Das, the leader of the newly formed Orissa United Front Assembly Party, to form the Government.

Thus, it can be said that on various occasions, the Governors have exercised their discretionary power in appointing the Chief Ministers of their States.

(iii) The President and his right to Appoint the Prime Minister of India

In India, occasion for real exercise of the power of appointment of a Prime Minister arose for the first time during the presidency of Shri Radhakrishnan. The death

38. Ibid, p. 82.
40. Ibid, p. 50.
of Shri Jawahar Lal Nehru on May 27, 1964 brought his government to an end. A Prime Minister was immediately needed to head a new Government. The Congress Party could not immediately indicate who was to be its leader in Parliament and as such head the Government. Therefore, the President exercised his discretion and appointed Shri G.L. Nanda as a Prime Minister. It was said that Shri Radhakrishnan himself arrived at a decision to appoint Shri G.L. Nanda as Prime Minister independently of the Emergency Committee's identical recommendation.

In fact Shri Radhakrishnan, while appointing Shri G.L. Nanda, recalled an Indian precedent established in West Bengal in 1963, when Dr. B.C. Roy died in office. Mr. P.C. Sen, the senior-most cabinet colleague, was sworn in as the acting Chief Minister. In view of the existence of the above precedent, the President appointed Mr. G.L. Nanda as Prime Minister because he was the senior-most cabinet member.

41. In this context, Mr. Madhu Limaye said that 'President Radhakrishnan so exercised his reserve power (of appointing Prime Minister) as not to fetter the right of the Congress to choose its leader and installed Shri Gulzarilal Nanda as a stop gap Prime Minister'. See Madhu Limaye, Indian Polity in Transition (New Delhi: Radiant Publishers, 1990), p. 9.


43. B.C. Das, f.n. 12, p. 245.
Similar procedure was followed again in January 1966 when Shri Lal Bahadur Shastri died in office. The President, Dr. Radhakrishnan, asked Mr. G.L. Nanda again to be the caretaker Prime Minister.

Moreover, the events relating to the succession of Mrs. Indira Gandhi emphasized the possible role of the President in the matter of appointment of the Prime Minister. Mrs. Gandhi was assassinated on October 31, 1984. The same day the President, Shri Zail Singh, swore in Shri Rajiv Gandhi as the Prime Minister of the Country, departing from the earlier practice, when after the demise of Shri Jawahar Lal Nehru and Shri Lal Bahadur Shastri, the President had named a caretaker Prime Minister, while awaiting the decision of the Congress Parliamentary Party. In Shri Rajiv Gandhi's case this decision was taken a posterior, on November 2, 1984.

Similarly the 1989 general elections to the Lok Sabha provided an opportunity to the President, to play an important role in the appointment of the Prime Minister, though to a limited extent. At that time no party obtained a clear

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45. Robert L. Hardgrave, 'India in 1984: Confrontation, Assassination and succession', Asian Survey (Berkeley), 25(2), February 1985, p. 139; See also Max Jean Zins, Ibid.
majority in the Lok Sabha. President Shri Venkataraman first invited Congress(I), which was the largest single party in the Lok Sabha, to form the government. When Congress(I) refused to form the Ministry, the President gave opportunity to Mr. V.P. Singh, leader of the National Front and Bhartiya Janata Party coalition, to form the Government.

But this Government did not last for a long time. Bhartiya Janata Party withdrew its support on October 23, 1990 from the National Front Government and demanded its dismissal by the President. But the President exercised his discretion and gave an opportunity to Mr. V.P. Singh to prove his majority on the floor of the House on 7 November, 1990. Mr. V.P. Singh failed to prove his majority on the floor of the House.

Thereafter, the President decided to explore the possibilities of forming an alternative government and invited first Shri Rajiv Gandhi and then Mr. Chandra Shekhar to form the government.

Thus, it can be said that on various occasions the Presidents of India have exercised their discretionary power in appointing the Prime Ministers of the country.

(iv) The Controversy of 1979 regarding President’s Role:

The President of India may also play a prominent role in the appointment of the Prime Minister, if the majority party in the Lok Sabha splits and the government resigns in anticipation of its defeat on the floor of the House.

In fact such a situation developed in India in July 1979 when Shri Y.B. Chavan, the leader of the Congress(S), moved a vote of no-confidence against the Prime Minister Shri Morarji Desai. There was large scale defection from the ruling party and ultimately on 15 July 1979, the Prime Minister Shri Morarji Desai resigned without facing the vote of no-confidence but without resigning his leadership of the Janata Party.

The President Shri Neelam Sanjiva Reddy asked Mr. Chavan, to explore the possibility of forming an alternative government.


49. It was quite obvious that with the majority party racked by defections, the successor government had to be a coalition. Hoping to form one Mr. Morarji Desai clung to Janata Party leadership.
cohesive government. His decision was democratic because the parliamentary conventions demand that the leader of the Opposition party should first be given the opportunity to form a Government in the state, especially when the ruling party is defeated on the floor of the House. As Prof. Jennings had said:

"It is an accepted rule that when a government is defeated, either in Parliament or at the polls, the Queen should send for the leader of the Opposition".51

Mr. Chavan told newsmen as well as the Congress Working Committee that he would be able to form a Government. He asked for three to four days time for making efforts to seek support from other parties so that he could form a coalition Government. But on 22nd July, he met the President and conveyed his failure to form a Government. At the same time he took care to inform the President that his efforts had resulted in the emergence of combination of parties and groups that could provide a viable and stable government.

The failure of Mr. Chavan's efforts and his report to the President to that effect rekindled the hopes in the Janata...

50. 'Search for new Prime Minister', Eastern Economist (New Delhi), 73(3), July 20, 1979, p. 115.
51. Ivor Jennings, f.n. 9, p. 32.
camp to form a new government. Mr. Morarji Desai claimed that he could form a stable government and informed the President accordingly.

In the meantime Mr. Charan Singh also wrote to the President that he had the necessary support to form a stable government and, therefore, he should be called upon to do so. He also impressed upon the President that the Party (of Mr. Morarji Desai) which had lost the majority in the Lok Sabha could not be given a chance till his party had explored the possibility of forming a government.

Now the question arises: can the President invite a leader for re-appointment, who has already resigned from the office of the Prime Ministership owing to internal dissensions or owing to no confidence motion lying before the House?

In this context, Shri M.N. Kaul, former Lok Sabha secretary, held that the President could have called Mr. Desai again to form a Government. According to him, Mr. Desai's Government had not really lost the majority because of no-confidence; but it had resigned because of defections from the party.

54. 'Search for new Prime Minister', f.n. 50, p. 116.

55. Shri Charan Singh resigned from the Janata Parliamentary Party as well as the Ministry on July 16, and on the same day, was elected leader of Janata(S), Journal of Parliamentary Information, f.n. 48.

On the other hand, Mr. Ram Jethmalani held that Mr. Morarji Desai had forfeited the right to rule the country. As he said:

"...When a ruling party elected a leader it elected the Prime Minister and the resignation from one was resignation for the other, and that by tendering his resignation, Mr. Desai had forfeited his right to advice the President..."57

He further said:

"Mr. Desai could have asked any or all his colleagues to resign, reshuffled the Cabinet, advised the dissolution of the Lok Sabha or continued in office until he was defeated in Parliament. Not having followed any of these courses he weakened his claim to form Government again ...."58

It is a fact that Mr. Desai resigned as Prime Minister only when he was finally convinced that his party had been reduced to a minority and that it was almost certain that no-confidence motion against him would be passed.

However, the President took the most unprecedented step of inviting two contenders - Mr. Morarji Desai and Mr. Charan Singh - simultaneously to explore the possibilities of forming an alternative government.59 Both were asked to submit a list of M.Ps. supporting their respective leadership.60

58. Ibid.
60. Ibid.
The President's decision was criticised by many leaders. Acharya J.B. Kriplani told the newsmen at Madras that the President should have ascertained which party had the majority support without calling for lists from the leaders.61 Shri S.N. Mishra, Janata (S) leader said that the Presidential action "does not conform to the practice which has been gradually followed so far. The President's action was not only strange but it might also lead to horse-trading."62 He was firmly of the view that the President should have invited only Mr. Charan Singh and it was not correct to invite Mr. Desai who had to resign because his Ministry had been reduced to a minority.63

Despite the criticism of the decision of the President, the fact remained that at that time i.e. from 18th to 23rd July 1979, it was not clear which of the party was likely to command a majority support in the Parliament and would be able to form a stable government. Therefore, the President

62. Quoted in M.V. Pylee, Crisis, Conscience and the Constitution (N. Delhi: Asia Publishing House, 1982), p. 31; The fear of horse-trading became true promises of support changed at frequent levels depending on the benefits offered by the rival groups ... The price of a member of Parliament belonging to the smaller parties or an independent was quoted to be the highest, anything in the neighbourhood of Rs.10 lakhs. Even the so called responsible and elder politicians, including Ministers and group leaders openly talked about so and so being purchased at such and such price by the contending groups. See 'Money in the battle for 270', Democratic World (New Delhi), 8(30), July 29, 1979, p. 10.
63. M.V. Pylee, Ibid.
decided to ask Mr. Morarji Desai and Mr. Charan Singh both to send him the lists of their supporters. Justifying his own decision, Shri Neelam Sanjiva Reddy wrote in his book:

"At that stage I had before me the claim of Morarji Desai that the Janata Party was the largest single party and that he as its leader should be called upon to form a Government. On the other hand Charan Singh, the leader of the newly formed breakaway group called Janata (S), had the support of Congress (S) given to it in writing ... The situation was such that without asking the two leaders to furnish detailed information about their respective supporters no decision could be taken".64

On July 25, 1979, both the parties Janata and Janata (S) submitted their respective lists. While Mr. Charan Singh's list contained 279 names, Mr. Morarji Desai's had 278. Both the lists contained the names of 557 members while the total strength of the members of the Lok Sabha was only 538. Later on it was detected that Mr. Desai had submitted an inflated list of supporters. In the cynical game of numbers Mr. Charan Singh emerged as the winner and the President, Mr. Sanjiva Reddy, invited him to form the government and also to seek vote of confidence by the third week of August 1979.65

Thus the President exercised his discretion in the matter of appointment of a Prime Minister in the wake of a
crisis which had no precedent. It was the first time in the history of the Indian Republic that the President of India asked the Prime Minister-designate to secure a vote of confidence from the Lok Sabha.

The Presidential judgement in inviting Mr. Charan Singh to form the Government was vehemently criticised by some noted jurists and political leaders. Shri M.C. Changla, a jurist, was of the view that the President must have invited Mr. Desai first to provide another Government at the Centre because he had not faced the no-confidence motion moved against his Ministry.66

Many people criticised Mr. Charan Singh for seeking help from Mrs. Indira Gandhi. It was stated that it was ironical that Mr. Charan Singh would have to depend on the Congress-I for remaining in power. He was one of the founders of the Janata Party which was formed in early 1977 to dethrone Mrs. Gandhi, who, he had till lately proclaimed, represented the dictatorial tendencies in the country.67

Moreover, people concerned with the nation's stability and integrity were being reminded of what had happened in

66. Quoted in N.S. Gehlot, f.n. 56, p. 183.
France during the Fourth Republic. The French nation, at that time, became divided between "the ex-Prime Ministers and the future Prime Ministers. Prime Ministers used to come in the morning and go out in the afternoon".68

It was said that the same might happen in India in the days to come. As a senior Janata Party leader put it:

"The longevity of the party rule is increasingly shortened. While the Congress ruled the country for 30 years, the Janata Party could stay in power only for 28 months. The next Prime Minister would be lucky if he could complete even 24 weeks. After that it would be 24 days and may be less than 24 hours".69

Some critics argued that in adopting the procedure of asking the two leaders to furnish lists of their respective supporters, the President had departed from a principle that he had advocated as speaker of the Lok Sabha during 1967-69, when he had said:

"In no circumstances should it be left to the Governor to determine whether a chief Minister continues to enjoy the support of the majority of the members or not ... It is the prerogative of the Assembly to decide this issue".70

But Mr. N. Sanjiva Reddy, defending his action, later on wrote:

69. Quoted in Ibid.
70. N. Sanjiva Reddy, f.n. 64, p. 33.
"In my Presidential address I was dealing with a situation in which there was already a Chief Minister holding office. If there was a challenge to his continuance in office on the plea that he had lost his majority in the State Assembly ... what should the Governor do? ... I suggested that the Governor should leave the decision to be settled on the floor of the Assembly ... The problem that arose in 1979 was however different. A Ministry had resigned and the leader of the Opposition ... reported his inability to (form the Government) ... It was constitutionally my duty to find a Government. It was ... my responsibility to choose between the two alternatives, a responsibility which I could not pass on to any other organ envisaged by the Constitution ..."71

Some of the political leaders criticised the President for asking the Prime Minister to seek a vote of confidence from the Lok Sabha. They held that it is the Prime Minister's advice that is binding on the President and not vice versa. Mr. B.P. Maurya of the Congress (I) said in a statement that the advice of the President to the Prime Minister, Mr. Charan Singh, to seek a vote of confidence in the Lok Sabha, "although given in all good faith, cannot have any binding force and is devoid of any constitutional validity. After the President had exercised the prerogative and appointed the Prime Minister, no power remains with him to tender any advice or give any direction in the matter of discharge of his duties as Prime Minister".72

71. Ibid, pp. 33-34.
72. Indian Express (New Delhi), August 1, 1979.
Critics were also of the view that by asking Mr. Charan Singh to seek a vote of confidence, the President had encouraged defection, horse-trading and corruption in parliamentary life. This had been proved by the hectic manner in which ministers were sworn in from time to time till the very last day before the confidence vote was to take place. Newspaper reports revealed that a member of Parliament, who along with a few of his Lok Sabha colleagues formed a parliamentary group and pledged his support to Mr. Morarji Desai, switched his allegiance to Mr. Charan Singh just 48 hours before the confidence vote was scheduled expecting to be sworn in as a minister a few hours before the proposed time of the crucial vote.73

Though Mr. Charan Singh had denied that the support to him from his collaborators was conditional in any way, the sources revealed that he had reportedly sent a word to Mrs. Gandhi that if given time, he would be able to work out a formula enabling him to withdraw cases against her and her associates.74

It is a fact that, so long as the Prime Minister enjoys the support of the lower House, there is no point in asking the Prime Minister to seek a vote of confidence. But

74. 'Good bye to Special Courts', Democratic World (New Delhi), 8(33), August 19, 1979, p. 10.
in the context of a peculiar situation in which Mr. Charan Singh was appointed, the President had every right to advise the Prime Minister-designate to show his majority on the floor of the House. In fact, the President was being forced to take such a decision because of the confusion created by the Congress (I) statement. It clearly stated that "its unconditional support to Mr. Charan Singh ended when he was sworn in as the Prime Minister on July 28". 75

On 20th August 1979, Mr. Charan Singh resigned before a vote was taken on the motion of confidence in the specially convened session of the Lok Sabha. 76 What was more surprising was that he, as Prime Minister by the exclusive grace of the President, and totally lacking the popular mandate advised the President to dissolve the Lok Sabha. On 22nd August, the President dissolved the Lok Sabha and offered fresh elections. 77

Right from the beginning it was clear that Mr. Charan Singh was a stop-gap Prime Minister, hardly going to survive the vote of confidence. When the day of reckoning dawned, Mr. Charan Singh resigned from his post and recommended the dissolution of the Lok Sabha.

76. Asian Recorder (N. Delhi), 25(39), Sept. 24-30, 1979, p. 15089.
77. P. Sood, f.n. 52, p. 173.
The President's decision to allow Shri Charan Singh's ministry to continue as caretaker government created controversy and produced many outbursts. The President became a target of attack. His decision was questioned. He was accused of being partisan and even a conspirator.

The Janata Party members started talking of impeachment of the President. They charged that Mr. Reddy had brought down the prestige of the high office and was unfit to hold it any longer. In a joint statement Shri Chandra Shekhar and Shri Jagjivan Ram lamented that the President's decision testified to a deep conspiracy to prevent the single largest party, Janata, from forming a Government and to ensure that elections were held with the State apparatus in the hands of a person chosen by the President himself.

Reacting sharply to the order for dissolution, former Prime Minister Shri Moraji Desai described it as absolutely unconstitutional. He said:

"It is very funny manner in which he (the President) has behaved not only now, but even earlier when he called me and Mr. Charan Singh simultaneously to form a Government".

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78. 'Janata move for impeachment' Times of India (New Delhi), August 23, 1979.
79. 'Fears of dictatorship by the President' Indian Express (New Delhi), August 23, 1979.
Here the question arises, what led the President to take such a controversial and momentous decision? What were the issues involved? And what were the circumstances? What could possibly have been the reasons which made the President to deny Mr. Jagjivan Ram the chance he deserved? These and related matters deserve to be recounted and analysed in some detail for a proper appreciation of the complex situation in its totality.

Though the Janata Party, all the time beginning from August 20 when Mr. Charan Singh submitted his resignation, was claiming a majority, for all practical purposes the President seemed to have been doubtful of such claim because Congress (I) and Janata (S) had unmistakably opposed the claim of the Janata Party to form a Government. Congress (S) too was of the same view. Having regard to these facts and figures, the President came to the conclusion that Shri Jagjivan Ram, notwithstanding the strength of a little over 200 of his own party, could hardly form a Government commanding majority support.

Moreover, the confusion was created by Mr. Jagjivan Ram himself. He refused to submit the list of his supporters until the morning of 22nd August and was insisting that he would demonstrate his majority only on the floor of the House. But to show that majority he wanted atleast 10 days time. This
implied clearly that he was only hoping that if given time of eight to tendays, he may be able to engineer sufficient defections from various quarters to enable him to fulfil his life-long ambition of being the Prime Minister of the Country.

It was also pointed out that Shri Charan Singh's Government should not be allowed to continue as a caretaker Government because it had never been able to get a vote of confidence from the Lok Sabha. But it can be argued that even though it had not been able to get a formal vote of confidence from the Lok Sabha, the Government did represent, when it came into power on 26th July 1979, a majority sentiment in the Lok Sabha. It was on written assurance of Congress (I) support that the President had called Mr. Charan Singh to form the Government. It is thus wrong to say that Shri Charan Singh's Government never had a majority support.

Had Mr. Charan Singh sought the vote of confidence from the Lok Sabha immediately after he was invited to form the Government by the President, the Ministry would have been in office in all probability. The situation at that time was such that those who had promised support to Mr. Charan Singh could not have backed out and many a fence-sitter from the Janata and the smaller parties would have also crossed over in a moment of excitement filled with allurement.81

81. Dewan Barindranath, 'Time to think - Clearly and Cleanly' Democratic World (New Delhi), 8(34), August 26, 1979, p. 5.
The President needed the Ministry to aid and advise him in the exercise of his functions. Therefore, he decided to let the Ministry then in office to continue to run the country's Government because he was aware of difficulties in forming a new Government.

Thus it can be said that during Mr. Sanjiva Reddy's time, the lever of political power shifted in favour of the President. After Desai's resignation, he not only nominated the Central Government himself but also exercised his discretion in the dissolution of the Lok Sabha. The caretaker Prime Minister also functioned within the guide lines set by him.

II. President's Power to Dismiss the Prime Minister

According to Article 75(2) of the Constitution of India, the Ministers including the Prime Minister hold their office during the pleasure of the President. Article 75(3) further provides that the Council of Ministers shall be collectively responsible to the Lok Sabha which means the Government may continue in office so long as it enjoys the confidence of the Lok Sabha. The question arises that whether the Prime Minister is answerable and accountable to the lower house of the Legislature only and not to the President of India? Does the President have any discretion regarding the dismissal of the Prime Minister? These questions are
of crucial importance and are the subject matter of discussion in this part.

Under parliamentary practice, the Prime Minister generally resigns if he loses the majority support in the Lok Sabha and the question of dismissal does not arise. But there may be certain typical situations in which the President may exercise his discretionary power in dismissing a Prime Minister. According to one writer, these situations are:

"(1) Where the Prime Minister keeps himself in power by questionable means as evidenced by floor crossing from one party to the other and continuous expansion or shufflings of the Ministry;

(2) Where a Ministry having lost its majority is not prepared to resign, nor is agreeable to convene an early session of the Legislature for trial of strength and hopes in the meantime to be able to pressurise, persuade or purchase the legislators to change over to its side in sufficient numbers to give it the requisite majority;

(3) Where a Prime Minister refuses to resign even when he has lost the confidence of the party and the latter has elected a new leader in his place".82

Thus, it can be said that if the Prime Minister tries to stick to office even after a vote of no-confidence is

82. H.M. Jain, f.n. 33, p. 183.
passed against him or if he refuses to summon the Lok Sabha for testing his strength, the President may exercise his discretionary power in dismissing the Prime Minister.

However, we are thinking of extraordinary situations when the Prime Minister, even if he enjoys the majority in the Lok Sabha, can also be dismissed if he stays in office by misusing his powers or if his stay in office is considered not in the national interest by the President of India. In the following pages we will try to establish this point.

(a) Practice in Indian States regarding Right to Dismiss the Head of the Government

We will first discuss the practice regarding the Governor's right to dismiss the Chief Minister in this context to draw some parallels.

At the state level, the Governors have often exercised their discretion in dismissing the Chief Ministers of their States. For instance in July 1956, the Governor of Kerala dismissed the duly elected Communist ministry of Kerala on the Ground that the Government was using its machinery and funds for party purposes.83

In 1967 in West Bengal, when the Assembly was not in session, some of the M.L.A.s had withdrawn their support to

Mr. Ajoy Mukherjee's Government. Thereafter, the Governor asked the Chief Minister to convene an early session of the Assembly in order to test whether he enjoyed the confidence of the Assembly or not. But when the Chief Minister did not agree to an early summoning of the Assembly, the Governor dismissed his Ministry. A new ministry headed by Dr. P.C. Ghose was sworn in and the Governor summoned the Assembly on the advice of the new Chief Minister.

When the Assembly met, the speaker adjourned it on the ground that the action of the Governor in dismissing the Ministry of Mr. Ajoy Mukherjee was unconstitutional. The matter reached the Calcutta High Court and it declared that the action of the Governor was constitutional. As it stated:

"The provision in Clause (2) of Article 164 that the ministers shall be collectively responsible to the Legislative Assembly of the State does not in any manner fetter or restrict the power of the Governor to withdraw this pleasure. Collective responsibility contemplated by Clause (2) of Article 164 means that the Council of Ministers is answerable to the Legislative Assembly of the State. It follows that a majority of the members

of the Legislature Assembly can at any time express its want of confidence in the Council of Ministers. But that is as far as the Legislative Assembly can go.

"The Constitution has not conferred any power on the Legislative Assembly of the state to dismiss or remove from office the Council of Ministers. If a Council of Ministers refuses to vacate the office even after a motion of no confidence has been passed against it in the Legislative Assembly of the state, it will be then for the Governor to withdraw the pleasure during which the Council of Ministers holds office. The power to appoint the Chief Ministers and the Council of Ministers, on the advice of the Chief Ministers, and the power to remove the Ministers from office, by withdrawing the pleasure contemplated by Article 164(1) have been conferred upon the Governor exclusively". 85

In July 1984 in Kashmir, the Government headed by Dr. Farooq Abdullah faced a big crisis when some members of Legislative Assembly decided to withdraw their support to his Ministry. They met the Governor and told him that Farooq Abdullah's National Conference had split into two factions and that he (Dr. Abdullah) had lost his legislative majority. 86

After being informed of this development, Dr. Abdullah wrote a letter to the Governor and asked him for the

85. The Calcutta High Court in the decision reported in Mahabir Prasad v. Prafulla Chandra (1969 Cal. 198) upheld the decision of the Governor, All India Reporter (Nagpur) Vol. 56, 1969, Calcutta 198.

immediate summoning of the Legislative Assembly to test his majority on the floor of the House". But the Governor did not accept his request and dismissed him. After his dismissal Dr. Abdullah again approached the Governor that an emergency session of the Assembly be summoned to give him an opportunity to demonstrate his strength on the floor of the House. But it was also ignored. The Governor said that he was not bound to follow the advice of Dr. Farooq in view of the fact that he had lost his majority support in the House and had ceased to be the Chief Minister of the State.

The dismissal of Dr. Abdullah was criticised by many. Denouncing the dismissal, Andhra Chief Minister, Shri T.N. Rama Rao, called a meeting of 19 opposition parties in New Delhi. Speaking with one voice, the Opposition leaders condemned the undemocratic removal of the Abdullah Ministry and its replacement by the defector government of Mr. G.M. Shah.

Shri L.P. Singh, a distinguished former Home Secretary and Governor of Assam, also condemned the action of the Governor of Kashmir in his article entitled 'Governor's Rule in Crisis: Rights and Wrongs in Kashmir'. His argument was


88. Ibid.

89. Ibid.

that the dismissal of a Ministry should be the responsibility
of the Legislative Assembly through a vote of no-confidence
on the floor of the House.\footnote{Cited in D.A.Low, f.n. 86, pp. 204-5.}
He criticised the practice of
defactors from a State's ruling party going to the Governor
and asking him or her to dismiss the Ministry at once because
it no longer had a majority.

A week after Shri L.P. Singh's article appeared, Shri
Jagmohan, the Governor of Kashmir, justified his action in
a long letter written to a newspaper, 'The Times of India.'
He argued that Mr. L.P. Singh was out of touch with recent
events in Kashmir and that the Governors had to act with
discretion because only they could fully assess the circum-
stances.\footnote{Ibid, p. 205.} He also said that whatever the critics might say
about the Governor's discretionary powers, neither the
government nor Parliament of India had thought it appropriate
to limit that powers through any guideline".\footnote{Ibid.}

To us, the Governor's action in Kashmir appears
prima facie obnoxious since he took upon himself the
responsibility of establishing the majority support to the
then Ministry of Dr. Farooq Abdullah instead of summoning

\begin{thebibliography}{93}
\item 91. Cited in D.A.Low, f.n. 86, pp. 204-5.
\item 92. Ibid, p. 205.
\item 93. Ibid.
\end{thebibliography}
the Legislative Assembly immediately, as advised by the Chief Minister. By contrast, the action of the West Bengal Governor appears justified since he observed the constitutional niceties.

However, the point made by Shri Jagmohan regarding the absence of any guideline is well made. If the appropriate authorities leave the space open in the area of discretionary powers and do not limit it, the Heads of the States cannot be faulted if they use these according to their best judgement.

In August 1984, the Governor of Andhra Pradesh, following Shri Jagmohan, similarly dismissed the duly elected Ministry of Mr. N.T. Rama Rao on the ground that, due to defections from his party, his government had lost the majority in the Assembly instead of asking the Chief Minister to seek a vote of confidence in the Assembly. He swore in Mr. Bhaskara Rao who formed the Ministry with the support of the Congress party and the defectors.94 This led to a widespread agitation in the State and consequently Shri Rama Rao's Ministry had to be reinstated.95


95. Ibid, pp. 149-50.
Such situations should be avoided. Mr. Ram Lal's action was out and out partisan and hence he had to lick the dust. He lowered in public esteem the high office of the Governor. Infact the Governor or President must be on very strong grounds whenever they take such an unconventional step. They should not only be but also appear to be working in the larger public interest. As a person, they must be above board.

(b) **Convention regarding Right to Dismiss the Head of the Government**

The Heads of the states in different countries have often exercised their discretionary power in dismissing the Heads of the Government. For instance in 1953, the Governor General of Pakistan dismissed the government of Khwaja Nazimuddin after the riots in Lahore and justified the dismissal on the ground that he could withdraw his pleasure in the interests of public order and tranquility. In 1962 there followed the major episode in the western Region of Nigeria when the Governor, the Oni of Ife, dismissed the Premier, Akintola, after receiving a letter from a majority of regional legislators expressing lack of confidence in him.

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In October-November, 1975, Australia was in the midst of a grave constitutional crisis. The crisis arose in October 1975 when the Opposition in the Senate decided to defer consideration of the Appropriation Bills until the Prime Minister Mr. Whitlam agreed to call elections to the Parliament. The high point of the crisis was reached on November 11, when the Governor General, Sir John Kerr dismissed the Prime Minister, though he enjoyed majority in the Parliament, in view of the fact that he could not obtain supply of funds.

The Australian situation was special in view of the constitutional provision regarding Senate's financial powers - hence, it does not help us in drawing any inference so far as our contention with regard to the Indian President is concerned.

In August 1990, there followed a major episode in Pakistan when President Ghulam Ishaq Khan dismissed the then Prime Minister of Pakistan, Mrs. Benazir Bhutto in view of the fact that her government was burdened by nepotism and torn by corrupt practices. Justifying his decision of

98. Ibid, p. 95.
dismissing the government, the President declared that Mrs. Banazir Bhutto was unable to govern and had lost control of law and order situation.\textsuperscript{101}

Later in April 1993, the President of Pakistan dismissed the Government of Prime Minister, Mr. Nawaz Shariff, dissolved the National Assembly under his special constitutional powers and installed Balakh Sher Mazari as the caretaker Premier.\textsuperscript{102} While justifying his dismissal order, he said:

"The Government ... is not in a position to meet properly and positively the threat to the security and integrity of Pakistan and the grave economic situation confronting the country necessitates the requirement of a fresh mandate from the people".\textsuperscript{103}

Later, Mr. Nawaz Shariff challenged the Presidential order and it (the order) was struck down by the Supreme Court of Pakistan.

President Ghulam Ishaq Khan's actions come very close to what we are trying to establish - that the President being the Head of the State, is above the Head of the Government, and being the custodian of national interests and guardian of the Constitution, would be within his rights

\textsuperscript{101} Ibid.,

\textsuperscript{102} \textit{Indian Express} (New Delhi), April 19, 1993.

\textsuperscript{103} Ibid.
if he dismisses the Head of the Government, who according to his light, is jeopardising the national interest or trampling upon constitutional provisions. However, we would also like to add a word of caution—though our contention is that extraordinary maladies call for extraordinary remedies, but these powers should not be used frequently, as was done by Ghulam Ishaq Khan for then they lose their import.

Mr. Khan's repeated use of his discretionary powers smacked of a dictatorial attitude and hence was rightly set aside by the Pakistan Supreme Court.

(c) **Controversy of 1987 regarding Indian President's Right to Dismiss the Prime Minister.**

Coming back to the Indian scene, we would like to recount the events as they unfolded, resulting in an extraordinary situation, during 1986-87.

In October 1986, Mr. V.P. Singh, then Finance Minister hired an American firm of investigators called Fairfax to investigate the illegal holding of Indians in foreign countries. In February 1987, the Indian Ambassador in Bonn had sent the information to New Delhi that the German firm HDW was unable to reduce the price of two submarines ordered

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by New Delhi because it had to pay seven per cent commission on the sale price. On receiving that information Mr. V.P. Singh ordered, without consulting the Prime Minister, an immediate inquiry to be carried out in the matter.

When the President, Shri Zail Singh, came to know about the above stated scandal, he sent a letter to the Government intimating his desire to be briefed about the developments related to the probe on foreign funds issue including the appointment of the Fairfax group as investigators.

Meanwhile, the information about Bofors scandal also leaked out. The Swedish radio reported that a payment of about 500 million rupees was made to parties by the arms manufacturer, Bofors, on a 13-billion rupees defense deal signed with the Indian Government in March 1986.

Later, the President sent another letter to the Prime Minister and demanded details of the Bofors gun deal such as the nature of the telegrams exchanged between the Indian Embassy in Stockholm and the External Affairs Ministry, the report of the evaluation committee, the delivery

schedule of the guns and the test trial report.¹⁰⁸

But the Prime Minister refused to give the President the technical and the classified information he had demanded in respect of the Bofors field gun acquisition. He, in fact, was of the view that the Council of Ministers was supreme in regard to taking decisions on giving information to the President.¹⁰⁹

The President refused to accept that argument of the Prime Minister. Apprehension that the President was seeking re-interpretation of the constitutional provisions and statute books to divest Mr. Rajiv Gandhi of his office and bring down a duly elected government, had spread round the country.¹¹⁰ The people also petitioned the President to allow them to prosecute Shri Rajiv Gandhi in a court of law on charges of corruption.¹¹¹

On the other hand, the speculation regarding the dismissal of Mr. Rajiv Gandhi was criticised by many. Mr. Kamlapati Tripathi, veteran Congress-I leader, said


¹¹¹. Mr. Ram Jethmalani, a leading criminal lawyer, Mr. George Fernandes, a Janata leader and Mr. Rajinder Puri a writer urged the President to sanction prosecution of Mr. Rajiv Gandhi on the plea that the material supplied by them was enough to establish a prima facie case against the Prime Minister.
that it would be a perverse interpretation of the Constitution to say that the President had the inherent power to dismiss the Council of Ministers while it enjoyed the majority support in the Lok Sabha. 112

Dr. L.M. Singhvi, a former member of Parliament and an eminent jurist, argued that Article 78(b) did not authorise the conversion of the Presidential Office into permanent commission or court of enquiry. 113 He also said that the President could not dismiss the Council of Ministers in retaliation for not furnishing some information called for by him. In his view the President's right to call for information was limited and was subject to the exigencies of his functions in the discharge of which he was not wholly his own master. 114

Meantime, some opposition parties clearly expressed themselves against President's dismissing the government headed by Shri Rajiv Gandhi which enjoyed the confidence of the Lok Sabha. The Telugu Desam Party said that it was opposed to a coup by the President and felt that it would be too dangerous a proposition for the future of democracy and

114. Ibid.
the country to lay down a precedent of vesting the President with the power to dismiss the Prime Minister.\textsuperscript{115} The two communist parties also said that the opinion that the President had the inherent power to dismiss the Ministry and the Lok Sabha would mean in effect advising the President to organise a coup against the Republican Constitution.\textsuperscript{116}

Shri Soli J. Sorabjee, an eminent jurist, also said that the President could not dismiss a duly elected government on the ground of incapacity, unfitness or corruption for the simple reason that he had no such disciplinary jurisdiction.\textsuperscript{117}

On the other hand, the opposition parties quoted Shri H.M. Seervai, an eminent jurist, who had written in his book:

"That in the very unlikely event of a Council of Ministers in the House of the People being bent upon subverting the Constitution, the President has certain reserve powers and obliged by his oath to exercise them, need not be disputed. He may dissolve the House of the People and compel an appeal to the electorate ...."\textsuperscript{118}

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  \item \textsuperscript{115} Times of India (New Delhi), May 14, 1987.
  \item \textsuperscript{116} Ibid, May 1, 1987.
  \item \textsuperscript{118} H.M. Seervai, Constitutional Law of India (A critical commentary with supplement), (Bombay : N.M. Tripathi Pvt. Ltd., 1968), p. 775 (Emphasis added).
\end{itemize}
Dr. Subramaniam Swamy, general secretary of the Ajit Singh group of the Lok Dal, also criticized Mr. Kamalapati Tripathi's warning to the President of conflagration if he dismissed Mr. Rajiv Gandhi as Prime Minister. He said that the violation of Article 78 by the Prime Minister, the Fairfax, Submarine and Bofors scandals and the penetration of sensitive defence areas such as the Andamans naval base by the Italians had created an environment in which the President had a duty to explore an alternative within the Congress(I) who would, as Prime Minister, restore the confidence of the nation in our sovereignty and integrity, which had been badly shaken in 1987.

However, all the rumours and the reports regarding the dismissal of Mr. Rajiv Gandhi were set at rest when the Presidential secretariat, in a press release, discarded these reports. The President expressed his personal grave distress over these reports and misinterpretation in press-media.

To sum up, so far the President's power to appoint the Prime Minister is concerned, we have found - there is not much latitude or scope for him to exercise his discretion in the matter of appointment of the Prime Minister except in special

120. Ibid.
situations like when the Prime Minister dies in office or resigns or is defeated on the floor of the House.

But regarding his power to dismiss the Prime Minister, so far no precedent has arisen and the whole discussion has been in the context of the situation as it existed in 1987. The most prevalent view has been that the President has no power to dismiss the Head of the Government, so long as he enjoys the confidence of the Lok Sabha. But our contention is that the President has certain reserve powers and he is obliged by his oath to exercise them. If he has reasons to believe that the Prime Minister is violating the basic principles of the Constitution or trying to subvert it or is indulging in such activities which are threatening the security of the Country, we submit that he can dismiss him (Prime Minister) even if he enjoys majority in the Legislature. Our contention is that the President can also dismiss a Prime Minister, if he is convinced on the basis of his information that he (Prime Minister) is practising bribery and corruption. This contention is supported by what Dr. Ambedkar had said in the Constituent Assembly on December 31, 1948:

"Article 62(2) states that the Ministers shall hold office during the pleasure of the President. That means a Minister will be liable to removal on two grounds, one ground on which he would be liable to dismissal under the provisions contained in clause (2) of Article 62 would be that he has lost the confidence of the House, and secondly that his administration is not pure, because the word used here is 'pleasure'."
It would be perfectly open under that particular clause (i.e. clause 2) of Article 62 for the President to call for the removal of that particular Minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular Minister probably is a person who enjoyed the confidence of the House. 122

Shri M.V. Pylee, an eminent constitutional expert, also justified the power of the Head of the State to dismiss the Head of the Government. As he said:

"The Governor's use of his discretion to dismiss a Ministry which still enjoys the support of a majority will be justified if he is convinced that there have been clear cases of corruption to which the Ministry is a party and, in the interests of purity in administration, the Ministry should be dismissed from office. 123

Shri Madhu Limaye, former member of Parliament, had also maintained:

"Of course respect for conventions of the Constitution demands that a Prime Minister or Chief Minister enjoying majority support should not be dismissed. But nevertheless occasions may arise when exercise of the power of dismissal and reference of the issues to the electorate would be justified. If the security of the Country is threatened, if democratic freedoms are put in jeopardy, if the First Minister is involved in graft and taking of bribes, then the Head of the State would be justified in taking action. 124

Shri R.N. Pal and Sudesh Rani had also written in their book:

"The President has a duty to preserve and protect the Constitution. As such, if the Prime Minister does something unconstitutional, the President, according to the oath of office can dismiss him ...."125

The delegation of Supreme Court advocates had also maintained:

"If a Council of Ministers act to destroy the Constitution or ignore the constitutional duties and mandate, the President would be right to withdraw his pleasure by dismissing the Council of Ministers ...."126

We have thus established a case in favour of President's power to dismiss the Prime Minister. Now, having used this power, the President is expected to explore the possibilities of forming an alternative Government - obviously, from the other parties failing which he is left with no alternative than to take the matter to the people by dissolving the Lok Sabha.

126. Times of India, f.n. 115.