Chapter Two
Chapter- 2
UNION-STATE LEGISLATIVE RELATIONS

Founding father of our Constitution declared that their intention at very outset that the “Constitution would be federal with a strong Centre” if we look apart history of India and the situation prevailing at the time. The idea persisted through the proceeding of the Constituent Assembly that unity and intensity of India must be secure at the costs and the Constitution provides for a powerful Centre, perhaps the most powerful Centre possible to create on paper in a federal scheme. The distribution of powers in legislative relationship is not enough to examine merely the constitutional provisions but it is essential to examine the manner in which there provisions, it is not to examine merely the Constitutional provision: but it is essential to examine the manner in which these provisions have been worked and how politics has played a part in it Centre State relationship has a political nexus, the nuances of which are not derived from the Constitution.

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN UNION - STATES

In the legislative relation the overall scheme of distribution of powers is not only to provide a strong Centre but also to give parliamentary laws supremacy over state legislation. Shri N.G. Ayyangar said “We should make the Centre in this Country as strong a possible consistent with leaving a fairly wide range of subjects to provinces in which they would have linked.” The legislative powers have been distributed between parliament and state Legislature was under article 245 and 246 read with the three legislative lists (union, state, concurrent) apart from the list system there are various other Article in the Constitution empowering Parliament to make Laws. Besides these, there are provisions for reconciling conflict between the Centre and the States in the legislative sphere though the list of the seventh scheduled are fairly exhaustive and have been drawn with meticulous care, situations may be arise when

48 Constitutional Assembly Debates , Vol. V, p. 38
Parliament may have to undertake legislation on a matter not covered by any of the lists. Such cases have been rare so far and there are not many reported divisions where a union law has been attributed solely to residuary power.  

“The powers of the State Legislature to legislate with respect to state list matters have been made subject to power of Parliament in list III”50. Certain heads of legislation which in the first instance belong exclusively to the States may become the subject of inclusive concern of Parliament if an appropriate declaration is made by Parliament in this behalf. Further there are certain heads which are partly within the jurisdiction of the state and partly within the competence of Parliament thus entry 11 of the State lists”. 51 As originally enacted relating to education was made expressly subject to the provisions of entries 63,64,65 and 66 of list I and entry 25 of unity III and it has now seen transferred to the concurrent lists. Parliament has not only been given wide range of authority under the list system but it has also been empowered to make laws encroaching upon the jurisdiction of the States under article 2 to 4, 249, 252, 253 and 258.

Art. 249 of Indian Constitution enables the Council of States to transfer any matter in the State list to the Union list by merely passing a resolution by two thirds majority that is necessary or expedient to do so in the national interest. There is a distribution of legislative powers between the Union and the States. This distribution of various powers between the two sets of Governments does not depend on any law to be made by the central, but by the Constitution divided between the Union Parliament and Legislatures of the States. The distribution of legislative powers from the points of the view of subject matter is made following the Canadian pattern of division of powers between the dominion and the provinces. In the first place, the Constitution enumerates the subjects with respect to which the Legislatures of the States have exclusive power to

50 Article 246(3) of Indian Constitution.  
51 Entry 11 of the state list was transferred to list III by the 42nd amendment.
make laws. This has been designed in the Constitution as the State list.\(^{52}\) It enumerates the matters with respect to which the Union Parliament has exclusive power to make laws. This is known as the Union list.\(^{53}\) In addition to State and Union lists Indian Constitution provides for a concurrent field of legislation. The list subject-matters have been drawn from the view of the national or local importance of the matter. The Union Parliament has exclusive power to enact laws with respect to 96 items along with a residuary item which are of general or national importance including defense, preventive – detention, foreign affairs communications, properly of the union finance and economic powers, union services, election of parliamentary affairs etc. The Legislatures of the States on the other hand, have exclusive power to enact laws with respect to 66 items of the state list.

The executive powers are divided between Union and the States on the basis of the legislative power, i.e. the executive power of the Union intendeds to all matters with respect to which Parliament has power to make laws\(^{54}\) and the executive power of the states extend to the matters with respect to which the Legislatures of the States have power to make laws.\(^{55}\) Thus distribution of executive powers between the Union and the States is co-terminus with the distribution of legislative powers”.

The legislative powers clearly indicate that Constitution has adopted the principle of rigid separation in matters of distribution of financial resources between the Union and States. The two fiscal sphere are distinct from each other either Government can not encroach on any fiscal matter which forms the subject matters of the other Government. Under the union list the following matters fall exclusively within the competence of the Union :

- Taxes on income other then Agriculture income.
- Corporation tax

\(^{52}\) List II of VII schedule to the Constitution of India.

\(^{53}\) List I of VII schedule to the Constitution of India.

\(^{54}\) Article 73 of Indian Constitution.

\(^{55}\) Article 162 of Indian Constitution.
- Taxes on capital value of the assets exclusive of agricultural land of individual and companies, estate duty in respect of property other than agricultural land;
- Duties in respect of succession to property other than agricultural land.
- Terminal taxes on goods or passengers carried by railways, sea or air, taxes on railways fares and freights.
- Taxes other than the stamp duties on transaction in stock exchanges and future market rates of stamp duty in respect of bills of exchanger, cheques, promissory note bill of landing, letters of credit policies of insurance, transfer of shares debentures, proxies and receipts.
- Taxes on sale or purchase of newspapers and on advertisement published their in.
- Taxes on sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter state trade or commerce and any other tax not enumerated in list II or III. States enjoy exclusive powers in respect of following items, land revenue, taxes on Agricultural income estate duty and succession duty in respect of agricultural land, taxes on lands and buildings taxes on mineral right subject to such limitations as may be imposed by the Union Parliament.

Since federalism implies the existence of two coordinate sets of Governments operating at two different levels in two different spheres. The key to the nature of a federation lies in the distribution of powers. There is almost unanimity among the Constitutional expect regarding this aspect of federalism (Union & States) in a federation the sovereign power is divided between the national and state Governments. By this way a federation differs from a unitary state, under unitary system there is a single resource of sovereign power that is Parliament, whereas under a federal system. There are two equal sovereign resources of powers – (1) The Parliament (2) State Governments.

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The distribution of powers says Professor Dicey, “is an essential feature of federalism.” He also found the root cause of division of powers in the very object for which a federal polity is established. Prof. K.C. Wheare the champion of normative federalism echoed the Dician concept of essentially of division of powers under a federal system. Lord Haldane in the case of Attorney General for the Commonwealth of Australia V. Colonial refining co. ltd; that Canada was not a true federation, Professor Where remarks, the important point is whether the powers of government authorities or not. The details of the division of powers between the national and state Legislatures may very under every different federal Constitution, but the basic on which the division of powers should rest are similar in all the federations. The general principle guiding the division of powers has been very highly pointed out, Prof. Dicey when he said “whatever concerns the national as a whole should be placed under the control of national government. All matters which are not primarily of common interest should remain in the hands of the several States. All the modern federation possess a concurrent jurisdiction where both the national and the State Governments are empowered to enact laws, the general principle behind the provisions regarding the concurrent powers was very well pointed out by the joint committee on the Indian Constitutional Reform (1934) in these words “experience has shown, both in India and elsewhere, that there are Central or to a Provincial Legislature and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law through the country, in others to guide and encourage provincial efforts and in others again

58 Outdated from centre state power under Indian federalism by Prasad Anirudha, p. 80 1914 AC. 237
59 Professor Wheare, Supports thus the similar idea of Kinedy in the Constitution of Canada Chap. XXIII outdated from centre state power under Indian federalism by ; Prasad Anirudha , p. 80
60 Dicey , A.V., Op.cit, p. 143.2 at 143.
to provide remedies for mischief’s arising in the provincial sphere but extend icy or liable to extend beyond the boundaries of single province.

The division of powers in Union accepted by all as the basis of a federation, there is no unanimity as to the mode of the division of powers broadly speaking two sets of pattern of division of powers may be found peculiar to the modes of the formation of federal polity. As the federation may be formed by an agreement amongst the autonomous states, for example in the case of the USA and the Commonwealth of Australia, the pattern of division of powers is that the federal Constitution expressly and specifically enumerates the power of the federation and leaves the remainder in the hands of the authorities of the federating States. “A federal States is therefore a state in which the sovereign state authority distributes by means of Constitution the totality of the functions exercisable within its sphere of the of control in such a manner that reserves for its own exercise only a certain quantum of them, leaving however, the residue to the non-sovereign member States created by this constitutional grant of autonomous states power, without any control in respect of the establishment of norms of relation as well as in respect of the manner and the method of the exercise itself as long as the constitutional limitations are observed. Division of legislative powers was propounded under the American federation. The Constitution of the USA was adopted in year 1787 are respected the oldest and the most respected member of groups of modern federal Constitutions. The American Constitutional system is passed upon a division of power between the Union and State Governments and such division is grounded on the principle that the federal government is a Government of enumerated powers limited to the authority delegated to its in the Constitution, while the States Governments of residual powers, retaining all of the authority not granted to the Government in Washington. The India Constitution distributes the legislative powers between the federation and the component states by provision of four causes:

- Provisions enumerating the powers of the Union.

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Provisions prohibiting the union from doing certain things.

Provisions prohibiting the States from doing certain things.

Leaving the residue to the States or to the people.

The Constitution of India possesses a very elaborate and comprehensive scheme of the distribution of legislative power between the Union and States. In the follows, no single pattern of division of powers prevalent in any traditional federation. It makes its own division of power as to the departure from American pattern, it has very well been pointed out by the full bench of the Madras High court that, “legislative powers in our country are not divided between the States and the Centre on the pattern of division of powers in the United States. We do not have a Centre with enumerated powers of legislation and the States with reserve power. All the subjects of legislation are set out in three list of the 7th schedule of the Constitution”.

The scheme and principles of distribution between the union list, the state list and the concurrent list observes, Alan Gledhill, “are the same as in the 1935 Act, except that whereas the Governor general could in his discretion assign either to the Centre or to the provinces legislative powers regarding subjects not mentioned on any list under the new Constitution subjects notion the lists including taxes, fall within the exclusive competence of the Union Legislature.

Union Supremacy: The long arms of Union and concurrent lists tilting balance of legislative powers in favour of the Parliament, there are several ways in which the plenary powers of the national Parliament are ensured by Constitution. The scheme under the Constitution tilting balance of legislative powers in favour of the Union may be conveniently divided in to two heads, provisions under the Constitution ensuring national supremacy in legislative fields and the allocation of the subject matters of legislation in three lists. The Constitutional provisions are ensuring national supremacy over state legislation. Article 248 of the Constitution reserves the residuary powers of legislation to the

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64 AIR 1958 Madras 608.
65 Union List of Indian Constitution, entries 9.
Union Parliament. It follows the Canadian pattern of allocating residuary powers with the national legislation instead of leaving it with the units States as it is done in the case of USA and Australia. A legislative with residuary powers of legislation is generally powerful than that of the enumerate powers.

Article 254 clause (1) specially gives overriding power to union legislation in case of conflict between the laws enacted by the two legislatures - Parliament and the States Legislature. Clause (2) of Article 254 however, makes certain exception and a state law may prevail over Parliamentary Law in that States, if reserved for the Constitution of the President and has received his assent. This concession in concurrent field of legislation depends upon the sweet will of central Government on whose advice the President assent the bill even in this concession can be withdrawn by subsequent parliamentary law adding to amending varying or repealing the law so made by the Legislature of the States. “Special circumstances in which Parliament can legislate on matters reserved to the States. The established notion of federalism by making provisions of Article 243 to 253 visualizing four contingencies in which Parliament can make laws with respect of matters exclusively falling in the States field.66

Union Executive is to exercise control over legislation passed by the State Legislature. A Governor is empowered to reserves any bill passed by the State Legislatures for the consideration of the President67 certain bills which in opinion of Governor would if that become law, so derogate from the powers of the High Court as the endanger the position which that court is by this Constitution designed to fill are to be reserved by the Governor for Presidential assent under provision to article 200. Article 200 deals with the President’s functions when a state bill is reserved by the Governor for his consideration. Art. 201 provide when a bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the bill or that he with holds assents there from.

66 Anirudha Prasad, Centre State power under Indian federalism, Deep & Deep Publication, New Delhi 1986 p. 91
67 Article 200 of Constitution of India.
“There are certain other provisions in which the prior sanction of the President for introduction of a bill in legislative assembly is needed”\textsuperscript{68} or certain legislation through with in competence of the Legislature must be reserved for the assent of the President in order to obtain validity.\textsuperscript{69} The courts have allowed the state laws if it procured the subsequent Presidential assent. It was decided by Andhra Pradesh high court in N. Balaraju and others v/s the Hyderabad municipal cooperation\textsuperscript{70} that article 255.

**ROLE OF POLITICAL PARTIES IN THE PROCESS OF LEGISLATION**

**Regional Political Parties and Legislative Relations:** Regionalism is not a new phenomenon in India, regional consciousness in its devotion to the greater cause of federal manifested itself even during the period of India’s struggle for independence.”\textsuperscript{71} But it remained suppressed under the echo of the powerful force of Indian national movement. Regionalism began to raise its head in different parts of the Country in different parts of the Country in different forms soon after independence. The regional diversities which are based on linguistic and cultural distinctiveness having its roots in history acquired new dimensions in the new climate. The regional consciousness is there after found expression through an articulate demand for regional autonomy as a means of pressuring regional particularism.

The political reorganization of the Country on linguistic ground rekindled the traditional rivalries that have existed when these linguistic States were independent in ancient times. The linguistic and cultural minorities in several States while being conscious of their rights have constantly demanded separate identities of their own and which in the process led to the growth of

\textsuperscript{68} Jacob Alice, *Centre-State Government Relations in the Indian Federal System*, 10 (Journal of Indian Law Institute) 1978 Vol. 4, p. 583 and p. 545

\textsuperscript{69} Article 31 (3) art- 31 (4) first provision to art. 31(a) and art. 254 (2)

\textsuperscript{70} AIR -1960 AP 234(Andhra Pradesh)

\textsuperscript{71} Amol Ray, *Inter Governmental Relations in India*, Asia Publishing House, Calcutta, 1966 p. 10
political movement and agitations. People in one linguistic state developed a sense of separateness from those living in another part of the Country which also gave rise to movements like son of the soil. The emergence of this type of linguistically oriented regionalism has often threatened national integration and greatly affected the Centre–State relations. Thus regionalism which drew its substance from history and which has been reinforced by the reorganization of the States, continuously expresses itself in disaffection and complaints of regions against the Centre.  

Regionalism in India found formal expression through the regional political Parties. Regional Parties are not a new feature of the Indian polity. They were existed even before the independence.” The birth and growth of regional Parties is also closely related to fluctuations in Congress fortunes. As the Congress decline, spilt and tended to degenerate into a personality cult, regional Parties have grown in strength and numbers. An equally important reason for their growth has been the absence of any viable national alternative.”

**Legislative Relations during Janta Government:** The Janta Party came into existence in the year 1977 as a result of the release of the top opposition leaders from detention. It may be recalled here that all the top leaders in the opposition Parties were under detention during the emergency imposed by the then Prime Minister Mrs. Indira Gandhi in 1975. The Congress Government announced in January 1977 that Lok Sabha poll would take place in March 1977. The Congress (O), Jan Sangh, Bhartiya Lok Dal, Socialist and the Swatntra Party were merged in to one National Front. The leaders of all these Parties came together and formed the Janta Party. The Party fought the elections very successfully under its banner. This historical poll resulted end of the Centre in the last week of March 1977. The Janta era started in the Country with a say of

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new hope. However, Party could not work with a real sense of unity because of the difference of the personality clash of the Party.

The Party has given its own views about the Centre–State relations. The unity of India is the unity of a land of diversity. The democratic Constitution of our Country has therefore to be in essence a federal Constitution. However in the historical circumstances that prevailed at the time of birth of the independent India, some unitary features were considered essential to preserve the unity of the Country. More than three decades have elapsed since the Constitution came into force. The experience of these year have reserved the loopholes and the shortcoming that can result in the subversion or erosion of some of the basic values and concepts of our Constitution including democracy, federalism and decentralization.”

There should be proper devolution and decentralization both at the administrative and legislative spheres is the major thrust of the Party. The decentralization should be from the Centre not only to the States but right up to the Panchayats in turn with the spirit of federalism. It has therefore, become imperative to have a second look at the Constitution to take corrective action through the Constitutional Amendments and the Constitutions. These Amendments should strength the federal Charter of the Constitution with emphases on devolution of political and the financial powers not only from the Centre to the States, but further down to the Panchayats as well. The edifice of a strong Centre can be raised only on the firm foundations of the strong States.

The central executive has been making inroads in to the legislative relations between the Centre and the States, the Janta Party has given its views on various aspects. The Centre should maintain well defined norms in the appointment of Governors and their powers, there is provisions in the Constitution for setting up of inter state council – this council is set-up, to solve the inter-states and Centre-State disputes.

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The concurrence of the States is not needed in the deployment of Paramilitary Forces by the Centre. It is the Party view to prevent Centre’s monopoly of the mass media like the television and radio. Some of the powers enjoyed in theory by the States become inhibited and illusory in actuality. Article 31-A 31 C and 30 4b of the Constitution provides ample scope for encroachment on the State Legislative powers by the Centre.

In Atiabatic tea co ltd. v/s the state of Assam AIR – 1961 SC 232 it was said it is a federal Constitution which we are interpreting and so the impact of art.301 must be judged accordingly. Again in Automobile Transport (Raj) v/s State of Rajasthan AIR – 1962 SC 1406 It was stated “The evolution of federal structure or a quasi – federal structure necessarily involved in the context of conditions then prevailing a distribution of powers and basic part of our Constitution relates to that distribution with the three legislative lists in the seventh schedule.”

In the matters of the bills passed by the State Legislatures the Party has given its views. The Governors of the States reserves the bills for President’s assent. For this purpose the Governors should act strictly on the advice of the concerned States’ Council of Ministers. This provision should be made in the Constitution. The President may block the bills passed by the state Legislatures for an indefinite period. Therefore the President should return the bills with his assent with three months. The Constitution should be amended in this direction. No bill with respect to any matter enumerated in the concurrent list shall be introduced in either house of Parliament unless the bill has been referred by the President to the Legislatures of the state for expressing views thereon with in such period as may be specified in the reference and the period so specified has expired, “No bill with respect to any matter enumerated in the concurrent list shall be introduced in the house or either house of state Legislature unless the bill has been referred by the speaker of the legislative assembly of such state to the

75 Replies to the Questionnaire Government of Karnataka ; the Report of Sarkaria Commission on Centre –State Relations part II, Govt. of India 1988, p. 225.
speaker of the house of the people for expressing the views of Parliament there on within such period so specified has expired.  

**LOK Dal Party’s views on Legislative Relations:** The Lok Dal had its own views on Indian federalism. The Party has said that the Indian Constitution is not unitary but is a federal one. Whether a Country is federal or not depends on that country’s historical and political developments. Lok Dal has strongly given its clear views on the issue that the federation is a must for efficient administration of India. Indian States are organized on linguistic and cultural basis. The unity of the country has to be maintained. It is true that Centre should be strong but it should be not be at the cost of the constituent States. If the States are strong no doubt the Centre will be strong.

The constitutional relationship between the Centre and the States should be cordial. The Centre should be remaining strong enough not only to meet any foreign aggression but it should also have the powers to curb the fish porous and secessionist tendencies in any part of the country. But at the same time States should have freedom and enough resources for their socio-economic development. The history of the Central Government in the first 58 years after the enforcement of our Constitution has shown that decisive central intervention has taken place. This is so, because of different political ideologies in the Central and the State Governments. The most important requirement of a federal Constitution is the distribution of legislative powers between the Centre and the States. The Central and the States should be independent of each other in their respective sphere. Thus the Centre and the States derive their powers from the same source that is the Constitution.

Under Article 249 the Parliament has power to make laws in respect of matters specifically included in the State List. If the Raj Sabha passed a resolution by two-thirds majority then Parliament will make legislation even on the state subjects, if it of National importance.

Under Article 200 the Governors of the States can reserve the bill passed by the state Legislatures for the consideration of the President. The Party is of

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76 Ibid. p. 227.
the opinion that the Governors should not reserve any bill for the consideration of the President except those, which are vocative of powers of the High Courts.

The legislative powers of the States can be easily interfered with in the name of the President Veto. If the Union Government decides to declare an emergency, then, it should consult the inter-state council. Financial emergency under Article 360 should be promulgated only after the matter is placed before the inter-state council.

**The Bhartiya Janta Party (BJP):** The Bhartiya Janta Party (BJP) came into being as a result of the split in the Janta Party in the year 1980. The erstwhile Bhartita Janasangh members left the Janta Party formed a new Party called the Bhartiya Janta Party. The present Bhartiya Janta Party is nothing but a continuation of the former Bhartiya Jan Sangha. Bhartiya Jan Sangh was formed in year 1951.

**Jan Sangh:** In the year 1967 the Jana Sangh in its annual session passed the resolution on Centre-state relations. In the mean time the party favours a unitary Government. But at the same time it demanded the decentralization of legislative and financial powers. The party had stated that the Indian Constitution has been described by many Constitutional experts as quasi-federal. India can be administered only through the regional Governments (States govt.). The States are called as the political units. The Bharatiya Janta Party has referred Rajamannar Committee’s report on Centre-States relations. The Tamil Nadu Government had appointed this committee in the year 1969. The Committee in its report expressed its commitment to federalism in its pristine form. The Committee recommended the deletion revision of a number of provisions in the Indian Constitution dealing with Centre-state relations. Especially the Raja Mannar Committee recommended the deletion or drastic revision of Article 251, 257, 348, 349, 355, 356, 357, and 365 of the Constitution. By and large BJP has accepted the distribution of legislative powers enumerated in the list 1,2,3, under VII schedule of the Constitution. The Party had asserted that article 200 of the Constitution has been misused, the bill
passed by the State Legislatures have to be reserve for the consideration of the President to create difficulties for the state Governments. Therefore article 200 must be amended as stated below-

If the State Legislatures have passed a bill relating to a subject in the state list, then the Governor of the state should have only two options –

➢ To give his assent to the bills.

➢ To return the bill expeditiously with his recommendations for any change in the bill if the Legislatures passed the same bill in the original form or in the amended form the Governor shall give his assent to the bill.

The BJP has suggested certain changes in the constitutional position of the Governor. There should be changes in the manner of his appointment and powers. “This power vested in the Governor has been vastly misused and the Governor has often acted in the interest of the ruling party rather than as the constitutional head as provided by the constitutional provisions.”77 “The party BJP is of the opinion that the test of majority in the legislative assembly should be determined on the floor of the house and with in shortest possible time and the Governor should have no discretion in the matter. If the necessary, relevant provisions in the Constitution be amended to prevent abuse of power by the Governor.

Thus the BJP has opposed the flagrant and repeated abuse of Article 356 of the Constitution by the Centre. The office of the Governor has been reduced to that of opinion of the Centre. The State Government’s had been treated no better then municipalities. The office of Governor must acquire its intended dignity and impartiality. There should be complete review of Governor’s powers.

77 The View of Bharatiya Janta party state unity west Bengal, Report of Sarkaria Commission on Centre Sstate Relation part II, Govt . of India, 1988, p. 622.
CPI and CPM: The Communist Party of India (CPI) came into existence in 1925 at the conference in Kanpur. The party conducted its first Congress in the year 1943. In the year 1947 the CPI acquired the States of a major Political Party in the Country. Finally Party make in to two Parties in 1964 named Communist Party of India and Marxist Communist Party of India. The CPI has given its views on Centre-State relations. The Party has viewed that—“this is burning and important subject which has been dogging our political life for long and which has today become all the pressing because of the coming to power of Governments of various parties in different States.” Communist Party’s opinion is that there is a striking imbalance in Centre-State relations. Therefore States have lost much of the substance of their autonomy. “The capitalist path of development and the monopoly bourgeois power plus the single – Party rule at the Centre, as well as in most of the States over the past year, have of course been the main contributory factor in undermining the federal features of the Constitution on the one hand and in the concentration of excessive powers and authority with the Centre on the other the Centre and the States should have their legitimate due to in the field of power, authority, resources and opportunity. The Centre and States should have all these powers to discharge their respective responsibilities of the people and the country. The question of centre, in the struggle between the force of dictatorship and democracy.

The CPI (M) has viewed that the question of Centre-States legislative relations has acquires great importance in the context of growing alienation between the Centre and the States. This alienation has been growing because of the Centre’s constant attack on the powers of the States. Divisive forces have been working to disintegrate the Indian unity. To stop the process of alienation between the Centre and the State, it is urgently necessary to restructure the Centre-States relations in the interest of Indian unity.

78 The views of Communist Party of India on Centre State relations sent to Sarkaria Commission, New Delhi, 24 April 1984, p.1
The Communist Party of India–Marxist is of the opinion that the State Legislature must be made supreme in the state sphere. Article 163 and 164 state relations has now acquired importance in the context of the political situation emerging in India after the traumatic experience of the emergency dictatorship. It is no longer treated as a heresy to be hunted down and no longer regarded as a separatist fad destructionist’s slogan of the Communist Party of India (Marxist). Even the President sometime back expressed the opinion that the Centre-State relations deserved a fresh look. Life’s realities have passed it as problems of Indian democracy, of its advances which can not be ignored without doing harm to the democratic process. The fact is that the 42nd amendment act reduced the States to the position of a subordinate dependent of Government of India, showed that the attack on their power was an inevitable requirement of dictatorial rule. The Centre–State relations have become an issue of the Indian Constitution empowered the Governor to reject bill passed by the state legislatives. He reserves the bill for President’s assent under Article 200 and 201. The Party had suggested these articles should be done away with. The Centre should not interfere in the state affairs. Article 356, 357 enable the President to dissolve the state legislative Assembly concerned. These two Article should be deleted if there is a break down of Constitutional machinery in the States, then the provision must be made for democratic step of holding elections all installing a new Government. Even the party opposes the ordinance making powers of the President and Governors, these powers must be curtailed. “The actual distribution of legislative powers between the Centre and the States, the union and the concurrent lists are so all – pervasive that state autonomy is infecting negated. To add to this provision, the Parliament can legislate on certain subjects within the exclusive competence of the States, in the national interest and public interest. Furthermore, the Governor’s power to reserve to the President important legislations adopted by the States and the right of central
Government acting in the name of President to withhold assent to the bill passed by the legislative make a mockery of the legislative competence of the States.\textsuperscript{80}

The CPM(M) has suggested that the elections to the Rajya Sabha should be held directly by the people. All the States should have equal representation in the upper house except those with a population of less than three million. Both the houses should have equal powers. The states autonomy should also be there. Apart from the office of the Governor there are several other provisions which enable the Centre, indirectly or indirectly to interfere in the administration of States. The most important of them are the powers vested in the Central Government to dismiss the State Government, dissolve state Legislature etc. These have been used in a notoriously partisan way.\textsuperscript{81} Apart from the States autonomy, the party has also given importance to the Centre. We must also by to preserve and strengthen the union authority in subjects that could be carried out by the central authority and not by a single state, such as defence, foreign affairs including foreign trade currency communication and economic coordination.\textsuperscript{82}

**ROLE OF GOVERNOR IN LEGISLATIVE RELATIONS**

The Janta Party had said that the office of the Governor has been misused to subserve the interests of ruling Party at the Centre. This is total disregard of the constitutional provision. It is unfortunate that the Governors have been acting according to the direction of his Central Government. The Governor strictly has no role in the context of the Centre–State relations. Both the founders of the Constitution as stated in the debaters of the constituent assembly and the decision of the Supreme Court do not envisage any such role for the Governor. Instead of elections of Governor by the state Legislature involving a lot of expenditure, the Constitution makers considered nomination of an eminent

\textsuperscript{80} The views of communist party of India on centre state relations sent to Sarkaria Commission part II, Govt. of India 1988 p. 641.

\textsuperscript{81} Ibid., p. 642.

\textsuperscript{82} Communist Party of India, Marxist on Centre –State relations, Party Publication , New Delhi -1983 p. 15.
person by the Centre- with the consent of the Chief Minister of state, would be a better procedure and adopted it, without making a specific provision for the consent of the Chief Minister but with the distinct statement in the Constituents Assembly that it would be with such consent. The Supreme Court has also held in Dr. Raghukul Tilak’s case AIR-1979 SC709, that the Governor’s Office in an independent constitutional office which is not subject to the control of Government of India”. 83 The appointment of the Governors is made in partisan manner. It is political patronage and the Centre has not been following any well-defined norms, values and guidelines. Generally, the Centre will not consult the state Government in the appointment of the Governors. In these appointments the centre has been ignoring the persons of high caliber efficiency and impartiality.

The Chief Minister must be districted by the state Governor concerned to test the majority on the floor of the state Legislature. The same procedure should be followed by the President to test the majority of the ruling party on the floor of the Lok Sabha. If the Government falls and no party is able to prove the majority on the floor of the legislative assembly, elections must be held at the earliest. The Governor should not promulgate ordinances on the advice of the Chief Minister, who has lost the majority support. “The institution of Governor has been dragged into controversy because many of them have acted in palpably partisan manner at the behest to their central masters on innumerable occasion the Governors have been hand in glove with their bosses in Delhi to impose the President’s rule and they have thus subverted the working democracy at the state level. In facts, this has been done so often and so brazenly. The question about how the Governor of state should be chosen went through a number of steps in the constituent assembly before the present provision was adopted. Initially the idea was that the Governors should be directly elected by the people of the States. Jayaprakash Narayan had pointed out that in order to presence states autonomy the choice of Governors should have nothing to do with

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83 Ibid., p. 228.
President. A process of elections for Governors would encourage a narrow provincial way of functioning and thinking in each state. It would be better if the Governors were not intimately connected with local parties but was detached figure, acceptable to the state Governments no doubt but now known to be a part of the Party machine.

During constituent assembly debates the hope was expressed that the convention of consulting the state Governments concerned should be built up. But in practice it has not been nominated. The Governors have been transferred from one state to another. This is because a person will be better fitted to do the needful on behalf of the ruling Party of the Centre. The Party questioned the Governor’s authority to summon, prorogue and dissolve the state legislative assemblies.

When the monopoly of the Congress Party was shattered since then the role of Governor has assumed greater significance. This has further become so because of nature of multi-party system and prevalence of the phenomenon of defections. In this the ruling party at the centre has found in the office of Governor an effective instrument to recapture power for itself. As Soli Sorabjee put it – “It will not be exaggeration to say that no institution or constitutional office has suffered grater erosion or degradation than the office of Governor. The public today generally regard the Governor as an employee of the central government and in some cases as a spy of the Centre. The unfortunate fact is that few incumbents of this high office have no clear conception of their role in our constitutional scheme and in fact regard themselves as the lackeys of employees of the Central government and readily act according to its direction”.  

In the seventies and eighties in particular the office of Governor was used to topple down the state Governments on one pretext or the other. While this role of Governor has attracted more attention since 1967. The intentions were

made clear as early as in 1953 when Gian Singh Rarewala led coalition ministry in PEPSU was dismissed on the ground of law and order.

Governors act on behalf of the central government the trends of appointing Governors after consulting state Chief Ministers was relegated during Indira Gandhi’s regime and Rajiv Gandhi followed the same. Governors have also started interfering in the state Government’s affairs in the name of their discretionary powers. The attitude of Ms. Kumudben Joshi towards the TDP Government in 1980s in Andhra Pradesh was manifest in a variety of activities. She was criticized for her non-cooperative stand against the norms of parliamentary form of government. Similarly Ram Dulari Sinha Governor of Kerala in 1988-89 was almost on a confrontationist line with the CPI (M) led left Democratic ministry. Also starting from 1967 Governors have been using their powers to dissolve or suspend state legislative assemblies to help the ruling party at the centre to form governments at its convenience. Such interference by Governors in state government affairs and abuse of their powers for partisan reasons has been giving rise to a feeling of insecurity among states and demand for setting the issues of appointment and dismissal of Governor’s themselves their compulsion to act on the advice of Council of Minister.

President’s Rule: Provision for imposition of President Rule in states – in Punjab President rule continued for almost five years (May 1987 to February 1992) under Article 356 was made to deal with serious situations as a life shaving device to be used as a measure of last resort. In practice this Article has been so frequently used for purely partisan interests that it has become almost poisonous for our political system. The use of Article 356 rests on subjective satisfaction of the President (Prime Minister) himself. In practice these provisions have been misused by –

- Dismissing the state government having majority in the assembly.
- Suspending and dissolving the assemblies on partisan consideration.
Not to giving chance to opposition to form government when electoral verdict was indecisive.

Denying opportunity to the opposition to form government when ministry resigned in anticipation of the ministry on the floor of the House.\(^86\)

When the Janta Government came into power it had frequent used the Article 356 for dismissing Congress Government in nine states in 1977. Indira Gandhi on return back to power repeated the performance in nine states governed by the Janta Party. During Rajiv Gandhi’s tenure use of Article 356 was made so frequent that it almost showed an intolerant attitude of the Central Government towards the non Congress (I) state governments. Ram Krishna Hedge points out that “for graver incidents have occurred in Congress (I) ruled states without either of the steps in redress. A situation in which the state government exists and functions at the sweet will of the centre reflects as total negation of federalism”.\(^87\) The provision for imposition of President’s rule is not in conformity with federal as well as democratic principles and has been frequently used for party ends; it has become most irritating contention between centre-state relations. Those provision have been frequently used for party ends it has become most irritating contention between centre state relations. Therefore, there has been a persistent demand from many political parties and observers for deletion of the Article 356 from the Constitution.

The Governor’s power to reserve a bill passed by the state legislature, for the President’s assent is another cause of tension between the centre and the states. This was specially been so in case where the governor has reserved a bill against the advice of the state ministry; presumably under the direction of the central government. “The purpose of this provision (contained in Article 200 and 201) is that the centre wants to keep a watch on the activities of the states. Unfortunately Governors have used these Articles in most of the cases to serve


\(^87\) Ramakrishna Hedge, “Plant for United States of India”, *Mainstream*, June 8, 1991, pp. 11-12.
the interest of the ruling party at the centre which led to a good deal of controversy. Several examples can be cited in this regard”.

The state ruled by the opposition parties have from time raised a hue and cry against the misuse of Article 200 and 201. In its memorandum to Sarkaria Commission the Bhartiya Janta Party alleged that bills have been reserved for consideration of the President in order to create difficulties for the state Governments. The West Bengal Government in its reply to the Sarkaria Commission’s questionnaire felt that Article 200 and Art. 201 had to be deleted. If the deletion was not feasible the state suggested a constitutional amendment should clarify that the Governor would not act in his discretion but only on the advice of the State Council of Ministers. At the opposition conclave held at Srinagar in 1983, all the opposition parties demanded the removal of the power of the centre to veto (through the President) the laws passed by the state legislature. Similarly the four Chief Ministers from southern states in 1983 demanded legislatures to enact laws on subjects for which they constitutionally have executive responsibility without having to seek the President’s assent”.

**Power of Governor to Prorogue the Legislative Assembly:** Beside the power to summon the state legislature the Governor of a state has the power to prorogue the legislative Assembly. It may however be asked in this context that, whether the Governor should follow his individual judgement or whether he should always act on the advice of the chief minister in exercising this power. According to same the Governor should always act on the advice of the chief minister, and according to others, the Governor may in certain special circumstances, exercise his individual judgement. Some other people’s opinion is that the Governor should exercise his power to prorogue the Legislative Assembly only on the advice of the Chief Minister. The Madras High Court also took this view in the case Mathialagan v/s Governor of Tamil Nadu on the

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89. Ibid., p. 46.
90. Article 174(2) of the Constitution of India and Section 53(2)(a) of the Construction of J&K.
other hand a number of well known Parliamentarian like M.C. Ranga, M.C. Cheterjee Math Pal and Acharya J.B. Kriplani, held that the Governor might follow his individual judgement in the matter of proroguing the legislative Assembly.

Since the conflicting opinion has been expressed on this point by men of eminence both in the field of constitutional law and in public life, the controversy deserves minute examination. Ordinarily the Governor should exercise the power to prorogue the legislative Assembly on the advice of the Chief Minister if the latter has a majority in the legislative Assembly. But what action should the Governor take if the Chief Minister advises him to prorogue the legislative Assembly in order to avoid facing a vote of no confidence against himself? The Governors’ committee held as follows: “As regards prorogation the Governor should normally act on the advice of his council of Ministers. But if the Chief Minister advises prorogation of the Legislative Assembly while a motion of no-confidence is pending, the Governor should first satisfy himself that notice of no-confidence is not frivolous but is a genuine exercise of the Parliamentary right of an opposition to challenge the Government’s majority.”

The Governor should ask the Chief Minister to face the Assembly and allow the matter to be voted upon. He has thus discretion in this respect which he must judiciously exercise. The Supreme Court to held that the constitutional provision which enable the Governor to prorogue the legislature did not indicate any restriction on that power.

If the Governor prorogues the Legislative Assembly when it is in session and in the midst of its legislative work, the action of the Governor may be questioned on grounds of an alleged want of good faith and abuse of constitutional powers”. If he prorogues the Assembly in the middle of the

93 Article 174(2) and (3) of the Constitution of India.
session, it is likely to appear that he has done so, to save, the ministry from being defeated on the floor of the House.

It would be constitutionally improper because the Governor should see that the executive has the continued and open support of the Assembly. Even in the matters where Governor is bound to act on the advice of his Council of Ministers, it is not necessary for him to accept the advice straightway. According to Governor’s Committee there is ample room for exchange of views between the Governor and Council of Ministers even though the Governor may be bound to accept the cabinet’s advice finally.

The action of Governor in proroguing the legislative Assembly came in for sharm criticism in the Lok Sabha. Many members argued that the Governor ought to have used his discretion instead of going by the advice of the Chief Minister. Under the Article 163 of the Constitution of India the Governor of state may also exercise his discretionary power in proroguing the legislative Assembly of the state.

If the Governor is bound to accept the advice of the Chief Minister to prorogue the Assembly is accepted the possibility of Chief Minister misusing the power cannot be ruled out. For instance, a Party may, as soon as it establishes its majority in a trial of strength in the legislative Assembly, get the Assembly prorogued for it can then maintained itself in power at least for next six months without being required to convene the Assembly.

Thus the Governor’s acceptance of the advice of the Chief Minister to prorogue the legislative Assembly during the budget session in Jammu and Kashmir does not appear to have been constitutionally proper.

**PRESIDENT RULE AND INDIAN DEMOCRACY**

When the popularly elected governments are not able to function properly, then there is alternative that is president rule. It generally regarded as the necessary evil rather than a desirable alternative. There is absolutely no justification for not restoring a popular government as soon as the crisis situation
is brought under control. The promulgation of President’s rule to fight problems like terrorism can be counter productive. We see these problems in various states such as –

**Punjab:** The Punjab experience does not support the statement of the Prime Minister Rajiv Gandhi that President’s Rule was justified to fight terrorism. He pleaded for imposition of President’s rule in the state and for additional powers when he said on December 6, 1986 in the Rajya Sabha to us. He also said that “without dislodging the elected government we cannot intervene in the Punjab under the existing law”. Hence the plea gives us powers and we will act”. There appears to be a basic misconception in some quarters that President’s Rule is a Panacea for all ills. The situation in Punjab actually started improving only after the restoration of popular rule in February 1992 relying fears that would get out of hand if powers were handed over to the elected representatives of the people. There are many other factors are also responsible for this development in Punjab; and all of them can not be discussed here.

**Jammu and Kashmir:** It is true on the matter of J & K that the holding of elections is not easy, there is little doubt that the dissolution of the State Assembly when it was not quite justified and the decision not to hold elections immediately thereafter were two important factors responsible for the deterioration of the situation, incidently, the dissolution of the state Assembly on February 19, 1990 by Governor Jagmohan was effected without the approval or even the concurrence of the union government and was done under the powers vested in him by the state constitution”. 95 It may be recalled that Jammu and Kashmir is the only state in India to have its own constitution. It other states, Governors have to legislative powers since there are transferred to Parliament on the imposition of the President’s rule. However in J & K the Governor also assumes legislative powers during what is called Governor’s Rule for a

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maximum period of six months. On the expiry of this period President’s rule was imposed on July 19, 1990 and periodically extended thereafter by Parliament. It has been in operation for more than five years and all efforts to restore the political process have powered infructuous. However now there is a popular Government in J&K headed by Faruq Abdullah.

**President Rule after Ayodhya Crisis/Babri Mosque Demolition:** The imposition of President rule in four states, first state – U.P., then Himachal Pradesh, Rajasthan, and M.P. in 1992. After the demolition of Babri Mosque at Ayodhya, the Union Government had not dismissed the BJP Government in U.P. when there was some justification for doing so (i.e. before and immediately after a mob had started pulling down the mosque). Although the state administration had refused to act in violation of specific assurance given by it to the Supreme Court to protect the disputed structure, the Union Government did not intervene on the plea that it had no powers under Article 356 to dismiss the state government in such circumstances. Only a few days later, it had little hesitation in dismissing all the four state governments ruled by the BJP; when the law and order situation in the states was no worse than that in the Congress ruled states of Gujrat and Maharashtra. The response of the union government, it has been alleged was partisan and was dictated not so much by the security situation in these states as by the desire to promote the political interest of Congress Party.

**National Emergency:** A National Emergency can be declared under Article 352 whenever the security of India or any of its territory is threatened by war external aggression or by armed rebellion. During National Emergency the executive authority of the union extends to giving directions to any state regarding the manner in which the executive power vested in it should be exercised. The parliament also assumes is given concurrent power for legislating on the subjects which in normal times, come under the state list in the Constitution. On the immediate effects of the proclamation of an emergency due to war or external aggression is that fundamental rights guaranteed under Article 19 are automatically suspended under Article 358. Both the Union and State
Governments may thereafter make laws which may restrict or even violate any of fundamental rights conferred by Article 19(1). They may also taken away the right to seek protection against such violations from courts. The union government is empowered under Article 359 to issue an order suspending the right to move a court for enforcement of Fundamental Rights.

First time under Article 352 emergency was declared in October 1962 during Indian conflict. It was still in force when the India-Pakistan conflict started in September 1965. The Emergency Proclamation was revoked only in January 1968. The proclamation of a national emergency in 1962 was followed immediately by the enactment of the Defence of India Act 1962, and later by the notification of the Defence of India rules under the Act. These rules, gave extensive powers to the governments to regulate the life and property of the citizens. The emergency legislation was modeled on wartime legislation enacted during British rule. The Defence of India Act 1939, the phraseology of Sec. 3 of the 1962 Act was almost identical to the provisions of section 2 of the 1939 Act.

Again National Emergency was proclaimed in December 1971 following the war with Pakistan. While this proclamation was still in force, a fresh proclamation was issued in June 1975; this time on the ground of internal disturbance. Both of these proclamations were revoked in March 1977. The benefited of these 1975 proclamation on the ground international disturbance followed by the suspension of the enforcement of Fundamental rights under Article 359; were highly suspect since they occurred immediately after the Allahabad High Court level found Indira Gandhi guilty of electoral malpractices and disqualified her. It has been widely alleged that the emergency was declared more to enable Mrs. Gandhi to retain power than to fight any serious threat to national security. Constitutional Amendment acts passed soon after the proclamation of emergency further fueled threes suspicious.

These Amendments not only prolonged the life of the elected Lok Sabha but they also put the proclamations under Articles 352 and 356 beyond judicial security. The maintenance of Internal Security Act (MISA) 1971 was amended
twice in 1975 giving very extensive powers to the executive detain people without trial‖.96 “Thousands of people were put behind bars, including a large number of persons who had committed no other crime except called these measures a constitutional coup to retain power. The Shah Commission, which proved excesses committed during the emergency year (1975-77) commented adversely on many act of the union and state governments”.97

The problems of internal security which necessitated the inclusion of emergency powers in the Constitution have not eased. They may in fact have multiplied becoming both much more serials and mere complicated. The treat of India’s integrity, unity and stability is much more serious today than at any other time the post-independence years. The states have been unable to handle the multiple internal security problems with their own resources. The Union Government is frequently called upon to send its armed forces to assist them. It has been suggested that “law and order” be brought into the list of concurrent powers in the constitution”.98

The President of India should excise his judgment before signing any of the emergency proclamations to ensure that these provisions in the constitution are not misused to undermine India’s federal and democratic institutions. At the same time, it should be ensured that in a multi-ethnic, multi-religious, and multi-linguistic society like India, the states are given sufficient autonomy to satisfy the aspirations of their people, many of whom have a strong sense of their own group identity. This identity crisis; which is already assuming alarming proportions in some parts of the country will become much more serious if the impression continues that the centre in encroaching on the autonomy of the states, “the report of the Sarkaria Commission”99, widely endorsed by

96. All these constitutional amendments and laws were repealed substantially by next parliament after Mrs. Gandhi lost power in the 1977 general election.
98. The National Police Commission (1977-81) discussed this suggestion, but decided not to comment on it in the report as its members were unable to reach a specified agreement.
constitutional experts and informed public opinion emphasized that intervention by the Central government under article 356 might be needed but only in some exceptional circumstances. There could be situation where with many parties competing in a general election, no party was able to form a government, no alternative government could be formed or there might be cases in which a state government acted in disregard of constitution or actually promoted internal subversion, or was unable to control a situation in which law and order had broken down completely.

**Sarkaria Commission and Article 356: The** Sarkaria Commission also enumerated illustratively the situations where it considered recourse of Article 356 to be improper. Mal-administration allegations of corruption, or a crisis in a state’s finance were not considered appropriate ground for imposing President rule. Internal disturbances in a state were also not sufficient justification for invoking article 356. Until all other means of controlling them had been exhausted. Where a Ministry had not been defeated on the floor of the state legislature in a confidence vote it could not be superseded merely on the state governor’s assessment that it had lost its majority. Where a ministry was defeated in such a vote the formation of another government had to be explored, and then the alternative of dissolution of the legislature considered. President’s rule should be imposed only as a last resort if fresh elections were not immediately desirable. The Commission observed categorically that a State Government could not properly be dismissed under Article 356 simply because the Party in power in a state had lost the majority of the state seats in a election for Central Parliament such dismissals had occurred in various states in 1977 and 1988.

Sarkaria Commission concluded that the imposition of President’s rule may have been justified in just one third of the seventy four occasions it examined. The commission also noted that the necessity of obtaining

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parliamentary approval had not served to check misuse of its power by the central executive. While hoping that central governments in the future would limit their use of this power to exceptional situations where constitutional government could not otherwise carry on in a state, the commission suggested amendments to the constitution designed to enable limited judicial scrutiny of action under Article 356 as a safeguard against resort to President rule for extraneous purposes. The central governments of the period 1988-94 failed to respond to the Sarkaria Commission’s recommendations and Article 356.

By observing the political conditions and misuse of Article 356, Justice R.S. Sarkaria had emphasized that this Article should be used very carefully and should follow the constitutional instructions. The Commission falls back on creating appropriate convention instead of constitutional amendments curtailing the power of Governor. When that situation is arise, the commission indicate four illustrative heads –

- Political crisis.
- Internal sub-version
- Physical break down
- Non-compliance with constitutional directions of the Union executive

All attempts should be made to resolve the crisis at the state level before taking resource to provisions of Article 356, the availability and choice of these alternatives will depend on the nature of constitutional crisis its causes and exigencies of the situation. These alternative may be dispensed with only in cases of extreme urgency where failure on the part of the union to take immediate action under Article 356 will lead to disastrous consequences.

The first recommendation of Sarkaria Commission regarding to the proper application of the Article 356 is to ensure parliamentary control by providing that state legislative assembly should not be dissolved before parliament has had an opportunity to consider the Presidential proclamation and that upon requisite notice given to the speaker, a special sitting of the House
shall be held within 14 days from the date of notice and President’s rule shall be revoked if the House passes a resolution disapproving it.

To ensuring the effective Judicial review of the proclamation imposing President’s rule in state. Firstly the report of the Governor on the basis of which the Presidential action is taken should be a speaking document that is it should contain a precise and clear statement of all facts and grounds which form the basis of the presidential satisfaction as existence or otherwise of the situational contemplated in Article 356. Next the information received by President on which he can also act independently of Governor’s Report must not be vague or wholly irrelevant. The Presidential rule’s implementation should be made an integral part of the presidential proclamation.

The suggestions of the Sarkaria Commission are much too watery, since a Government at the centre which can stop to dismissing a State Government without basis will not hesitate to attach some facts obtained from Governor to its proclamation. A much better course will be, what has been proposed by some non Congress I, governments, namely, that in case the emergency provisions are to be retained in Constitution, it should be the Inter-state Council (provided under Article 263) and not the union Council of Ministers that must decide whether a state Administration is to be dismissed or state legislature dissolved under Article 356.100

According to Soli Sorabji these recommendations are in keeping with fundamental and statutory principles underlying any civilized jurisprudence. Their adoption will ensure that Article 356 a giant which should be watched carefully will subserve the legitimate purpose for which it was enacted by the founding fathers. It will also restore some elements of constitutional morality which is the imperative need of power.101

100. Bata such a plea was rejected by the Congress I saying one should not criticize the constitution because of a few individuals. Buta singh in Lok Sabha, April 4, 1989.
An extra safeguard has been added against the misuse of Article 356, is through the 52nd Amendment of the Constitution prohibiting floor crossing. The problem of defection which very often leads to the breakdown of constitutional machinery in a state seems to be diluted by the enactment of anti-defection law in 1985. As we were beginning to believe that the power of imposing President’s rule was an extra-ordinary power to be invoked rarely, the Constitution has once again become a play thing in the hands of the Party in power at the Centre. The most glaring examples are the imposition of President’s rule in Nagaland on 7 August 1988, and in Karnataka on April 21, 1989.

Sarkaria Commission and Scope of Article 356: The Commission said that the constitutional machinery of the state may be break down because of political crisis. Such a crisis could arise no Party was able to secure an absolute majority in the House and despite the efforts of the Governor, there was complete demonstrated inability to form a Government commanding the confidence of the Assembly.

A Political crisis could also be caused by resignation or dismissal of Ministry following its loss of majority to form a government and there being no possibility of coalition government. In these situations, the Sarkaria Commission recommended that the Governor had the option to dissolve the Assembly, so that fresh election may be held, thereby allowing the political deadlock to be solved by the people. He could ask the outgoing Ministry to form a caretaker government. However the legality to do a thing and its propriety are separated issue. If the Assembly had finished more than half of its life, dissolution would be preferable. If this was not so, the Governor must carefully weight the factors before taking a decision. A fresh election should be ordered only after consulting the leaders of the political parties involved.

If the ingredient mentioned by the Sarkaria Commission were absent, the President’s Rule was the only way out. The Commission recommended that Article 356 be used sparingly in extreme cases, as a measure of last resort when all available alternatives had failed to prevent or rectify a breakdown of the
constitutional machinery in a state. The central government and the Governor might argue that the Sarkaria Commission report is yet to be accepted by the Union Ministry. The court has given the Governor a very limited role. He (Governor) has to act on the advice of his cabinet, unless the Constitution otherwise provides. The Commission has very clearly said that the Governor is bound to go by the advice of dissolution of the House by a Chief Minister who has lost his majority in the House. Since the cabinet is collectively responsible to the House, the Governor must satisfy himself that Chief Minister would command a majority in the House. It is not the duty of Governor to examine the political programme of the legislature parties and then conclude whether or not they are fit to rule the state. He (Governor) needs to do is, to judge, which party or coalition has the majority and whether the majority is likely to last. It is not the governor’s business to sit on judgements in the legislature.

The President’s rule can not be imposed for helping the ruling party to buy time for realizing its party strength or sorting out Party differences, or for dissolving leadership crisis because that would be tantamount to the exercise of power for an intraneous purpose outside the ambit of Article 356 and hence would be unconstitutional. If the state is brought under President’s rule to punish selfish and greedy legislators that could be a case of irrelevant and impermissible considerations coming into play, because Article 356 is not a measure. Its paramount purpose is remedial restoration of the broken down constitutional machinery in a state.

**Conclusion:** More than five and half decades have passed since the commencement of the constitution and the legislative authority of the states has been gradually eroded over the years. In the view of growing discontent among the states and their demands for greater autonomy, particularly among the non-Congress Governments functioning in the states. As examined by Administrative reforms commission and they took the view that list have been drawn up
admirably well and they “do not consider the time ripe or in any way appropriate for general review of the list”.  

Four years later Rajamannar Committee (1971) suggested to appointment of a high power commission to review the list and pending the decision of such a commission recommended transfer of many items from the Union List and concurrent list to the state list. Indeed the very terms of reference of the Rajamannar Committee enjoyed it “to suggest suitable amendments to the constitution to secure to the states the utmost autonomy”. The crux of its recommendations was to eliminate the concept of legislative supremacy of the centre and to confer utmost autonomy to the states. The report did not evoke favourable response from the central government or even the press opposition parties and other state governments. The distribution of legislative powers is a delicate subject involving a study in the depth of constitutional provisions and practices. The Sarkaria Commission has also suggested how for legislative relations could be maintained.

- Sarkaria Commission recommended a strong centre.
- Supremacy of Parliament under Article 246 and 254 is essential and needs no modification.
- Residuary power other than taxation could be in the concurrent list.
- There is no question of limiting the powers of Centre.
- Regional language should be the administrative language in the state concerned.
- Institution of Governor should be constituted.
- The Centre should not appoint a person as Governor of the state concerned from the panel of names given by the state government.
- If there is no clear majority to any political party in the legislative assembly, then the governor should give chance to form the coalition ministry if possible.
- If a person heads the coalition government than the Governor should give him 30 days to prove the majority in the legislative assembly.

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The majority should be proved only in the legislative assembly but not in the Raj Bhavan.

Before the Union Government deploys its armed forces and other forces in aid of civil power in a state the State Governments should be consulted.

The State Legislative Assembly should not be dissolved straight way.

President rule should not be imposed straight away in the state concerned.

To dissolve the legislative assemblies and to impose the president’s rule the centre should take the approval of the parliament.

In the event of a political break down necessitating centre intervention under Articles 352, 355, 356 the possibility of forming an alternative government should be first explored.

The commission has come to conclusion that the constitutional provisions relation to central intervention in the states are necessary and should remain intact.

The system of Governor sending fortnightly reports to president must continue.

It is not necessary to delete or armed Article 200 and 201 in regard to Governor’s power to refer any bill to the Centre for assent.

When the centre withholds assents to a bill reasons should be communicated to the State Governments concerned.

The Governor’s power of issuing ordinances should be discontinued. The ordinances should be issued only under exceptional cases.

However recourse to enmass imposition of President’s rule in a number of states as was done in 1977 and 1980 was improper.

The centre should also consult the vice president and speaker of the Lok Sabha before appointing the governor of a state apart from consulting the Chief Minister.

Centre power’s governs in regard to the reorganization of States should be retained.

Broadcasting subject will remain with the centre. The more extensive and generous use of Article 258 should be made to decentralize centre powers.

There should be amendments to the commission of inquiry Act. This is prevent the misuse of power vested in the central government.
The Commission has recommended that president has to place the resolution passed by the state Assembly concerned before the Parliament for the certain or abolition of legislative council. Parliament may accept or reject the resolution, if the resolution is adopted by the parliament, the Union Government shall introduce necessary legislation for implementation by amending the Constitution if necessary.

The tribunal award must be binding on States on river water sow.

The importance of national programmes should be broadcast and telecast in state concerned languages in radio and television. This idea leads toward the growth of unit and integrity of the Country.

Centre should provide immediate relief to states in the event of natural calamities.

Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of parliament, while the residuary field other than that of taxation, should be placed in the concurrent list”. The constitution may be suitably amended to give effect to this recommendation.

On considering the question of distribution of legislative powers we should be clear in our minds about the goals which we seek to achieve and whether national interest would be better served by transferring powers in any particular areas to the states and whether such transfer will stand the tests of efficiency, economy and administrative convenience.

I do not consider that a wide range of subjects has been allotted to the Centre. But there are certain unusual provision regarding central intervention in the limited sphere allotted to the states even without any amendment of the Constitution. Parliament may, by a mere declaration, assume jurisdiction over certain heads of legislation which are the exclusive concern of the states. There are various provisions in the constitution enabling parliament to legislate on matters reserved to the states. In the peculiar circumstances of our Country powers under article 2 to 4, 250, 251, 253, 254 and 368, through opposed to the federal principle, may continue to be vested in parliament but Article 249 which makes a serious inroad into state autonomy without serving much useful purpose should be emitted.
Article 252 enables parliament to legislate with respect to a state subject for two or more states by consent serves a very useful purpose clause (2) of that article prevents state legislatures from amending or repealing any such law passed by parliament. In regard to state legislation articles 200 and 201 deserve consideration. Under the second provision to Article 203, certain types of Bills are required to reserved types of Bills are required to reserved types of Bills are required to reserved for the consideration of the President. Article 200 also permits the governor to reserve any bill for the consideration of the President. Article 200 does not provide any guidelines as what types of bill should be so reserved and whether the governor has any discretion in the matter. Once a bill is reserved the president many under article 200 either give his assent to the bill or withhold it and in the case of a non money bill direct the governor to return the bill to the state Legislature with a massage. There is a no time limit provided for exercise of president’s powers and bill are lying with central government for a long time without any decision being taken. I suggest that while scrutinizing a state bill the centre should not delicate its policy to the state government unless the policy of the state government is opposed to national interest. If the president is dissatisfied with any bill he should, in first instance, return the bill for reconsideration of the state legislature and when the bill is against received by the president he may either give his assent to the bill or withhold it. In the context legislative relations our constitution is flexible. I would like to suggest minimum amendments to the constitution. The autonomy of a state depends not only on constitutional provisions but more so on constitutional conventions and practices. There is a feeling right or wrongly among non-Congress governments functioning in the states that they are discriminated against by the centre. Every effort should be made to see that there is no cause for such misgiving.

There is a well defined distinction between Party and Government and public criticism of the function of the functioning of State Governments by the central Ministers serves no useful purpose. It is only created bitterness. When the central government undertakes legislation in concurrent field a firm convention should be established that before introducing the bill in parliament, the states
should be consulted and their views obtained. I would like to go on one step further and suggest that when the centre undertakes any legislation in relation to entry in the Union list which affects the states such consultation is called for. There are various entries in list I relating to economic affairs and legislation on such subjects may affect the states. The states are bound to feel frustrated if they are not consulted. Not only should the states be consulted but their views taken into consideration in matters affecting them.

I would also like to suggest that there should also be dialogue, discussion and consensus. The centre which has got a massive mandate from the people can afford to be magnanimous and should take the states into confidence in all matters of mutual interest. At the same time political leaders in the states should not only be dedicated to state interests but should have due regard for sister states and particular the interest of rational development and national unity. Following other measures should also be taken for strengthen the Centre-State relations.

- The strengthening of the inter-state council to deal with the matters of federal importance and to evolve it as conflict resolving institution.
- Since federal structure is one of the basic structures of the Constitution, hence it is the bounded duty of the president to protect and safeguard the federal institutions.
- Political parties need to democratize their internal functioning.
- Upper House of Parliament (Rajya Sabha) needs to be made a truly federal chamber by affecting structural changes in the modes and members of its constitution.

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