ROLE OF GOVERNOR AND STATE AUTONOMY

RECENT TRENDS

1. GOVERNOR OF THE STATE\(^1\) is an institution of crucial importance. On his impartiality and integrity depends the autonomy of the states and the soundness of centre-state relations.

The centre-state relationships have around a measure of anxiety and also confusion in the post fourth general election political set up in the country.\(^2\)

2. The very fact that the Governor is (i) head of state-executive, (ii) a party of the state-legislature and (iii) is in turn appointed by the president points to a peculiar phenomenon of our federal system.\(^3\)

3. As the Governor has a dual role\(^4\) under the constitution, the importance of his office, is the most significant. Under the constitution, the importance of his office in the context of centre-state relations, is the most significant.\(^5\)

4. The scope of this study is limited to examine the role of the Governor in the area of centre-state relations and thereby to point out the disturbing trends of the role and further to make suggestions so that the disturbing in the role of the Governor may be
POSITION OF GOVERNOR IN THE CONTEXT OF STATE AUTONOMY

1. The governor's integrity and independence vis-a-vis centre are indispensable to the autonomy of the states.\(^6\)

2. Governor is appointed by the president\(^7\) and holds office at his pleasure.\(^8\) Formally, the executive power of the state is vested in Governor\(^9\). In the exercise of these powers, he is aided and advised by a council of ministers with the Chief Minister at the Head.\(^10\)

3. **METHOD OF APPOINTMENT**

   Why the present method for appointing the Governor was preferred? The question of choosing Governors went through a number of stages\(^11\) inn the constituent Assembly.

   1. Initially, the idea was that governor should be directly elected by the people of the state.

   2. It was though that giving the federal govt. any authority to nominate the Governor would be repugnant to the autonomy of the states.

   3. Sri Jai Prakash Narain pointed out that, in order to preserve state-autonomy, the choice of Governors should have nothing to do with the president.\(^12\)

   4. But, due to the fear that, these might be a conflict and a
deadlock between a popularly elected Governor and the Minister.

5. Other methods of choosing the governor were put forward and discussed.

a) An indirect election by an electoral college consisting of members of state legislatures members of parliament from the state or.

b) Election of panel of Names among whom President should make choice, where put foward and discussed.  

6. At the final stage, all these proposals were abandoned and the proposal for nomination by the president was accepted by the constituent Assembly.

7. Nehru though that a process of election for Governors would encourage a "narrow provincial way of functioning and thinking in each state.

8. It would be better if the Governor was not intimately connected with local parties but was a tetahed figure, acceptable to the state Government but not known to be a part of the party machine.

9. A hope was expressed that a convention of the state Government being consulted before a Governor was appointe would be built up.

10. Though, there has been some such convention between 1950-67, but after coming of non-congress Ministries in sme states, this convention was not strictly followed.
11. Some safeguards and necessary to ensure their Independence:

The experience of last 37 years amply demonstrates that Governors cannot play an independent and impartial role so long as they hold office, entirely during the pleasure of the president. Hence, some safeguards are necessary to ensure their independence, whether by constitutional amendment or otherwise.

1. A.R.C. Recommended that "a person should not be appointed as Governor for more than one term." Such a restriction is necessary to safeguard his independence and impartiality against being jeopardised by expectations of partonge.

2. Study team appointed by A.R.C. headed by setalvad recommended that - "No persons who is appointed as such, not even after retirement".

3. Former Chief Justice K. Subba Rao suggested:
   i) Governor should be ineligible for any other office under government after retirement and (ii) should be irremovable from office on any ground other than proven disbehaviour or incapacity after inquiry by the Supreme Court.

4. Report of the Governor's Committee (1971) observed under the constitution just as the state is a unit of the federation and exercise its executive powers and functions through a council.
of Ministers responsible to the legislature, and non else, the
governor as head of the state, had his functions laid down in the
constitution itself, and is in no sense, and agent of the
president."

5. On May 4, 1979 in Hargovind Pant v.s Dr. Ragukul Tilak Supreme Court held:

It is not material that the Governor holds office during the
pleasure of the president. It is the term of office of the
Governor and it does make the Government of India an employer of
the Governor. (i) This office is not subordiante to the Government
of India, (ii) he is not amenable to the direction of the
Government of India, (iii) nor is he accountable to them for the
manner in which he carries out his function sand duties, (iv) he
is an independent constitutional office which is not subject to the
control of the government of India, (v) He is constitutionally the
head of the state.

In the context of centre-state relations, it seems that the
suggestion made by justice Subba Rao is more sound about the
position of the Governor."

GOVERNORS' FUNCTIONS AND THERI
IMPAT ON STATE AUTONOMY

Importance of Governor's Role:

A study of his powers and functions reveals the importance
of Governors' role in the centre state relations.
1. Ordinarily, the powers of functions of the Governor are to be exercised by him, as head of the state on the aid and advice of his council and Ministers because Parliamentary Government is adopted in our country.

2. Exercising some powers or functions either expressly or impliedly in his discretion:

The concept of discretionary exercise of powers by Governor is of great significance in the context of state's autonomy because.

i) Governor might face situations in the state which call for subjective evaluation and immediate action and also.

ii) There may be situations in which in the wider interests of democracy and the country the advice of the council of Ministers might have to be rejected by the Governor.25

iii) Whenever he feels that he would exercise his discretion in a situation to preserve, protect, and defend the constitution, he can lawfully do so.26

3. State of Punjab Vs Satya Pal

In this case, Supreme Court of India, has clearly laid down that Governor can use his constitutional power to restore parliametary government where other state agency is cutting at the
root of democratic and parlimentary functioning of the government.

i) Facts of the case:

Are very interesting Punjab Assembly was in but was put in a state of inaction for 2 months on account of its adjustment by the speaker under rule 105 which the governor had no power to rescind and the time as running out as the budget session of the Assembly had to conclude its business before March 31, as after that date no money could be from the consolidated fund.

ii) Governor had to act promptly to restore legislative Machinery of the state:

The Governor did this by proroguing the Assembly and prmulgating and orinance to enable the legislature to trasact financial busines.

iii) The Supreme Court Held:

The power being untrammelled by the contitution and an emergency having arisen, the action was perfectly understandable. The Governor acted not consituional way open to him.... There wa nothing colourable about it. It was intended to achieve a define purpose by using the constitutional power of the Governor.
A) EXPRESS DISCRETIONARY FUNCTIONS OF THE GOVERNOR

i) Under the constitution, is the Governor to act in his discretion in certain matters. In answer to this question the Courts have held very rightly on several occasions that -

"All the powersss exerciseable by the governor can be exercised on the advice on the advice of the ministers except in so far as the constitution expressly or perhaps by necessary implication says that he can exercise those powers in his individual discretion".

2. The framers of our constitution provided expressly wherever they intended that the Governor should exercise his own discretion and, except in these situations, the Governor should always act on advice of his council of Ministers.

3. There are provisions in the constitution which expressly provided that the Governor is to exercise his power and functions in his individual discretion and independently of his council Minister.

4. These express provisions which require the Governor to act in his discretion are:

i) Article 239(2) and paras 9(2) and 18 of the 6th schedule to the constitution.
ii) Article 239(1) Provides that if Governor is also appointed as Administrator of an adjoining union territory - shall exercise his functions as administrator independently of his council of Ministers.

iii) Similarly Para 9(2) of the 6th Schedule also gives discretionary power to the Governor of Assam to determine the Shares of royalties from licences or leases for prospecting or extracting minerals in an autonomous district to be made over the district council in a tribal area of that State. And the governor's decision in his discretion shall be final. 31

iv) There are articles 371 and 371A which impose special responsibility on the Governors of Andhra Pradesh, Maharashtra, Gujrat and Nagaland for specific purposes, also come under this category. 32

However, by imposing special responsibility on the Governor, these articles 371 and 371A authorize the President to give directions to the Governor to implement the specific purposes of these articles and in case of non-compliance to take action under Article 365. 33 Thus we can draw an inference that the governor should exercise his own discretion and, except in these situations, the Governor should always act on the advice of his council of Ministers. 34
B. IMPLIED DISCRETIONARY FUNCTIONS OF THE GOVERNOR

1. The constitution also provides discretionary powers to the Governor, not directly but by necessary implication.35

2. The constitution envisages a greater scope of discretion for the Governor under Article 163(1) and (2) which was considered necessary for keeping the centre's eye on state functioning.36

Hence, situations may arise in which the Governor may actually have to exercise his discretion.

3. These Situations are:
   i) Regarding the appointment of the Chief Minister37
   ii) Regarding the dissolving the state legislative Assembly.38
   iii) Regarding the dismissing of Ministry.39
   iv) Regarding the reservation of a Bill for the consideration of the president40 and
   v) Regarding the Governor's report for president's Rule in the States.41

4. These constitutional powers of the Governor are of significant use in the context of centre-state relations.

5. It is obvious, that it is his discretion and not that of any other authority, therefore, his discretion cannot be controlled or
interfered with even by the centre. This is why the Governor's independence in exercising his discretionary powers is indispensable to a State's autonomy.

CONSTITUTIONAL OBLIGATIONS OF THE GOVERNOR

The constitution of India provides that each state shall have Governor. The same person can be appointed as governor of two or more states. The Governor is the Executive head of a state. He exercised his powers either directly or through officer sub-ordinate to him in accordance with the constitution. The Governor of a state is appointed for a term of five years. By the President by warrant under his hand and he hold his office during the pleasure of the president. Hence he can be removed by the president. To be appointed a Governor, a person must be.

A) A citizen of India
B) Must have completed the age of thirty five years.
C) Must not hold any office of profit in India and
D) Must not be member of Either House of State legislature or the union Parliament.

in case he is member of either house he shall be deemed to have vacated his seat on the date on which enters upon his office as Governor.
1. Under the constitution, the governor is bound to discharge constitutional obligations:

i) He has to preserve, protect, and defined the constitution and the law in the state.  

ii) He has to devote himself to the service and well being of the people of his state.

In all of his decision, the Governor should be guided by these objectives placed before him by the constitution.

2. The Governor is the constitutional head of a state as well as constitutional link between the Centre and the states.

The study Team of A.R.C. has properly discussed this duality and recorded.

"Thus duality in his role is perhaps its unusual feature. It would be wrong to emphasize one aspect of the character of his role at the expense of the other, and the successful discharge of his role depends on correctly interpretation the scope and limits of both."  

D) A PLEA FOR DRAFTING OF GUIDELINES FOR GOVERNORS

1. It is necessary that some guidelines are developed (resolved) for the purpose of guiding the governors in the exercise of their discretionay powers.
2. The autonomy of a state comes to a vanishing point if its people's mandate can be defied or ignored by a central appointee. (The Governor)

3. The very possibility of the ruling party at the centre being able to manipulate through Governor, the legislature, or the imposition of the central rule, has adverse impact on the state-autonomy.

GUIDELINES ARE NECESSARY

1. Constituent Assembly first thought that a schedule be inserted in the constitution providing for the instrument of instructions.

   But, ultimately this matter was left to the Governor to be regulated by convention. This, the idea of instrument of instructions was dropped while enacting the constitution.

2. A.R.C. recommended that Guidelines be formulated by Inter State Council and on acceptance by the union, issued in the name of the president. These Guidelines should be placed before both house of parliament.

4. A special wing be set up in President's secretariat which would ascertain all the facts... and reasons for the action taken by him in a particular situation."

These would be "Confidentially communicated to the Governors."  

PRESENT SITUATION

In the absence of guidelines for the Governors state Governors have not taken identical decisions in identical situations in the past.

This is bound to happen in future also, if all state governors are left free to exercise their discretionary powers according to their own wisdom and assessment of political situation.

DANGER - A danger in this situation is that a varied practices will develop and no uniform conventions will be set up.

Hence, it is necessary that some guidelines are resolved for guiding the Governors in the exercise of their discretionary powers.
GOVERNOR'S POWER TO APPOINT CHIEF MINISTER

What should a Governor do when no political party has a clear majority in legislative assembly.

i) The whole controversy arises because the constitution is silent on this point, and the manner in which governors have hitherto used to power of appointing the Chief Minister is no less controversial.

ii) Discretion was given in 1935 Act and also in draft constitution (Article 144). But later discretion was deleted in the final form of our constitution.

It was said by Dr. Ambedkar that discretion would serve no useful purpose and after a long debate this clause was deleted.

iii) The present study is conducted on an aspect of Indian constitution which is more of practical politics and less of constitutional law. But it is the duty of constitutional lawyer to help the politicians to adopt a principal approach which our constitution enjoins upon them. "The law will state the practice" says Jennings, "and the practice will follow the law"
CONSTITUTIONAL PROVISION AND THEORETICAL DISCUSSION

1. Article 164(1) of the constitution reads - "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister...."

   Apparently the words in clause (1) of Article 164 give an unregulated power to the Governor to appoint any one as the Chief Ministers and thus exercise of Governor's pleasure under Article 164(1) cannot be fettered by any condition or restriction.

2. Formally, it is the discretion of the Governor, but not unconditioned by an essential feature of the parliamentary form of government namely the collective responsibility of the council of Ministers to the state assembly."64

3. Theoretically, it seems that the Governor can rely upon his personal choice only in the exceptional cases when it is not clear who among the several claimants to the office of the Chief Minister is having the majority support with him65 and the exercise of his discretion can not be called in question in writ proceedings.66

4. What should the Governor do, when none of the groups has got an absolute majority.

i) The Governors committee suggests that "The relevant test is not the size of party but, its ability to command the support of
majority in the legislature."

ii) A.K. SARKAR, P.B. GANEDRAGADKAR, MEHRA CHAND MAHAJAN

All of them say that a person who can ensure a stable government should be invited by the Governor to form the Government.

iii) But, most of the Governors have invited the leader of the largest single party to form the Government.

2. Some practices of Appointing the Chief Minister when non of the parties has majority:

A CRITICAL SURVEY

NOTE: Most of the Governors had invited leader of the largest single party to form the Government during the preceding 38 years. To cite, the first example is that of MADRAS STATE.67

1 Madras (1952)

Governor Sri Prakasa rejected the claim of opposition leader T. Prakasham (166 out of 375 United front) and invited Rajaji as the leader of the single largest party to form the Ministry.68
2. Orissa (1952, 1957)

Governor of Orissa also followed the precedence of Madras in 1952 and 1957 when the congress emerged as the single largest party in the House on both occasions.

3. Rajasthan (1967)

Governor Sampuranand overlooked the opposition majority of Mr. Laxman Singh, and invited Shri Mohan Lal Sukhadia Leader of largest single party (congress to form the government. Massive Demonstration were staged and president rule was imposed.


A recent precedent occurred when K. Karunakaran a Congress(I) leader was appointed Chief Minister of Minority government of united democratic front on December 28, 1981.

The people of Kerala had to witness the sad spectacle of the minority trying the survive by the casting vote of the speaker before it finally decided to quit. There after the Governor did not give the opposition a chance to form the government when Mr. Karunakaran lost his majority of one.

Parliamentary history was reated in Kerala Assembly on February 4, 1982 when the speaker exercise his casting vote to defeat a no confidence motion against the government.
Opposition parties urged they then, Governor Mrs. Jyothi Vencatchellum to immediately dismiss the minority government, government of Karunakran "the sole prop. of which is the unconstitutioinal and unprincipled exercise of the casting vote of the speaker".

5. Assam (1982)

A recent example is of Assam when Governor Prakash Mahotra in early 1982 installle Mr Gogoi as Chief Minister without a cleare majority.

The Governor refused to accept the claim of opposition having 64 members in its rank, but asked Gogoi with only 48 members with him to form the government.

Left and democratic Front Alliance denounced the governor for acting as party agent and demanded his resignation. Eventually, Gogoi Ministry had to quit office without facing the assembly.

6. Haryana (May 1982)

Recent Haryana controversy and role of Governor:

All the opposition leaders unanimously condemned the action of the Governor Sri G.D.Tapase and called upon the president to dismiss hem.
The press all over the country has also, criticised the action of Governor in swearing in Sri Bhajan Lal of Congress as Chief Minister in astonished haste on Sunday evening of May 23, 1982, ignoring the fact that he had asked Sri Devilal of Lokdal supported by B.J.P. and some independents to demonstrate his strength on Monday morning of 24 May, 1982.

The also massive and widespread demonstrations in Haryana against the Governor's action.

NOTE: In all the states, Governor had applied the Principle of the largest party in the house in appointing the Chief Minister.

POSITION IN HARYANA NOT COMPARABLE WITH EXAMPLES OF MADRAS AND RAJASTHAN

In Haryana the situation was altogether different.

1. Lok Dal and B.J.P. fought the elections of May, 1982 as Allies of an Alliance and not separately as rivals. They were entitled to be treated by Governor as one entity and not as two parties. A pre electoral alliance cannot be equated with a post electoral ganging up. Hence, should have not been wished away by calling it a so called front."
WHEN THE CLAIM OF THE LEADER OF LARGEST PARTY TO FORM GOVERNMENT CAN BE LEGITIMATELY IGNORED

1. There are certain situations when the claim of the leader of the largest party in the house to form government can be legitimately ignored.

2. This had been done when all the other parties combined to form a common united front before the election and when such a united front has a majority in the legislative Assembly.

3. Governor's committee also agreed with this view and recommended:

"If prior to general election some parties combine on agreed programme.... and if such a combination does secure a majority, Governor may invite the commonly chosen leader of the combination to form the Government - because the electorate in returning such a combination to the legislature in a majority had already prior knowledge that it would be called upon to form the government. The Governor in inviting such a leader would be acting in accordance with the wishes of the electorate."

In all these cases - united fronts won the majority and their leaders were invited to form the Government, ignoring the claims of the leaders of single largest parties. For example -

Kerala (May, 1982) - Non communist parties formed a united Democratic front before elections and own the majority and governor invited its leader to form the government bypassing the claim of C.P.(M which was the largest party.

SOME INFERENCE:

1. Our constitution - framers have established a fully responsible and parliamentary form of Government both at the centre and in the states.

2. Problems may arise, making the constution inconvenient or even impossible to run a responsible government in any state.

3. Therefore, the constitution - framers have provided proper safeguards under the constitution to meet such situations -

   i) By imposing obligation upon the Governor to defend the constitution and also.

   ii) By imposing a duty upon the centre to ensure that the government of every state is carried in accordance with the provisions of this constitution.
4. APPOINTMENT OF CHIEF MINISTER:

Inference:

i) The very concept of Collective Responsibility under the constitution demand that the discretion of the Governor should very much be conditioned by the party position in the legislature.

ii) But, when none of the parties has got an absolute majority support in the house, which party's leader should be invited to form the government. The task of the Governor bristles with difficulties and, more so, when there are no established conventions in this regard. 

iii)) What is required under such situations has been aptly recorded by the committee Governors:

"Proper 'tradition' have to be built up around the fundamental concept of responsible government. (We) have to ensure that it is honoured, and that the right of the legislature to to expect and demand responsibility is never assailed or undermined." 

iv) Looking at past practices, it seems that it would be much better for the parliamentary democracy in our country that -

When no party or co-alition formed before the elections, obtains absolute majority, the leader of the largest united front formed before election should be invited to form the government.
v) So long as this principle is not accepted as the convention in appointing the Chief Minister the possibility of the Governors manoeuvring the appointment of the Chief Minister shall remain.

vi) The practice of inviting the leader of largest party has been followed only when the congress party (Now the Congress (I) Party happened to be the largest and not otherwise.76

GOVERNOR'S POWER TO DISSOLVE STATE ASSEMBLIES

1. Governor can dissolve legislative assembly which has changed its character (in this way) by defection:

i) Under Article 174(2)(b) Governor has absolutely unrestricted power to dissolve legislative Assembly of the state.

In the Governor has reason to believe that legislative assembly is not representing the electorate, he has every constitutional right to dissolve it.

2. The majority in legilsatie Assembly is the creation of electorate and the members by their unilateral at of defection change this majority into minority and turn a minority into majority, which clearly amounts to a breach of the lectorate's confidence and betrayal of the fundamental principles of presentative democracy. Thus the Governor can dissolve such a legislative assembly, which has changed its character in this way.77
Various examples of Assemblies' Dissolutions point out the disturbing trends in the role of Governor and make quite an impressive indictment.

1. Unfortunately, the Governors have acted not as representative of the centre, but virtually as functionary of the ruling party at the centre in exercising their powers to dissolve state assembly under Article 174(2)(b).

To prove this conclusion two points deserve special mention:

FIRST: Whenever a Congress government, or a government supported by it from outside, or a government in which it was a major partner, has fallen or has been about to fall, the assemblies, instead of being suspended have been dissolved under Article 174(2)(b). For example:

1. Travancore-cochin, 1954
2. Kerala, 1970
3. West Bengal and Bihar 1971

OR UNDER ARTICLE 356 AS IN-

1. Andhra, 1954
2. Pondicherry (1968)
4. Manipur, 1969

Unless (This collapse of Government) happened soon after elections as in -

1. Haryana, Uttar Pradesh and Madhya Pradesh (1969)

In none of these cases were the opposition parties given an opportunity by the Governors to try and form government.

SECONDLY:

Whenever a recommendation for dissolution under Article 174(2) (b) or under Article 356 was made by non-congress out going Chief Minister it was rejected in all cases where the Congress was keen on forming the Government. for example -

1. Rao Birendra Singh in Haryana 1967
2. Sardar Gurnam Singh in Punjab 1967
3. Charan Singh in Uttar Pradesh 1968
5. Raja Naresh Singh in Madhya Pradesh 1969
6. Hitendra Desia in Gujrat 1971
7. Karpoori Thakur in Bihar 1971
8. Mizoram 1988

All these instances (of first and second category) point out
the disturbing trends in the role of Governor and make quite an impressive indictment.

GOVERNOR'S POWER TO DISMISS A MINISTRY

According to Article 164(1) of the constitution "....The Ministers should hold office during the pleasure of the Governor"...

1) The question arises does this pleasure confer upon the Governor, discretionary power to dismiss ministers arbitrarily on subjective consideration.

In answer, it may be said that Governor cannot withdraw his pleasure with unfettered discretion. The view of Calcutta High Court is that - in dismissing a minister, governor cannot use his unfettered discretion because this view is not substantiated by the framers of the constitution. Dr. Ambedkar has said in the Assembly:

"The position of the Governor is exactly the same as the position of the president."

2. The Governor cannot dismiss a ministry which enjoys the confidence of lower house. Though he can get it dismissed by the president for violating the constitution under Article 356.
3. Article 164(2) and Article 75(3) require that of Ministers shall be collectively responsible to the lower house are the backbone of parliamentary government.

This obviously means that though council of Ministers is appointed by the president or the Governor as the case may be and holds office during their pleasure yet this pleasure is actually vested in the Lower House of the Parliament or the State legislature.

4. This is so because, if the Governor is permitted to dismiss the popular government on his subjective satisfaction it would "cut at the root of parliamentary government to which our country is fortunately committed."^4

5. When the Chief Minister asks a particular minister to resign and if he does not resign, then he can advice to Governor to dismiss him. But, this practice has not always followed in all cases and -

There are example where Governor has refused to dismiss the minister inspite of the recommendations of the Chief Minister, which is disturbing trend in the role of the Governor."
GOVERNOR'S POWER TO RESERVE A BILL FOR PRESIDENT'S CONSIDERATION

Governor gives Assent Under Article 200

Every Bill passed by State Legislature is presented to the Governor for his assent under Article 200 of the constitution.

Governor has discretionary power to reserve the Bill for the consideration of president. In the interest of amicable state relations, Governor should exercise his discretion only in exceptional and warranted cases.

In addition to this, there are also certain circumstances under which constitution requires presidential assent before a Bill passed by a state legislature becomes law.

Once a bill is so reserved, the president may -

1. either give his assent or
2. withhold it or
3. he may direct the Governor that the Bill be placed before the state legislature for reconsideration in accordance with his message to the House.

But there is no time limit provided for presidential VETO and the president can VETO any Bill that is referred to him
for assent and he need not give any reasons for exercising his veto. 88

There have been instance when the state Bills have been sent back without assent 89 of the president.

Some of the state Bills had continued await to the assent of the president for 10 to 12 years.

A study of 119 Bills for the years 1964 to 1966 conducted by Indian Law Institute found that the centre while communicating assent has often tended to dictate its policies to the states, though actual assent has been refused only in few cases. 90

SUGGESTION

Hence, it is suggested that the constitution should be amended whereby Bills sent by the Governor to the president should be deemed to have been passed if the president neither rejects nor gives his assent to them within a period of three to six months.

GOVERNOR'S REPOR ON FAILURE OF CONSTITUTIONAL MACHINERY IN STATES TO MOVE PRESIDENT'S POWER UNDER ARTICLE 356

This discussion is made in the following chapter on "POWER OF THE PRESIDENT...."
FOOT NOTES OF THE CHAPTER V


2. See also Alice Jacob, Central State Relation in the Indian Federal System. 19 J.S.L. (1968), P. 636.

3. R.B. Tiwari, Role of Governor, In the Centre State relations in India. In Union and the state, 1972., P.372.

4. The position that emerges from the experience of last thirty eight years is that the governor has to function in a dual capacity (i) as a representative of the Union Government and (ii) as the constitutional head of the state.


7. See Constitution of India, Article 155.

8. Id. Article 156.

9. Id. Article 154.

10. Id. Article 163


13. See the views expressed by Rejeshwar Prasad, V.M. Kamath and Alladi Krishnaswami in the constituent Assembly. C.A.D., Vo. VII, PP 426, 429, 432, Also see Ajit Prasad Jain, "THE GOVERNOR IN THE UNION AND THE STATES, (1972), P.334

14. Mr. N.R. Deshapande described the reasons for preferring this method for appointmenting the Governors thus "The debates in the constituent Assembly clearly reveal that though an attempt was made to under play the importance of the decision to have a nominated governor as an indication of a centralist trends, the decision was approved by the Assembly on that ground itself".


17. For example, in 1969 United front Government in West Bengal Proteted against the appointment of Mr. Dharma Vira as Governor, but in spite of that protest he was
appointed governor. See Hindustan Times, March 23, 1969 P. 1. Similarly Mr. A.P. Sharma has been recently appointed Governor of West Bengal without consulting West Bengal Governor. See TRIBUNE, October 9, 1983. P.11 in Bihar also Mr. Nityanand Kanungo was appointed Governor in 1967, against the wishes of the Mahamaya Prasad Sinha, Ministry. See HINDUSTAN TIMES, November 11, 1967, P.1.

18. See for Example, Mr. Prabhudas Patwari was the first Governor in the history of Indian democracy to lose the "Pleasure of the President, Under article 156 of the constitution. A special Emissary was rushed from Delhi to the Raj Bhawan in Madras on the night of October 26, 1980, to deliver Mr. Patawari another, seeking him. Similarly, Mr. Raghkul Tilak was Governor of Rajasthan was dismissed in August, 1981 when he was unexpectedly relieved of his duties by a presidential directive.

19. But the Practice has been found to be different. Take for example Mr. Sri Prakash held office for 12 years, as Governor of Assam and Madras and Bombay, Similarly, Mr. B.N. Chakarvarti held office for 8 years and died while holding office of Governor of Haryana.


22. Mr. Justice K. Subba Rao made this suggestion in the Lal Bahaddur Memorial Lecturers of Poonaa University on Conflict between the Centre and States, See TIMES OF INDIA, March 3, 1969, P. 3


24. Interestingly, the preident has no dis-discretionary functions expressy provided for in the constitution like the Governor.

25. See in this connection, Article 163, Clasure 1 and 2 which provide: "163(1) There shall be a council of ministers with the Cheif Ministers at the head to aid and advise the Governor in the exercise of his functions, except in so far any of them in his discretion (2) If any question arises whether any matter is or not a matter as respects which the Governor is by or under this 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 this discretion."
26. Ibid.


26B. I.D. at 911 and 013.

27. For a detailed account of the deliberations in the constituent Assembly about the discretionary powers of the Governor, see K.C. Markand, "GOVERNOR'S Discretionary power - A study in the Intentations of the constitution Makers. "J.C.P.S. 115 (1968).


30. Paragraph 18 has now been omitted by see 17 of the North Eastern Areas (Re organisation Act 1971.

31. Seervai opines that these provisions are no provisions for the Governor to exercise his discretion as he has to act in these matters under the control of the President and thus the only sphere for his discretion is by necessary implication under Article 356 and second provision to article 200, see N.M. Seervai, constitutional Law of India, A critical commentary, (1967), P. 775.
32. Ibid.

33. Non compliance with the union directions by as state may attract president rule in the state, see Article 365.

34. Ibid.

35. For similar view, see H.M. Seervai, Note 31.

36. See in this connection the views expressed by Dr. Ambedkar in the constituent Assembly. He said: "Because the provincial Governments are required to work in subordination to the central government and therefore, the Governor will certain things in order to give the president the opportunities 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."

37. See the constitution of India, Article 164(1).

38. Id. Article 174 (2)B.

39. Id. Article 164(2)

40. Id. Article 200 and 201.

41. Id. Article 356

42. See Article 153

43. Article 154.

44. Ibid.
45. Article 156(3). However, the completion of five years terms by a Governor does not necessarily mean his relieving the gubernatorial post immediately. Under a well established convention he stays on until his successor takes over. As for example Mr. B.N. Chakaravarthy, the first full-figured Governor of Harayana who was appointed in September 1967, stayed in office for nearly nine years without getting a fresh lease from the union home ministry.

46. Article 155. It may be noted here that Indian constitution makes a departure here from the strict federal principle by giving the power of appointment of Governors to be president. In the U.S.A., the governor of a state is elected by the people of the state.

47. Article 156 (a)

48. This is another notable departure from the federal principle. Under the U.S. Constitution a state Governor may be removed from office by the state legislature or recall by popular votes in states where such provision is made.

49. Article 157 and 153.

50. Article 159.

51. Ibid.

63. This has been held so by the Calcutta High Court, See, Mahabir Prasad, V.P.C. Chose, A.I.R. 1969, Cal 196.

64. See Particularly in view of clause (2) of Article 164 which reads.

65. However, some writers hold the view that even in such cases he has no choice because the leader of the largest party in the assembly must be appointed as the Chief Minister, see J.R. Siwach Supra Note 2 at 75.

65. Mahabir Prasad Vs. Prafulla Chandra, Supra Note 31 at 211.

67. See the Indian Express, March 26, 1968, P.6

68. The Action of the Governor was Challenged by P. Rammurthi in the Madras High Court. See in Re P. Ramamorthi, A.I.R. 1953, Mad, 94.


71. The Governor's Committee Report, Supra Note, 36.

72. See Article 159.

73. Article 355.
52. The Report of the study Team on centre state relationship (hereafter cited as the report of the study Team) Vol. 1, 272 (1967)

53. See Kagzi, M.C.J. "Governor's Discretion Making and unmaking of the S.V.D. and U.F. Ministers Induced by to and for defections" 1(1). Delhi Law Revie (1972).


55. Similarly, when a plea for such Guidelines was made at the Governors conference, the union Government quiting refused to accept the plea. In his address to the Governor on April 1985 president Zail Singh said, "In our constitution there is no power vested in any authority to issue any directions, to the Governor or lay down any code or rules for his guidance", See Tribune, April 10, 1983, P.1.

56. Vesting the Governor with discretionary powers was justified inn the constituent Assembly on the ground that under a parliamentary system of government there are only two prerogatres which the kind of Head of the State may
In a Parliamentary democracy, the democratic customs, norms and conventions are as vital as the constitution, itself.

The Governors, committee Report, Supra Note 36 at 14.

For example, when the mid term elections were held in Kerala on March 4, 1965. Though the communist party was the largest having a strength of 40 out of 133. Yet its leader was not invited by the Governor to form the Government, inspite of the fact that the leader of the communist party publicaly declared that he was in a position to prove his majority in the house, and the Governor after making his own assessment recommended the reimposition of the president's Rule, Lok Sabha Debates, Vol. XLII, 1965, Cols 13576-77.

The authorities on this point for parliamentary democracy in England are very clear. See Halsbury's laws of England Vol. 7, p. 361. In cases where the ministry still retains the confidence of the house of commons, but the crown has reason to believe that the latter no longer represents the sense of the electorate the dismissal of the ministry or dissolution of the parliament would be consitutional." See also Dicey's Law of the constitution, 10th Ed. P. 433; "The reason why the
house can in accordance with the constitution be deprived of power and existence is that an occasion has arisen in which there is fair reason to suppose that the opinion of the house is not the opinion of the electors. A dissolution is allowable or necessary whether the wishes of the legislature are not may fairly be presumed to be different from the wishes of the nations.


79. Giri Lal Jain, "Centre State Relations No Fool Proof solution, Time of India, October 13, 1983, P.8. Further it may also be noted here that the Governor's have recommended and the centre has imposed president's Rule to give the congress party time to resolve internal funds Punjab (1973) Gujrat (1974) and Orissa (1976).

80. For a detailed answer to this question, see M.P. Singh, "Governor's power to Dismiss Minister," J.I.L.I. (1971), P. 612, K.J.Josh, The Governor's power to dismiss the ministers, 12, J.I.L.I. (1970) PP 127-38, J.R. Siwach, "Appointment and Dismissal of the Chief Minister 2, J.C.P.S.(1968) P.75, Alice Jacob, Governor's powers to
dismiss Minister's or council of Ministers - An Empirical study, 13 J.I.L.I. (1973) P.612.

81. Supra Note 50 at 209, The Court in this case held at "There is no.... limitations or condition to the pleasure, during which the Ministers hold office is absolute and unrestrcated."


84. Supra note, 26 at 913.

85. See Article 200

86. See Article 200 proviso second, 254(2): For Statistics of state bills assent to by the presidents see the Reports of the minisitery of Home Affairs, 1957-58, 116 Bills were assented to by the president, for 1959-60, 146 bills, for 1967-68, 52 bills.

87. Article 201.

88. Alice Jacob, "Centre state Governmental Relations in the Indian Federal system inn the union and the states, (1972), P.29.

89. For instance, the president with held his assent to the Industrial Disputes (West Bengal Ammendment) Bill, 1962
on June 5, 1955, See Alice Jacob, Ibid.

90. S.N. Jain and Ali Jacob, "Presidential Assent to State Bills - A case study," in the Union and the states, (1972) P. 355