Chapter-4
THE GOVERNOR AND CENTRE STATE RELATIONS

In a federal State like India the relations between the Central or the federal government and the governments of the States, constituting the federation, are of fundamental importance. As the entire governments powers of the State must necessarily be distributed between the Central government and the States governments in any federal structure. The smooth and efficient functioning of the governments at the Centre and in the States must depend upon a proper balance and harmony between the federal or the Central government on the one hand and the governments in the States on the other. To achieve this end the function of the Constitution and of constitutional law must therefore, be directed towards framing proper legal relations between the Central government and the governments in the States. Our Constitution embodies the Constitution both for the Union of India and also for the States. Unlike the American Constitution, which is concerned with the federal structure alone. Our Constitution has set up the Union Parliament and the Legislatures of the States between which the entire legislative powers of the State are distributed.¹ Part X I of the Constitution regulate the whole field of legislation, prescribing where Parliamentary legislation will prevail and where State legislation will supreme. The Constitution similarly sets up the executive government for the Union² and the executive government for
the States. In the same manner the Constitution sets up the judicial organization in the country with the Union Judiciary consisting of the Supreme Court as the highest Court of the country and the High Courts and the subordinate courts for the dispensation of justice in the States. In relation to each of these organs of government namely, the Legislature, the Executive and the Judiciary, the Constitution has prescribed the legal relations between the Central government and the States so as to maintain the balance in the functioning of these organs at the Centre and in the States.

An institution of crucial importance on whose impartiality and integrity the autonomy of the State and soundness of Centre-State relations depend is the Governor of a State in the Indian Union. Since the fourth general elections there has been a radical change in the power balance in the Indian federal system. The Centre-State relations which till 1967 were not put to test due to the Congress party monopoly of power at the Centre and in the States, have aroused a measure of anxiety and confusion in the post-fourth general elections political set-up of the country.

**Administrative Relations between Centre-State Governments:**

The constitutional heads of Centre and States are responsible for administrative relations between the Central government and the States. The Union government is represented by the President of India, who functions on the
advice of his Council of Ministers. The Constitution set up the office of the President as an elective office and vests the entire executive power of the Union in the President. The President has to function on the advice of his Council of Ministers who are collectively responsible to the House of the people. Our President is only the constitutional head of the Central government unlike the President of the United States of America. Though he acts in law in his own name in discharging the executive functions of the Union government, his functions are, in fact, distributed between and discharged by his ministers according to the Rules of Business framed by the President.

The executive powers of a State are vested in the Governor who has to function, like the President, on the advice of his Council of Ministers, who are collectively responsible to the State Legislature. The executive functions of the State are distributed between and discharged by the ministers according to the Rules of Business framed by the Governor. In appreciating the role of the Governor of a State under our Constitution it is important to note that unlike the President he is not elected by the local Legislature or by the electorate in the State, but is appointed by the President of India and he holds office during the pleasure of the President. The controversy which has arisen in recent times concerning the Governor's role and the manner in which he should function is largely due to this fact that the Governor holds his office during the pleasure of the President and is appointed by the President, which
means that in terms of constitutional practice the Governor in a State is actually appointed by the ministers of the President and the Governor holds his office also during the pleasure of the ministers of the President. This imports into the structure of our Constitution a political element which gives rise to the very controversies, which have been thrown into bold relief during the period following upon the general elections of 1967. It is not difficult to appreciate that if the Governor is appointed by the ministers of the Central government and he continues during their pleasure, he may become suspect of acting under the pleasure of the ministers of the Central government in relation to his functions in the State. So long as the same party forming the government at the Centre and in the States, the matter does not assume much importance. But when the same party does not run the government at the Centre and in a particular State, any action taken by the Governor in that State either dismissing his ministers or choosing new ministers or recommending the imposition of President’s rule in the State may become the subject of serious controversy.

The first problem, in Centre-State relation under the Constitution is the problem of appointment of the Governor of a State and his removal. If the President is to act on the advice of his Council of Ministers so far as his executive authority is concerned, can he act in a manner in the matter of appointing and removing the Governor of a State, which will create a conflict between the Central government and the State government concerned? Like the President, the Governor must
act on advice of his Council of Ministers. If the President is
advised by a Council of Ministers, which belongs to one party
and the Governor is advised by a Council of Ministers which
belongs to a party completely opposed to the party in power at
the Centre, can or should the President appoint a Governor who
is the out of tune with the party in power in the State? If he
does so, it will create a most undesirable conflict. Is it not,
therefore, proper that in appointing a Governor the Central
government should consult the Chief Minister of the State
concerned? It may be noted that such a consultation has infact
became almost a convention since the Constitution. Similarly,
can the President remove a Governor simply because he does
not approve of the actions of his Council of Ministers, who
belongs to a party different from the party in power at the
Centre? Such a course would obviously be contrary to the spirit
the Constitution, if not malafide and illegal. It must at the same
time be realised that the Governor must function independently
in discharging his functions as a channel of communication
and contact between the Centre and the States. He bears
certain responsibilities to the President. So far as he functions
in the latter sphere, he definitely preserves in himself the old
dual role of the Governor. The Governor is the executive head of
the State; he is at the same time a link with the Centre.\textsuperscript{10} It is
to allow the Governor to successfully and properly function as a
link between the State government and the Central government
that the Constitution does not allow to have elective Governor
in the States. This is with the belief that if the Governor was
elected by the State Legislature, he could not function independently as a link between the State government and the Central government.

**State Field Functions of Governor:**

The State field, the Governor functions as the executive head and acts on the advice of his Council of Ministers. Under Article 163, he is to be advised by the Council of Ministers with the Chief Minister as the head in the exercise of his functions except in so far as he is to exercise his functions in his discretion. Under Article 164 the Chief Minister is appointed by the Governor and the other ministers are also appointed by the Governor on the advice of the Chief Minister and the Chief Ministers and other ministers hold their office during the pleasure of the Governor. The Council of Ministers is collectively responsible to the Legislative Assembly of the State. The position of the Governor in the State field under the Indian Constitution offers hardly any parallel in other Constitutions. As the constitutional head of the State, he resembles the President in relation to the Union government; but at the same time he also represents the President and the Union government in the discharge of various functions. His position in the State is governed by his paramount obligation to act on the advice of his Council of Ministers excepting in the performance of those functions which he is required to perform in his discretion by the Constitution. He is required by the
Constitution to exercise functions in his discretion only in regard to two specific cases, namely-

- The carrying on of the administration of tribal areas as the agent of the President;¹¹
- Acting as the Administrator of Union Territory when so appointed by the President.¹²

Besides these, the Governor of Andhra Pradesh has been given special responsibility by Article 371 of the Constitution in respect of Regional Committees of the Legislative Assembly of the State. The Governors of Maharashtra and Gujarat have been given special responsibilities in respect of Development Boards in Vidarbha, Marathawada, Saurashtra and Kutch under Article 371(2) of the Constitution. Similarly, the Governor of Nagaland has special responsibility in respect of law and order in the State under Article 371-A of the Constitution. The Constitution does not expressly provide for any other discretionary powers there are certain other constitutional powers which, by necessary implication, require the Governor to exercise them in his discretion.

The Constitution also provides discretionary powers to the Governor, not directly but by necessary implication. 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.¹³
Hence, situation may arise in which the Governor may actually have to exercise his discretion. These situations are:

- regarding the appointment of the Chief Minister,
- regarding the dissolving of the State Legislative Assembly,
- regarding the dismissing of a ministry,
- regarding the reservation of a Bill for the consideration of the President, and
- regarding the Governor's report for President's rule in the State.

Thus these constitutional powers of the Governor are of significant use in the context of Centre-State relations. In the sphere in which he required by the Constitution to exercise his discretion, it is obvious that what is intended is his discretion and not that of any other authority, and therefore, his discretion cannot be controlled or interfered with, even by the Centre. This is why Governor's independence in the exercise of his discretionary powers is indispensable to a State's autonomy. An important question has been raised from time to time whether any guideline should be formulated for the manner in which the discretionary powers should be exercised by the Governor. The whole issue was carefully considered by the Constituent Assembly and in the initial stage of the drafting of the Constitution it was contemplated that a schedule by inserted in the Constitution providing for an Instrument of Instructions. Ultimately the Constituent Assembly in its wisdom
thought that if it was not necessary to have any Instrument of Instructions in this behalf, and the matter should be left to the Governor to be regulated by convention\textsuperscript{19}. In this way the idea regarding the Instrument of Instructions was dropped while enacting the Constitution.\textsuperscript{20} But, the Administrative Reforms Commission (ARC) recommended that "guidelines on the manner in which discretionary powers should be exercised by the Governor should be formulated by the Inter-State Council and, on acceptance by the Union, issued in the name of the President.\textsuperscript{21} Likewise, the Report of the Committee of Governor (1971) also came fairly close to suggesting a procedure for evolving a body of precedents. "A special wing may be set up in the President's Secretarial which would ascertain all the facts from time to time requiring action by the Governor in the exercise of his powers and reasons for the action taken by him in a particular situation". These would then be confidentially communicated to the Governors.\textsuperscript{22}

**Governor's power to Appoint Chief Minister:**

A very controversial question regarding the Governor's discretion is his power to appoint the Chief Minister.\textsuperscript{23} Article 164(1) of the Constitution of India 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. Clearly, the words in clause (1) of Article 164 give full free hand to the Governor to appoint anyone as the Chief Minister and thus exercise of Governor's pleasure under Article 164 (1) cannot be fettered by any condition or restriction.\textsuperscript{24}
Formally it is the discretion of the Governor to exercise his personal judgment in appointing the Chief Minister, although 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. This means, only such a person can be appointed a Chief Minister who carries or can carry with him majority of the Legislative Assembly. Hence it becomes clear that the Governor has no discretion in the appointment of the Chief Minister when there is one party having absolute majority in the House; he shall be bound to call upon the leader of the majority party to form the government.

But, in case a number of different parties are returned to the House and none of them has an absolute majority support in the House, what should the Governor do? Should he invite the largest single party to form the government? Or should he afford an opportunity to other smaller groups to form a coalition government? In answer to these questions the opinion is divided. Eminent jurists like A.K. Sarkar, P.B. Gajendragadkar and Mehar Chand Mahajan favours in view that a person who can ensure a stable government should be invited by the Governor to form the government. According to late M.C. Setalvad, if the party in power fails to obtain majority, the Governor should treat it as a popular rejection and call upon the leader of the opposition to form a ministry. In the event of his failure to do so the leader of the largest political party should be invited. The Governor's Committee has also recommend that "the relevant test (to appoint the Chief
Minister) is not the size of a party but its ability to command the support of the majority in the Legislature”.29 These views of the Governor’s Committee and eminent constitutional jurists deserve attention. But our past experience shows that most of the Governors had invited the leader of the single largest party to form the government during the last fifty plus years. Unfortunately, the practice of the leader of single largest party or the leader of the largest United Front formed before election has not been followed uniformly. This decision of the Governor based on political intention. Thus, looking at the past practices in the appointment of Chief Ministers, It seems that it would much better for the parliamentary democracy in our country that immediately after the elections, when no party obtains absolute majority, the leader of the largest party or the leader of the largest United Front formed before elections should be invited to form the government. So long as this principle is not accepted as the convention in appointing the Chief Minister, the possibility of the Governors exposing themselves to the charge of manoeuvring the appointment of the Chief Minister will remain.30

**Governor’s Power to dissolve State Assemblies:**

Under Article 174(2) (b) the Governor has absolutely unrestricted power to dissolve the Legislative Assembly of the State. If the Governor has reason to believe that the Legislative Assembly is not representing the electorate, he has every constitutional right to dissolve it. The majority in the Legislative Assembly is creation of the electorate, and if the members by
their unilateral act of defection of change this majority into minority and a minority into majority, it clearly amounts to a breach of the electorate’s confidence and betrayal of their trust and is clearly a violation of the fundamental principles of representative democracy. The Governor can therefore, dissolve a Legislative Assembly which has changed its character in this way. Unfortunately, the Governors have acted not as representatives of the Centre but virtually as functionary of the ruling party at the Centre in exercising their power to dissolve a State Assembly under Article 174 (2) (b). To prove this, two points deserve special mention here. First, whenever a Union government supported or a government supported by it from outside, or a government in which it was major partner, has fallen or has about to fall, the Assemblies instead of being suspended, have been dissolved under Article 174 (2) (b), Kerala (1970), West Bengal and Bihar (1971), or under Article 356 as in Andhra Pradesh (1954). Pondicherry (1968), West Bengal (1968 and 1971), Manipur (1969) and Orissa (1973) unless this collapse of government happened soon after elections as in Haryana, Uttar Pradesh (U.P) and Madhya Pradesh (1967) and Bihar (1969). In none of these cases were the opposition parties given an opportunity by the Governors to try and form government.

Secondly, however a recommendation for dissolution under Article 174 (2) (b) or under Article 356 was made by a outgoing Chief Minister, it was rejected in all cases where the Union government was keen on forming the government.
Examples are of Rao Birendra Singh in Haryana and Sardar Gurman Singh in Punjab (1967), Mr. Charan Singh in Uttar Pradesh (1968), Bhola Paswan Shastri in Bihar (1968), Raja Naresh Singh in Madhya Pradesh (1969), Hitendra Desai in Gujarat and Karpoori Thakur in Bihar (1971). All these examples point to the disturbing trends in the role of Governor and make quite an impressive indictment.32

**Governor's Power to dismiss a Ministry:**

According to Article 164 (1) of the Constitution the Ministers shall hold office during the pleasure of the Governor. Thus the question arises: Does this constitutionally prescribed pleasure confer upon the Governor discretionary power to dismiss the ministers arbitrarily on subjective considerations.33 In answer to this question it may be said that in dismissing a minister (including the Chief Minister) the Governor cannot withdraw his pleasure with unfettered discretion. This view of the Calcutta High Court34 that the Governor can use his unfettered discretion to dismiss the Council of Ministers is not very sound because this view is not substantiated by the framers of the Constitution. Dr. Ambedkar speaking in the Constituent Assembly said that the position of the Governor is exactly the same as the position of the President.35

It may, however, be noted here that “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”36. Articles 164(2) and Article 75 (3) which requires that the Council of Ministers shall
be collectively responsible to the Lower House are the backbone of the parliamentary form of government. This obviously means that though the 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. 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". However, the pleasure of the Governor to dismiss an individual minister means the pleasure of the Chief Minister because when the Chief Minister asks a particular minister to resign and if he does not resign, then he can advise the Governor to dismiss him. But this practice has not always been followed in all cases and there are examples where the Governor has refused to dismiss the minister's inspite of the recommendations of the Chief Ministers. For example, in Uttar Pradesh in 1970 in case of Charan Singh when he was the Chief Minister of Uttar Pradesh. He advised the Governor to dismiss a few minister but the Governor not only refused to dismiss them but even asked the Chief Minister to resign, and on refusal by the Chief Minister to do so, the Governor recommended the dismissal of ministry and imposition of President's rule under Article 356, which is a disturbing trend in the role of the Governor. Hence, it is submitted that so long as the Chief Minister is found capable of obtaining support of the majority of the House, the Governor...
should continue to follow the advice of the Chief Minister to dismiss a minister.

**Governor’s Power to reserve A Bill for President’s Consideration:**

Every Bill passed by the State Legislature is presented to the Governor for his assent under Article 200 of the Constitution. The Governor has discretionary power to reserve the Bill for the consideration of the President. In the exercising of this discretionary power the Governor has to play a constructive role in Centre-State relations. In the interest of amicable Centre State relations, the Governor should exercise his discretion only in exceptional and warranted cases. In addition to this, there are also certain circumstances under which the Constitution requires Presidential assent before a Bill passed by a State Legislature becomes law. Once a Bill is so reserved, the President may either give his assent or withhold it or 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 Bills that is referred to him for assent and, he need not give any reasons for exercising his Veto. There have been instances when State Bill have sent back without Presidential assent. The fact also remains that some of the State Bills had continued to await the assent of the President for many years.

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 Report on the failure of constitutional machinery in States:**

The President can act independently of the Governor's report in case of a situation in which the government of the State cannot be carried on in accordance with the constitutional provisions, yet the Governor's report generally forms the basis for President's action. Dr. Ambedkar justified the inclusion of the word "otherwise" in Article 356 on the ground that in emergent situations the President should come into the field from the beginning and not after the suppression of the Constitution by the Governor as envisaged under Article 188 of the Draft Constitution. Thus Article 356 empowers the President even to act on his own initiative. In State of Rajasthan Vs Union of India justice Bhagwati has also conceded that the inclusion of the world 'otherwise' in Article 356 gave the President very drastic powers which, if misused or abused, can destroy the constitutional equilibrium between the Union and the States. He says that, "indeed, the usual practice is that the President acts under Article 356 (1) of the Constitution only on Governor's report. But, the use of the word 'or otherwise' (in Article 356) shows that Presidential satisfaction could be based on other material as well. This feature of our Constitution indicates most strikingly the extent to which inroads have been made by it on the federal principle of government." It is
important to note that a few things which were thought inconceivable in constitutional terms have happened under the shelter of the world ‘otherwise’ in the Article 356. Mass dismissal of State governments without the report of the Governors, not for constitutional breakdown, but to suit the convenience of the party in power at the Centre, has happened in 1977 and 1980. Contrary to the expectations of Dr. B.R. Ambedkar, (Chairman of Drafting Committee) Article 356 has neither remained a dead letter nor has it has been sparingly used. Since the inauguration of the Constitution in 1950 the Article 356 was invoked more than hundred times different States for various reasons. The landmark judgment on January 14, 2005, regarding the powers of Governor the Supreme Court held that the Governor does not enjoy any special discretionary powers under the sixth schedule of the Constitution which deals with the Centre-State relations. The five-judges constitutional bench headed by Chief Justice R.C. Lahoti said while performing his duty under the sixth schedule the Governor was bound to take the advice of the Council of Ministers and a contention that “the sixth schedule is a Constitution with the Constitution” could not be accepted for various reasons. “It is impossible to visualize complete segregation of the sixth schedule from the rest of the Constitution” said the bench having Mr. Justice Shivraj V. Patil, Mr. Justice K.G. Balkrishnan, Justice B.N. Shri Krishna and Justice G.P. Mathur as other Judges. The sixth schedule of the Constitution is a part of Constitution and cannot be interpreted
by forgetting its other provisions the Court said, adding the under para “20 BB” of the sixth schedule the Governor was bound by the advice of the cabinet.

It would be understand from the above discussion that our Constitution never meant the office of the Governor to be merely ornamental. For the functioning of constitutional government in the State, the Governor forms the kingpin on which the entire machinery of the State must revolve. A Governor provides a stable link between the Central government and the State government and embodies in his office the machinery through which government in a State may function in accordance with the Constitution. Without him the Legislature cannot be called or prorogued or dissolved. Without him the Chief Minister and Council of Ministers cannot be chosen or removed. Even when the Council of Ministers is appointed, the Governor has to perform his legal, constitutional and conventional functions continuously in order to enable the government in the State to be conducted properly. He must see that the State government functions in accordance with the Constitution and in accordance with the directives in Part XI, Part XVIII and other Parts of the Constitution. It is for the Governor to advice the ministry, to warn them, to suggest to the ministry alternative policies and actions and to ask for their consideration and reconsideration of accepted policies and programmes. These duties of the Governor are similar to the rights and duties of the British sovereign as a constitutional monarch under the British Constitution. The Governor of a
State can exercise considerable influence over the government of his State through a wise use of these rights. The Governor was visualised to be a constitutional head, a sagacious councillor and adviser to the ministry, one who can throw oil over troubled waters. Apart from being a symbol of the State, the Governor could if he were active, by means of getting into touch with opponents of the party in power, reconcile them to a good number of measures and generally by tours and other means make the administration run smoothly. In short, the Governor would act as a lubricator of the government in the State.

The office of Governor was, therefore, never meant to be an ornament sinecure. He is not required to be an inert cypher and "his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibilities towards the Centre and towards the State executive of which he is the constitutional head". Apart from his constant, watch and guidance of the State government with the possible intervention by him to preserve constitutional government either by removing one ministry or by appointing another or by invoking President’s rule, under conditions which render constitutional government impossible, he is invested with special responsibility. He has also to play an important role for national integration and for the preservation of national standard in public administration. The Governor of a State ruled by a party which also wields power at the Centre will always tend to be unimportant. As the Special Report of the
Study Team of the Administrative Reforms Commission has said, he would be out-flanked and reduce to non-entity. The prospect has now changed with the emergence of governments in some States being run by parties different from the party ruling at the Centre and the institution of the Governor has now a chance to come into its own. In order to give true meaning to the office of the Governor, the first essential thing is to choose a proper person for filling the office. It should not be treated as the last refuge of a retired politician or civil servant or as a place for distribution of patronage. Outstanding men in the political, social and educational life of the country, who are not controversial figures, must obviously be the proper choice.

In order to enable the Governor to successfully discharge his functions under the Constitution, an agreed code of conduct approved by the State governments, the Central government, the Parliament and the State Legislatures should be evolved. This code of conduct should first of all lay down norms and principles which should guide the exercise of the Governor's discretion and his powers which he is entitled to use and exercise on his personal judgment. The Governor's role being not merely formal or ornamental as discuss above, there are circumstances in which he might be called upon (and in fact recent experience in the States has shown that he may frequently be so called upon) to exercise his own judgment and in some situations the exercise of his judgment can be crucial particularly when his functions relate to matters in which the Central government may be vitally concerned. It is, therefore,
important that the Governor must be enabled to exercise his constitutional functions with a clear understanding and on the basis of principles which are accepted by the State government and the Central government and on the basis of agreed conventions.

It is equally important that the Governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgment. The report of the Study Team of the Administrative Reforms Commission raises four questions for the purpose of assuring that the Governor may properly exercise his functions:

i. Questions relating to the appointment of Governor to ensure that persons of the requisite calibre are appointed;

ii. Questions relating to the conditions, arrangements and procedures enabling the Governors to perform their duties;

iii. Questions relating to the clarification and need for extension of areas involving the exercise of his own judgment by the Governor;

iv. Question relating to the powers and procedures for keeping the Centre informed of happenings in the States.

There can be no doubt that persons of high calibre and quality must be appointed to fill up the high office of the Governor. Everything that is necessary to find the best man for filling this high office should be done. In selecting the person to
be appointed as the Governor the choice should not be confined to the party in power at the Centre and the field of selection should extend much beyond the political arena.\textsuperscript{50}

The procedure for appointment of Governors should be clearly laid down and once laid down it should never be deviated from like the appointment of the judges of the High Courts. The prescribed procedure must provide for consultation with the Chief Minister at the time of appointment of the Governor. The conditions of appointment must also be laid down and must assure fixity of tenure for the Governor so that the Governor is not under the constant threat of removal by the Central government. The Constitution prescribes the term of five years for the Governor but subject to his removal at any time by the President. The procedure must ensure that a Governor should normally be allowed to function for five years unless there are overwhelming reasons for transferring him or removing him. The Special Study Team of the Administrative Reforms Commission has examined several suggestions in regard to this sphere and these may be noted:

- The first is that the appointment of Governors should be made subject to ratification by Parliament. The underlying object is to place a helpful curb on the discretion of the Central executive. We consider it unlikely that this suggestion will achieve the end in view, for with a majority in Parliament the party in power will find it easy to get approval for its nominee and ratification will thus become
a mere formality. The practice suggested also carries the
danger that individual names may be discussed in
Parliament. This may not only be unwholesome in itself
but may also deter good men from accepting posts of
Governor.

- An alternative to the above suggestion is that the Central
government should informally consult the leader of the
opposition in the Lok Sabha on every selection of a
Governor before making the appointment. The success of
such an arrangement would depend on the healthy of the
working relationship between the government and the
opposition. Conventions and attitudes in this field are yet
to develop fully. While the suggestion could be considered
for adoption in due course, the Study Team felt that it is
not likely to prove workable at the present stage.

- The third suggestion is that the appointment of Governors
should not be treated as the prerogative of the Union
government. It is argued that these appointments do not
fall within the scope of Article 74(1) according to which
the President must act on the advice of his ministers.
Since the Governor is not merely a Presidential agent but
also the constitutional head of the State apparatus and in
that capacity independent of the Union government, it has
been suggested that appointment by the Union
government acting through the President is not consistent
with the federal character of the Constitution. The
implication is that the President can and should act in his discretion in the appointment of Governors. This suggestion poses a fundamental constitutional question which has implications going beyond the appointment of Governors only. The issue whether the President possesses discretionary powers under the Constitution or not and the further issue whether he should possess such powers or not, are serious questions which do not yield to an easy solution. The study Team considers that for the purpose of their study, the existing practice of the President acting on ministerial advice in appointing Governor should continue.

Having regard to the pattern on which our Constitution is based, it would be hazardous to State that the President should perform important functions like the appointment of Governors of the States without the advice of his Council of Ministers. Constitutionally, legally, and otherwise the proper course is undoubtedly that the President must act on the advice of his Council of Ministers in appointing Governors in the States. The advice of the Council of Ministers is binding on the constitutional head on the principle that the Council of Ministers represents the majority view in Parliament and therefore such advice is binding on the constitutional head. Even from the point of view of constitutional propriety it is certain that, if the President acts on the advice of the Council of Ministers, he only acts in accordance with the majority view in Parliament. As a matter of constitutional convention it may
possibly be more healthy and more proper if the Prime Minister consults the leaders of the opposition parties before tendering advice to the President in making a particular appointment.

The Centre-State relationship bears its greatest strain when controversies arise regarding the appointment and dismissal by a Governor of his Council of Ministers. The choice of the Chief Minister must necessarily be made by the Governor. That is not merely his legal and constitutional authority but also must rest on his individual judgment as to who, according to him, can command a majority in the State Legislature. So long as there was a single party in majority in the State Legislature the choice of a Chief Minister and the Council of Ministers was a matter of routine. Disputes arose only after the fourth general elections. The Congress Party lost its majority in West Bengal, Bihar, Rajasthan, Uttar Pradesh, Orissa and Madras. The case of Madras was simple. The Dravida Munnetta Kazhagam (DMK) had a majority in the State Legislature and therefore, its leader was called by the Governor for appointment as Chief Minister. The case of Orissa was not very complicated. A coalition between the Swatantra Party and the Jana Congress had a clear majority in the State Legislature and the leader of the coalition parties, R.N. Singh Deo, was called upon to form the ministry. Bihar presented some difficulty but there also a coalition headed by Mahamaya Prasad Sinha obtained a majority in the State Legislature and Sinha was called upon to form the ministry. Soon afterwards there were defections in the coalition with the exit of B.P.
Mandal and his party – as a result of which there was a vote of no confidence passed against the ministry. Then came the difficulty and the Governor on finding as to who commanded the majority support in the State Legislature, asked B.P. Mandal to form the ministry. B.P. Mandal soon lost the majority and there were conflicting claims made by different groups for majority support in the State Legislature. The Governor was not satisfied that any group had a majority and therefore, recommended the imposition of President’s rule. After some time when the Governor found that Daroga Rai had a majority he appointed him as the Chief Minister and entrusted to him the formation of the ministry.

The West Bengal also presented serious complications. The United Front government which was formed after the general elections of 1967 under the Chief Ministership of Ajay Mukherjee faced difficulties after the defection of a large number of Member of Legislative Assemblies (MLA) under the leadership of P.C. Ghosh, who joined the Congress party in a coalition. This coalition clearly had a majority support in the State Legislature. The Governor requested Ajay Mukherjee to convene the Assembly for testing whether the United Front government enjoyed majority support any longer. On Mukherjee declining to do so, the Governor made his own assessment and dismissed Mukherjee as the Chief Minister and appointed Dr. P.C. Ghosh to be the Chief Minister. Dr. Ghosh’s ministry continued for some time when there were defections in his ranks and also in the ranks of the Congress party as a result of
which the Governor found that nobody had a majority support in the State Legislature and no one could form a government. Thereupon President's rule was imposed on West Bengal. Mid term elections were held in February 1969. After the mid-term elections the United Front came in majority and Ajay Mukherjee was again appointed the Chief Minister. Very soon there were troubles within the United Front and Ajay Mukherjee resigned on March 16, 1970 as a result of serious differences between him and several constituent units of the United Front led by the Communist Party of India (Marxist) CPI (M). On Mukherjee resigning, the Governor tried to find out if anybody could form the ministry. Nobody came forward with the claim majority. As a result the Governor recommended the imposition of President's rule and President's rule was imposed on March 19, 1970.

Recently in 2005, Jharkhand Governor Syed Sibtey Razi's decision to install a Jharkhand Mukti Morcha (JMM) -led government snowballed into a major controversy. The President Kalam summoned Razi to get a first hand account of developments in Ranchi that led to the swearing in of Shibu Soren as Chief Minister, hours after 5 independent Member of Legislative Assemblies (MLAs) had met the Governor and expressed their support to formation of a Bhartiya Janta Party (BJP)-led National Democratic Alliance (NDA) governments. The Bhartiya Janta Party (BJP) attacked Razi's decision as a "constitutional outrage" and also it as "murder of democracy".
The opposition leader L.K. Advani charged Razi with "subverting" the people's verdict and "murdering democracy".

The facts detailed above clearly indicate that in the choice of the Chief Minister and the Council of Ministers, apart from the legal and constitutional position, the Governor must necessarily act on his own judgment and assess the relevant facts concerning, mainly, the problem of finding a leader commanding majority support in the State Legislature. The suspicion that the Governor may be influence in making his choice of dictation from the Central government should be completely eliminated. We do not accept the legal proposition that in the matter of choosing the Chief Minister, the Governor can be controlled by the President or the Central government simple because the latter is the appointing and dismissing authority for the Governor. As a matter of law it seems established that the Governor's discretion and judgment cannot be fettered by dictation from any other authority.

Regarding the dismissal of the ministry it may at once be stated that this matter has generated the most acute controversies and passions in the past. It was argued in the case of West Bengal when Ajay Mukherjee was dismissed by the then Governor, Dharma Vira, that the Governor should have acted like the British Crown and he could not dismiss the Chief Minister once he was appointed unless he himself tendered his resignation or unless there was an adverse vote against him in the Legislature. This may be a good principle to follow and an acceptable convention to adopt provided the Chief Minister,
who is appointed, continues to enjoy the same support of the same coalition or party on the basis of which he was appointed. The Uttar Pradesh (U.P) is a typical example of how difficult a position may be if the extreme proposition is accepted that the Governor can never dismiss the Council of Ministers or the Chief Minister before an adverse verdict is given in the Assembly. Both in West Bengal and (U.P) it became clear that the respective Chief Ministers, Ajay Mukherjee and Charan Singh, had lost the majority support. The coalitions on the basis of which they were appointed had ceased to exist. In the case of West Bengal Shri Ajay Mukherjee declined to call the Assembly immediately to have a vote of confidence. In the case Uttar Pradesh the majority of the ministers themselves were sought to be dismissed by Charan Singh and the coalition which had a majority represented by the Congress (R) members had ceased to exist. The Governor was satisfied on his own assessment that Charan Singh had no longer any majority and his advice to dismiss the majority of ministers in the Council of Ministers could not be accepted, as he did not appear to represent the majority in the Assembly.

In 1999 the Rashtriya Janta Dal (R.J.D.) government headed by Rabri Devi was dismissed by the President on 12 February 1999 on the ground of the failure of the civil administration to maintain law and order situation in Bihar. The Assembly was also placed in a State of suspended animation. The decision was taken by the President on the basis of the report of the Governor S.S. Bhandri and the
recommendation of the Union cabinet in the wake of the macabre cruelty exhibited by Ranbir Sena, slaying over a dozen dalits including women and children. But the proclamation was revoked since the government knew that it could not be passed in the Rajya Sabha where they were in a minority. Then Central government decided to revoke President’s rule on March 8, 1999. Next day on March 9, 1999 Mrs. Rabri Devi was again sworn in as Chief Minister of Bihar and it brought the end of the 24 days long drama following the imposition of President’s rule.

**Non-State Field Functions of Governor:**

The non-state field, the provisions are to be found in part XI of the Constitution. Article 256 enjoins that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament. Article 257 provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and executive powers of the Union extends to the giving of such directions to a State as may appear to the Central government to be necessary for that purpose. The executive power of the Union also extends for the purpose as giving directions to the States for the construction and maintenance of means of communications declared to be of national or military importance and also for giving directions to States to take measures for the protection of railways within the State. Under Article 258, the Central government may entrust
the State government or its officers to exercise functions in
relation to any matter falling within the executive powers of the
Central government.

The provisions in part XI of the Constitution clearly fetter
the executive authority of the Governor. In regard to these
matters the Governor cannot possibly act on the advice of his
ministers which are contrary to the directions of the Central
government. In regard to these non-state matters the authority
of the Central government must be held to be parallel. If,
therefore, the Council of Ministers of any State advises the
Governor in a manner which impedes the enforcement of
Central laws applicable to the State or which prevents the
construction and maintenance of means of communications of
national importance or of railways, the Governor must ignore
such advice. This is an important exception to the doctrine of
constitutional government in the States, according to which the
Governor must function on the advice of his ministers,
responsible to the State Legislature. No Council of Ministers in
a State can demand the Governor to act contrary to the
constitutional provisions mentioned above. On the contrary if
the Council of Ministers does not carry out the directions of the
Central government as provided in the above Articles, the
Governor will have to carry out the directions of the Central
government and act on his own by distributing the business of
government in such a way as will enable such directions to be
carried out.
The position of the Governor in relation to his functions outside the State sphere or, in other words, in the field of inter-State and Centre-State relationship is beset with difficulties and complications. The controversies concerning the office of the Governor and his functions have arisen mainly in respect of States where the Governor had reported to the President under Article 356 of the Constitution that the government of the State could not be carried on in accordance with the provisions of the Constitution and the President had taken over the government in the State concerned on such report and the Governor concerned continued to function under the authority of the President and without the aid and assistance of a responsible Council of Ministers. It should be noted that the President may take over the government of a State without a Governor’s report if he is independently satisfied that such a course of action should be taken as contemplated by Article 356 of the Constitution.

The one of the most important irritants in Centre-State relation has been Article 356. It has been used or misused too often by the Centre. The ruling party at the Centre, was not prepared to let the State governments of other parties complete their terms by misusing the powers vested with the Centre under this Article. The change in the ruling party at the Centre in 1977 Lok Sabha elections dismissed nine State governments soon after assuming power. Its successor, Congress (I), which won Lok Sabha elections in 1980 repeated that feat by dismissing the same number of State governments
run by other parties. The persistent abuse of powers under this Article has been severely criticized as infringing upon the federal nature of Indian polity. It shows that it has reduced the States to the position of sub-ordinate organizations rather than equal partners in a federation.

Inspite of all, the Sarkaria Commission has favoured the retention of this Article, with the view that, if this Article is abolished, the Centre would not be able to intervene even when there is utter chaos and breakdown of the constitutional machinery in a State. However, the Commission has suggested some steps to ensure that this extra ordinary power is used by the Centre on rare occasions, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the State. It has been recommended that dissolution of the State Assembly should be endorsed by the Parliament. It has also been recommended that before taking action under Article 356, a warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences, and in a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly.

The Emergency provision in part XVIII of the Constitution including Articles 352 to 360 also constitute a most important features in our Constitution by which the autonomy and
constitutional governments of the States are limited. On the
declaration of Emergency the entire legislative field of the Union
and the States becomes one and parliament has by reason of
Article 250 of the Constitution the power to make laws for the
whole or any part of the territory of India in respect of any
matter enumerated in the State list. The executive power of the
Union also extends to giving directions to any State government
as to the manner in which its executive power is to exercised.
The invocation of the emergency provisions depends upon the
President's satisfaction that a grave emergency exists due to
external aggression or internal disturbance whereby the
security of India or any part thereof is threatened. In terms, the
decision is left to the President on his subjective satisfaction. It
would follow, therefore, that the President's decision can be
challenged provided his subjective satisfaction is malafide or
based on extraneous considerations or where there are no
materials justifying the satisfaction. A challenge on these
grounds was left open by the Supreme Court in the case of
Lakhan Pal Vs Union of India. On the principles which have
been clearly enunciated by the Supreme Court, it is difficult to
concede that the President's satisfaction can never be
challenged. It is true that the onus of proving that the
President's satisfaction is improper would be very heavy on the
person who may challenge the President's satisfaction. As the
Supreme Court stated in the above case the executives is
obviously in the best position to judge a situation which
justifies the proclamation of emergency. Nevertheless cases may
be conceived when the Central government may abuse its authority by proclaiming an emergency, suspending fundamental rights on such proclamation and appropriating all powers, executive and legislative thereupon without any emergency existing at all. Apart from the above provisions, there is also Article 355 of the Constitution by which the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the Constitution is made a permanent feature. This is a permanent limitation on the constitutional government in the States by which a government in the State is always subject to the Central government's overriding power and duty to ensure protection to every State against external aggression and internal disturbance and the conduct of the State government in accordance with the Constitution. A part from the legal position as outlined above, it seems extremely desirable and necessary that for the proper exercise of their functions under Articles 356 and 357 of the Constitution, the President and the Governors should be guided by a proper code of conduct which should be drawn up with the concurrence and agreement of the State Legislatures and Parliament and of the Central government and State governments.

The functions of the Governor in the State field and the non state field to bring into relief the problems which have emerged since last two plus decades when the Governor has become the focus of controversy, particularly because he has to
function in so many States without the aid of the Council of Ministers by exercising his powers either delegated by the President under Article 356 and 357 or when he exercise his powers without the aid of the Council of Minister, without the President having taken over the government of the State. These are problems which really become important to consider for the purpose of appreciating how best it would be possible to create a body of conventions for the guidance of the Governor’s actions so that there may not be any conflict of a constitutional nature which may establish the smooth functions of the government of the State either under the President’s rule or without the President’s rule.

**Governor Act as Centre Agent:**

The role of Governor has come for lot of criticism in the recent times which has made this appointment a point of discussion among the citizens. The Governor is usually a distinguished statesman who discharges his perfunctory duties with dignity and commands a respect from all strata of political parties. His ethical influence on the legislature paves the way for healthy and just environment where both the ruling as well as the opposition parties plays a citizen friendly role and work for what we call development process. In normal times the Governor normally abides by the decisions and recommendation of his Council of Ministers. His acts are to be inline with the constitutional provisions. In times of proclamation of emergency he has to tag along and execute the
orders of the President. He is merely a constitutional and emblematic head, possessing practically no powers in reality and performing always on the advice of his minister. The task he is called upon to play, cannot be any other than the role of a upright and impartial dignity, standing above the vortex of party politics and always accessible to the State government for consultation and guidance whenever leaders of that government are inclined to seek them. But he contributes the stabilizing factor in an atmosphere of political fluctuations, and supplies to the populace that ornamental symbol which represent their unity, appeals to their thoughts and to some extent even to their love ceremony. Till 1967, when a single party ruled at the Centre as well as in most of States, Governors role seldom stirred controversies, much less constitutional litigations. Since the 1970's especially after the birth of coalition politics the scenario has been changed drastically.

In Hargovind Vs Raghukul Tilak it has been held that the office of the Governor of a State is not an employment under the Government of India. It is an independent office and is not under the control or subordinate to the Government of India. But this has been nullified by the political actions of the Governor of State right from the days of attaining independence. The Supreme Court has adjudicated that a Governor is neither as agent of the Central government nor subservient to the Central government. He is the head of the particular State; his word carries weight, therefore, with the Central government and also with the State government.
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Narsima Rao led Congress government dismissed the Bhratiya Janata Party (BJP) led governments of Madhya Pradesh, Rajasthan and Himachal Pradesh on the pretext of failure of the Law and order. Instead of fighting a political and ideological battle, the Congress party took the weapon of Article 356 to dismiss these BJP led government. The reports from the respective State Governors of these States submitted identical reports that also within 24 hours which seems unusual. The Governors acted as instrument of the Centre. In October 1997, Romesh Bhandari decision to sack Kalyan Singh without giving him an opportunity to demonstrate his majority on the floor of Vidhan Sabha in consonance with the directive principle laid down by the Supreme Court in the Bommai case was considered to the direct and blatant affront of the Constitution and a flagrant dereliction of the constitutional duty enjoined on him. The real problem lies in the fact that drama was staged in Uttar Pradesh but the remote control of directions was coming from New Delhi. The Apathetic attitude of the then Prime Minister I.K. Gujral and his Council of Ministers was of a spectator. They failed to convene the cabinet to deliberate on the unconstitutional behaviour of the Governor, despite the letter from the President insinuating he recall of the Governor. The interim order passed by the Supreme Court on March 9, 2005 in the Jharkhand case once again raise important questions on the delicate balance of power that prevails between the three wings of government. The sordid Jharkhand episode brought to the fore extremely important role
that has to played by a Governor when election results do not throw up a dear winner. The Constitution requires Governors to be men of stature and strong moral character. Recently, 2008, the political development in Meghalaya are a pointer to the malaise that has spread role in our constitutional system. In the last three years, it happened Nagaland, twice in Goa before being enacted in Bihar. If in Meghalaya the Governor exercised his discretion to invite a party to form government, in other instances, the Governors used their discretion to dismiss popular government. Arbitrary decisions of Governors have challenged before the Supreme Court. It delivered stinging judgment, setting them aside. But, almost all of them were of academic interest as the political wagon wheel, by the time the verdicts, came had rolled much beyond. The reluctance, or call it slow action on part of the Apex Court in Goa in 2005. Chief Ministerial aspirant Manohar Parrikar will surely agree has emboldened Governors to violate constitutionally approved norms, brazenly, at the slightest hint from the Centre.

The former President of India A.P.J. Abdul Kalam’s\textsuperscript{59} observations at the All India Governor’s Conference in 2005 on the Governor’s role assume significance in the wake of the controversial role of the Governor’s of Goa, Jharkhand and Bihar in recently. His advice to the Governors to preserve the light of ‘dharma’ by rising above day-to-day politics needs to be appreciated. The President Kalam, while addressing the Conference of Governor in June 2005, had also said, “while there are many checks and balances provided by the
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Constitution, the office of the Governor has been bestowed with the independence to rise above the day-to-day politics and override compulsions emanating either from the Central system or the State system. The events that happened at Bihar, Goa and Jharkhand were constitutional coups all staged by the desperate and the paranoid. When the Supreme Court in a rare one line order pronounced the Presidential proclamation that earlier dissolved the Bihar Assembly unconstitutional. It was a rejoinder to the conspiracy that thwarted the judgments of democracy. Hung verdicts stipulate multifaceted solutions, Indra Bhushan Singh, senior Advocate of the Allahabad High Court, hoped that the present situation in Jharkhand would set the bench mark for handling fractured mandates and good the country's politicians and constitutional experts towards a solution to this problem. "I hope these development will at least cause a creative beginning to efforts in this direction" he added. In the past also Governors have behaved in this manner, more than fifteen years ago, it was Ram Lal who used his Governor's office to unseat the N.T. Rama Rao government in Andhra Pradesh to please Indira Gandhi. Channa Reddy used his office of Governor to create political uncertainty in a complete arbitrary manner when he was Governor of Himachal Pradesh. All these political coups have been triggered by old political hacks that have been compensated by the high command for their undistinguished loyalties. Governors are usually not too petulant; they have enormous capacity to take things lying down. It is only those who are left with a modicum
of self-respect get out in a huff in such situations. Mercifully, self-respect is not a major gubernatorial weakness. When Raj Bhavans become a mere dumping ground for disused political resource, it may be more profitable to turn them into biogas chambers. The distasteful Jharkhand episode brought to the forefront the exceptionally important role that has to be played by a Governor when election results do not throw up a clear winner. The Constitution requires Governors to be men of standing and tough honourable fibre. The wicked Ram Lal case was the first brazen manifestation of the defining of the Governors office. S.C. Jamir of Goa in 2005 gave Manohar Parrikar just two days time to prove his majority but Pratap Rane was given one month. In Jharkhand Syed Sibtay Razi invited Shibu Soren to form a government when he was not head of single largest party in 2005 and also gave him three weeks to demonstrate his majority. The appointment of pro-term speaker was also contrary to constitutional convention. The Buta Singh, who prevented the Nitish Kumar led coalition from staking claim in Bihar in 2005 is unconstitutional. There is not a shadow of doubt that what happened in Jharkhand, Goa and Bihar were completely illegal and unconstitutional. Governors have continued to exercise their discretionary powers in as arbitrary and partisan manner. What has happened in Goa, Jharkhand and Bihar are continuation what happened earlier in Karnataka, Bihar, Uttar Pradesh, Andhra Pradesh and many more? All these development have certainly downgraded the dignity and prestige of this August Office. What
is least expected from a constitutional authority like the Governor is that he must act as per constitutional authority like the Governor is that he must act as per constitutional norms and upright the traditions of this prestigious office. From the above discussion it will be apparent that our Constitution demarcates the respective areas of function of the Governors in the States, the Central government, the State Legislatures, Parliament, the Council of Ministers at the Centre and in the States. If there is proper understanding and appreciation of the respective functions of each organ and office there could be no conflict. Conflicts arise only when there is either extra emphasis on the use of powers by one organ as against the other or a tendency to create rivalries on the basis of party interests and policies.

We can say that in order to enable the Governor to successfully discharge his functions under the Constitution, as agreed code of conduct approved by the State governments, Central government, the Parliament and the State Legislature should be evolved. This code of conduct should first of all lay down norms and principles which should guide the exercise of the Governor’s discretion and his powers which he is entitled to use and exercise on his personal judgment. It is also suggested that to enable the Governors to perform their functions properly in accordance with the provisions of the Constitution, it is essential that only right persons be appointed as Governors. A Governor must be an impartial person who by his ability, character and behaviour inspires respect.
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References:

1- Constitution of India, Articles 245 to 255 and Articles 79 to 98 relating to Parliament and Articles 168 to 213 relating to the States read with Lists I, II and III of the seventh schedule.

2- Constitution of India, Articles 52 to 75.

3- Ibid., Articles 152 to 164.

4- Ibid.


6- Constitution of India, Article 53 (1).

7- Ibid., Articles 74, 75 and 77.

8- Ibid., Articles 153, 154, 163 and 164.

9- Ibid., Articles 155 and 156.


11- Constitution of India, paras 9 and 18 of the sixth schedule.

12- Ibid., Article 289 (2).


14- Constitution of India, Article 164 (1).

15- Ibid., Article 174 (2) (b).

16- Ibid., Article 164 (2).

17- Ibid., Articles 200 and 201.
18- Ibid., Article 356.
20- Constituent Assembly Debates, op.cit., p. 551.
22- The Governor’s Committee Report, New Delhi, 1971, p. 28.
25- Constitution of India, Article 164 (2).
29- The Governor’s Committee Report, op.cit., p. 131.
34- Mahabir Vs P.C. Ghosh, AIR 1960 Calcutta 190. The Court in this case held that there is no limitation or condition to the pleasure of the Governor prescribed by Article 164 (1) and it must, therefore, be held that the right of the Governor
to withdraw the pleasure, during which the ministers hold office is absolute and unrestricted.


38- This happened in case of Rao Birendra Singh in Punjab in 1961 when he was dismissed from ministry by the Governor on the advice of the then Chief Minister Sardar Pratap Singh Kairon. Similarly a minister was dismissed in 1964 in Bombay and in 1972 in Himachal Pradesh and Haryana.


41- The Industrial Disputes (West Bengal Amendment) Bill, 1964, on June 5, 1965.


45- *AIR 1977 SC 1361*.


56- AIR 1979 3SCC 458.


