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The office of the Governor is not only important for the federation but also for the success of the democratic system of the government in the country. After along debate in the Constituent Assembly it was decided to give much power to the Governor to maintain the unity of India. Since the creation of the office of the Governor in the Indian federal system the office has remained a controversial one. The institution of the Governor was misused to a great extent especially after 1971 to gain political mileage because of two reasons, firstly, then was one party dominance at the Centre and the secondly the lack of political power and awareness on the part of the opposition. The President shall appoint the Governor of State by warrant under his hand and seal. He is removable by the same authority. But in actual practice he is appointed by the cabinet, which means by the party in power at the Centre. But two conventions have generally come to govern his nomination. One the Central government ordinarily consults the State concerned before announcing the name of Governor of the State. It is a sound practice though it has been flouted on several occasions. For instance the appointment of the West Bengal Governor Dharam Vira against the wishes of the Chief Minister. In Bihar the controversy arose when M.P. Sinha, the Chief Minister, protested against the appointment of Nityanand Kanurgo as the Governor. The Chief Minister of Uttar Pradesh protested when Ramesh Bhandri was appointed Governor in the State. Jayalalitha
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strongly opposed the appointment of S.S. Barnla in 2004 as Governor of Tamil Nadu.

Another convention is that the incumbent of this office comes from outside the State concerned. This again is a wholesome arrangement, because such an incumbent does not have his local political roots and affiliations and would thus be free from State level party politics. But this convention has also violated in some cases, for instance in the appointment of Ujjal Singh in Punjab, Karan Singh in Kashmir, H.C Mukherjee in West Bengal and Vesentdade Patil in Maharashtra.

National Commission to Review the Working of the Indian Constitution under the Chairmanship of Justice N.M. Venkatachalaiha recommended that a Committee consisting of the Prime Minister, Home Minister, and Speaker of the Lok Sabha and the Chief Minister of the concerned State should select the Governor instead of confidential and informal consultation. It is better that the process of selection is transparent and unambiguous. It is advisable to consult the Chief Minister but his advice should not be binding upon the President while the appointment of the Governor and also the President should not act a tool in the hands of the Union government. But the President should see that the merit of the candidates should be principle criteria. The Governors should be honest, intelligent, more energetic knowledgeable, dynamic and independent persons and they should be in the position to defend, protect and safeguard the Constitution for which they take an oath.
The Governor of a State is the constitutional head of the State. The Constitution provides the Council of Ministers with a Chief Minister to aid and advise the Governor in the exercise of his functions. As the head of the State the Governor has right to appoint Chief Minister. But the matter of appointment of the Chief Minister may appear to be simple under normal circumstances but assumes great significance at certain other times. Various political scenarios might be present themselves before the Governor and depending upon the situation, he has either to act strictly according to the provisions of the Constitution or use his discretion. When a single party secures an absolute majority in the State Legislative Assembly after the election the task of the Governor in the appointment of Chief Minister is simple. He has no alternative but to call the leader of the majority party to form the ministry. The task of the Governor somewhat complicated when no single party secures a majority in the State Assembly. Here, the Governor has to appoint the Chief Minister at his discretion, and the exercise of his discretion cannot be called in question in writ proceedings. The criterion that influences the decision of the Governor in such situation is that the person so chosen should, in his opinion, be in a position to mobilize majority support in the Assembly.

In Haryana after the 1982 election the Congress could muster the support of 42 Members of Legislative Assemblies (MLAs) in the House of 90. Devi Lal, leader of the combined opposition, with the strength of 45 MLAs staked his claim to form the government. Haryana Governor G.D Tapase invited him
to the Raj Bhawan to prove his claim in two days. Bhajan Lal, leader of Congress party, claimed that he should be given the first chance to prove his majority as the Congress was the single largest party in the House. Surprisingly, Governor Tapase administered the oath of office to Bajan Lal as the Chief Minister without even waiting for Devi Lal. The Governor also gave one month time to Bhajan Lal to prove his majority.

Priority of single largest party, over post-election alliance is a straightforward convention supported by Sarkaria Commission but it has often been disregarded. In Uttar Pradesh (U.P.) in 1996, after the election, no political party could get a clear majority in the 425 members Assembly. Bharatiya Janta Party (BJP) emerged as the single largest party with 176 seats. Romesh Bhandari the Governor of U.P, refused to invite Kalyan Singh, the leader of BJP to form the government. The Governor wanted full satisfaction to the effect that a stable government could be formed in the State. It was only in March 1997, the Governor invited Mayawati leader of the Bahujan Samaj Party and the BJP combine, to form the government. Such incidences did shake the people's faith in democratic institution.

In 2005 the 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 Jharkhand, Governor Syed Sibtey Razi invited Shibu Soren to form a government when he was not the head of single largest party and gave him three weeks to demonstrate his majority. The Sarkaria Commission has recommended that in States, where
there is no clear majority with any single party, the Governor
should invited leader of the alliance of parties that was formed
before the election. Thereafter, chance should be given to single
largest party staking claim to form the government with the
support of other parties and independents. Next in order should
be the leader of the post-election alliance of parties claiming
support of other parties joining the government and some
supporting it from outside without joining the government
should be given the chance. The Governor Committee (1971) has
recommended that even the leader of the party in a minority may
be invited to form the government provided the Governor is
satisfied that such a leader would be able to command the
support of other parties in the Assembly for its policies.

The unlimited discretionary powers of Governor vested in
him need to the curtailed because these had made him to
indulge into exercises not squaring up the norms of the
Parliamentary system, without any remedy against such
exercises. This point of pin-pointing his discretionary powers
was raised in the Constituent Assembly and then though
Dr.Ambedkar had agreed with the suggestion yet had expressed
his inability to do so because, at that point of formulation of the
Constitution, he did not know as to which powers should be
vested in his discretion and which not. But looking at the
reasonableness of demand he had assured the House that at an
appropriate time this point could be raised and he would look
into it. Since the members forgot to raise the point at an
appropriate stage, the much desired limitations on his
discretionary power could not be imposed, and the provision as it was then conceived went on the statute-book. Since the unlimited discretionary powers have proved a bane of the Indian Constitution manifesting in complete subversion of federal parliamentary ethos, it is called forth that his discretionary powers should be stated in specific terms.

According to the scheme of the Constitution the Governor discretionary powers should extent to recommending the President for taking action under Article 356 and also reserving the Bills, passed by State Legislature for his disposal. Other powers to be exercised by him, of the nature of political policies, should be exercised on the aid and advice of his Council of Ministers and the prerogatives in his best judgment according to the established norms of the Parliamentary system. In the light of the above Article 163 should be amended.

As the head of the State, the Governor is also the ex-officio Chancellor of the State Universities and in his capacity he should be free to exercise his own judgment and shall not be bound to accept the advice of the Council of Ministers. In this way the educational institution of such a high level can be saved from dirty politics.

The Governor like President of India has also power to grant pardon, reprieves, respites, and remissions of punishment or suspended remit or commute the sentence of any person convicted under any law. But this power should be exercised with full care and when the matter is sub-judice the Governor should desist from taking action under Article 161 of the
Constitution to avoid a conflict between the executive and judiciary. The one of the directive that the power of pardon should not be consideration of religion, caste or political expediency. The Governor as a component part of the State Legislature has power to summon the Assembly. The directive of the Governor in the respect of summoning of the Assembly should not be ignored especially when a doubt arises about the strength of the Legislators backing the ministry. An alternative method which can be used to solve this problem is that if a majority of the members of the Legislative Assembly express their desire in writing with view to calling the Assembly, the Chief Minister should not be shy of it. In order to avoid recurring confusion is should be made obligatory through a constitutional amendments whenever, there is only doubt about the strength of the ministry, the Chief Minister must agree to the summoning of the Assembly by the Governor. In this way the crisis may be avoided. If the Chief Minister refuses that he has lost support of the majority the Governor will be entirely justified in dismissing such a ministry. In Karnataka Devraj Urs government was dismissed in 1977 on the suspicion by the Governor, that he had ceased to command a majority support as a result of defection in spite of the fact that the Assembly was under summons and was going to meet within three days, was it not the duty of the Governor to put his doubt to test in the appropriate forum? What it competent on the part of the Governor, acting from the position of a constitutional head to take such a drastic action as dismissed without an adverse verdict given by the Assembly? If
the Governor's conduct in the whole exercise is examined from the norms of the Parliamentary system it is difficult to appreciate the fact that throughout he had been playing politics and in the Constitution was violated in most blatant manner.

The Governor in his capacity as the head of the State has right to Address the Joint session of the State Legislature. In the normal circumstances the Governor has to read the Address prepared by the Council of Ministers in which a detailed description of policies and programme of the government is given. Since independence this right became the subject of the controversy. The West Bengal Governor Dharma Vira in 1969 refused to read some portions which were derogatory to his position and the Governor of Punjab D.C. Pavate had underwent a similar experience in 1969. His address contained an objectionable paragraph concerning the toppling of previous government of Gurnam Singh in Punjab in 1968. Dr. D.C. Pavate read the full Address including those portions which designated his past actions. The question if the address is an expression of the views of the government and not of the Governor, the former should not transgress its authority and condemn the Governor and the Central government. To avoid such controversies, the text of Address should be prepared with full care and it should be the moral duty of the ministry not to include anything which is against the Governor past actions.

Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. Article 200 does not invest in the Governor, expressly
or by necessary implication with a general discretion in the performance of his functions there under, including reservation of Bills for the consideration of the President. However, in rare and exceptionally cases, he may act in exercise of his discretion, where he is of the opinion that the provisions of the Bill are patently unconstitutional, such as where the subject-matter of the Bill is ex-facie beyond the Legislative competence of the State Legislature, or where its provisions manifestly derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation, or clearly violate Fundamental Rights or transgress other constitutional limitations and provisions. In this connection it is to be noted that the Governor of Kerala B.Rama Krishna Rao, reserved the Kerala Education Bill, 1957 for consideration of President when he himself satisfied that the Bill would fall contrary to provisions of the constitutional law. The Governor of Madhya Pradesh also reserved the Madhya Pradesh Panchayat Bill, 1960 for consideration of the President because the system of nomination as referred under Article 106 of the Bill was a negation to the concept of Panchayat Raj under the Directive Principle of State Policy. In dealing with a State Bill presented to the Governor under Article 200, he should not act contrary to the advice of his Council of Ministers only because, personally he does not like the policy embodied in the Bill.

An indept and careful analysis of the application of Article 356 brings to light that the provision had not been used rationally for the purpose for which it was incorporated. The
wishes of the patriarch of the Constitution during the debates in
the Constituent Assembly have also not been understood
properly while invoking the Article. It has been used as an
instrument of political management in favour of the ruling party
at the Centre. The strange thing is that Article 356 has been
used just as a daily diet, despite the fact that this is meant
mainly for emergency. Since the inauguration of the Constitution
in 1950, President’s rule was proclaimed more than hundred
times. It may be stated that on most of the time, there was no
justification for invoking Article 356.

In order to prevent the misuse of power, the Constitution
has incorporated certain safeguarding mechanism. The greatest
safeguard against any unjustifiable imposition is the President of
India himself. It is true that no such express power is conferred
on the President. However the President is duty bound to ask the
cabinet to reconsider its suggestion if he disagrees with it, and
ask for information or refuse to sign the proclamation. If he is
insufficiently informed. Of Course, it is open to the cabinet to
reject the advice and sent back the proposal, in which case, the
President is constitutionally bound to give his assent. Further,
we should not forget that the President is also, in fact, part and
parcel of the executive system and also the party system. In this
context, it would not be realistic to except that his decisions will
always be fool proof.

The framer of the Constitution has respond immense faith
in the Parliamentary control mechanism devised by them to
prevent the abuse of the Article 356. The control mechanism
through the political process was envisaged keeping in view the salient features of democracy. However, in practice, Parliamentary check over the abuse of power is minimal and ineffective. So far no Presidential proclamation has been voted down by the Parliament. However, if the ruling party has no clear majority in both the Houses of Parliament, the picture would be different. It was because of the lack of majority in the Rajya Sabha that Union government was forced to revoke the proclamation relating to President's rule in Bihar in 1999. The Parliamentary Control mechanism of Article 356 is effective, if the members of the Parliament irrespective of their party affiliation should be allowed to vote freely according to their conscience. The Parliamentary control mechanism as provided by the Constitution is also affected by the inadequacy of time. We need indepth discussions on this issue. Unfortunately a new trend has developed in our Parliament, by which the time available for discussion on issue becomes very limited. With the increasing frequency of imposition of President's rule it is suggested that the time limit for discussion should be increased.

The judiciary, which was initially reluctant to interfere in and to review the exercise of power under Article 356, asserted its power to do so in 1977 in the Rajasthan case. Thereafter the impression was that the 1977 judgment would remain a mere symbolic assertion of judicial power. But this was shattered in 1993 when the Madhya Pradesh High Court invalidated the proclamation of the President dismissing Sunderlal Patwa ministry under Article 356. The Bommai case, the Supreme
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Court went further and more emphatically asserted the power of the judicial review. It examined whether the power under Article 356 was exercised malafide or on extraneous considerations and consequently, the Court struck down the dismissal of ministries and the dissolution of Assemblies in Karnataka, Meghalaya and Nagaland. In the light of the above judgment, there is a possibility that in future, the unwarranted use of Article 356 might be struck down by the Court. In the Bommai case, the majority view was emphatic and was an open renunciation of the "judicial hand off" approach. It is heartening to note that striking down of these proclamations has clearly shown that imposition of President's rule under Article 356 is justifiable. This indeed is the judicial answer to the politically malafide abuse of the Article. However, the majority decision is not clear or unequivocal to be considered as binding law under view is again unanimously reiterated by a constitutional bench of the Supreme Court. Despite the constitutional safeguard, all the political parties which come to power at Centre intervened in petty State matters on the slightest pretext. Thus, the provision which was included as a life saving device by the framers of the Constitution has become poison for our political process. The important question, therefore arise for consideration whether the Article should be deleted. In case the answer is negative, should it be retained as it is or amended. In any event, we feel that the stage has not yet arrived in Indian constitutional development, where we can recommend the deletion of Article 356. What is
required is its proper use and that has to be ensured by appropriate amendments to the Article 356.

It is submitted that the powerful weapon of President's rule should not be discarded from the constitutional armoury. This will be an unpardonable mistake, keeping in view the innumerable threats and dangers faced by the Republic today. Despite its misuse on certain occasions, Article 356 will continue to be more a necessity rather than a liability and can be positively used to ensure that the State government is carried on in accordance with the provisions of the Constitution, given the fact that our Parliamentary democracy has entered the coalition age and that at present the regional parties are emerging stronger. The motivating factor for Presidential takeover of a State administration under Article 356 should never be petty party gains; rather it must be the objective satisfaction that the constitutional machinery has failed. Therefore, this power should be wielded only in extreme cases with the Union government having on other option to restore the spirit of the Constitution. For this we must develop a constitutional culture imbibing federal spirit.

The Congress, the Janata, Party, the United Front and the Bharatiya Janta Party governments that have come to power in the Centre retained Article 356. The Left parties, in principle, oppose the retention of the Article. But they have supported the imposition of President's rule on some occasions. The point is that most political parties make use of the provision when it suits them; otherwise, they want it to be deleted. On a closer
examination, it appears that neither deletion nor dilution is the answer to the vexed question of the misuse and abuse of the Article. The Article 356 is not an isolated or severable provision of the Constitution; it verily constitutes the crux of the entire Centre-State relationship. Remove it, and there goes along with it the rubric federal design which has been erected with a great sense of responsibility by the founding fathers of the Constitution. The only way is to incorporate effective safeguards apart from the existing constitutional checks keeping in view the federal nature of our society.

The Administrative Reforms Commission Report (1969), Rajmannahar Committee Report (1969) and the Sarkaria Commission Report (1988) while recommending suitable changes in the Centre–State relations also looked into the problems of misuse of the Article. The Administrative Reforms Commission (1969) recommended setting up of a machinery at the Centre to advise the President on possible intervention in the affairs of the State. This “high status and standing body” the Commission observed should advise the President as to “when, where and how” the Central government may intervene in the law and order matter in the State. Its functions should be purely of advisory nature and a report should be placed before the Parliament. The Commission called for some restraint in the exercise of the Presidential power under Article 356.

The Rajmannahar Committee on the other hand recommended the deletion of Article 356 and 357. In case the Union government wanted to retain the present provision, the
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Commission suggested that sufficient safeguards should be provided in the Constitution itself to secure the interest of the States against the arbitrary use of Article 356.

The Sarkaria Commission recommendations (1988) on Centre-State relations and in particular, with reference to the use of Article 356 would be valuable. The Commission is emphatic in recommending that Article 356 should be used very sparingly in extreme cases as a measure of last resort, when all available alternatives fail to prevent or rectify a constitutional breakdown in a State. "All attempts should be made to resolve the crisis at the State level" before taking recourse to the provisions of Article 356. The Commission also suggested that 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 and the explanation given by the State should be taken into account before taking action under Article 356.

In a situation of political breakdown, the Commission observed that the Governor should explore all possibilities of having a government with a majority support in the Legislature. If it is not possible to install such a government and if fresh elections can be held without available delay, he should ask the outgoing ministry to continue as a caretaker government, if the ministry was defeated in a major policy issue, unconnected with any allegations of maladministration or corruption, and is agreeable to continue. The Governor then should dissolve the
Legislature leaving the resolution of the constitutional crisis to the electorate.

The Commission has also recommended the course of action to be taken consequent on the proclamation of President’s rule. Every proclamation should be placed before each House of Parliament at the earliest. But since the constitutional provision in clause (3) of the Article 356 lies down that this should be done before the expiry of two months period, it comes to the rescue of the Central government and this recommendation is practically rendered ineffective.

The State Legislative Assembly should not be dissolved either by the Governor or by the President before the proclamation has been laid before the Parliament and it has an opportunity to consider it. The Commission recommended that Article 356 should be suitably amended to ensure this.

Another significant recommendation of the Commission is that “the safeguards corresponding in principle, to clauses (7) and (8) of Article 352 should be incorporated in Article 356” to enable the Parliament to review the continuance in force of the proclamation periodically.

The heart of the remedy suggested by the Commission is that the material facts and grounds on which Article 356 (1) is involved should be made an integral part of the proclamation. This would make the remedy of judicial review “a little more meaningful”. The Commission suggested that this should be provided, through an appropriate amendment, notwithstanding anything in clause (2) of Article 74 of the Constitution. This will
enable the aggrieved party to approach the Supreme Court and High Courts to determine whether the proclamation is well founded. And because of the logic of the decision will be written into the proclamation, the Supreme Court will be able to pronounce on the constitutional validity of the proclamation without invading the constitutional domain of the executive.

The Commission has also recommended that the report of the Governor on the basis of which the President acts under Article 356 normally should be "a speaking document" and should contain a precise and clear statement of all material facts and ground on the basis of which the President has satisfied himself as to the existence or otherwise of the situation contemplated in Article 356. Further, the Governor's report should be given wide publicity in all media and in full.

No, doubt the Sarkaria Commission has gone beyond the framers of the Constitution and their predecessors in suggesting certain recommendations with regard to the use of Article 356. Of course, these suggesting are not radical. They are appendages to the existing constitutional provisions to suit the political system which has undergone much transformation since 1967. They cover the past and make useful observations and suggestions with regard to the clear and specific malpractices. However, they hesitate to venture into the future and they take shelter in the original constitutional provisions and in the wisdom and ingenuity of the founding fathers of the Constitution. In the place of concrete suggestion to remedy the weakness, the Commission restricted its observation to giving
advice on how to use the Article, on what occasion to use it, how to treat ministries backed with majority by, how to understand the breakdown of constitutional machinery etc. Role of conventions in the democratic framework is another area on which the Sarkaria Commission was not eloquent. Many of the issued linked with the imposition of Article 356 genuinely need the support of conventions. The Commission's suggestions are good and valuable. But no one would follow them without concrete legal sanctions. No doubt, the attempt of Sarkaria Commission however small and limited was a good step and served as a corrective or rethinking element in the political process.

The Inter-State Council constituted a Standing Committee to look into the matter relating to Centre-State relations including abuse of Article 356. The Committee recommended the issue of warning or show cause notice with seven days time to reply to it and the proclamation be issued only after considering the reply of the concerned State government. The Committee went a little further that the Sarkaria Commission by stating that the proclamation should contain the text of the notice as well as the reply of the State government thereto. The proclamation is not in the nature of a court judgment to contain all these ingredients. The Committee suggested that the period of two months for obtaining the approval of Parliament might be reduce to one month. The period of two months is a fairly short period and there is no reason to reduce it to one month. The Committee further recommended that the proclamation be
approved by a two-third majority in Parliament. In these days of coalition government, where no party has even a majority, the condition that the proclamation be approved by a two-third majority would completely nullify the objective and effectiveness of Article 356. The basic problem is that no political party has a definite stand on the utility of Article 356. It is precisely for this reason that despite several meetings, the Standing Committee of the Inter-State Council could not reach a consensus of Article 356.

We can say that the presence of a healthy and strong opposition, vigilant public opinion and above all the existence of a free press go a long way in ensuring that Article 356 is used as was intended by the founding fathers of the Constitution. It was the combined forced of these three institutions which enabled to correct the wrong decisions of the Centre and the same resulted in Kalyan Singh in Uttar Pardesh in 1998, and Rabri Devi in Bihar, in 1999. But unfortunately the Indian Parliamentary system lacks a strong opposition, vigilant public opinion and an independent press. These agencies should be the moving spirit behind any Parliamentary system. But very often, these institutions cater to their vested interests only and look at problems from factional angle.

However, as things stand today the only effective safeguard against the misuse of the Article 356 appears to be the judiciary. As and when the power is unilaterally used against a State government the courts apart from considering the case should also be able to come out with a verdict within a short period of
time. It is suggested that the power to issue writs in this regard will enable the Supreme Court and the High Courts to deliver timely verdicts. This will help to put the constitutional process back on the rails without further damage.

Thus the office of the Governor is provided by Constitution in order to preserve the Constitution. His main function is to retain the ministry and to see that the administration of the State is going on in accordance with the provisions of the Constitution and when the ministry is out he has to carry on the administration of the State on behalf of the President of India. He has to send periodical reports to the President about the political and administrative affairs of the State. We may conclude that the Governor has two important roles to play, it is his responsibility to see that the federal balance and political stability are not sought to be destroyed or undermined. In his role as the head of the State government, he has discretionary powers. He is not merely a figure-head or a nominal head, or a passive spectator but the exact range of his power would upon the political situation that exist in the State. If there is great deal of political harmony in the State, the burden of the government is greatly reduced. If there is great deal of political disharmony in the State and political stability is being undermined, the role of the Governor naturally becomes much larger.