Chapter-V

PROVINCIAL OR STATE GOVERNMENT IN INDIA

Modern India is today a union of twenty-eight states (provinces) and seven union territories. Union territories refer to cities and provinces which are small and are governed by the central government. States (provinces) are both big and small. For instance a state like Uttar Pradesh (U.P.) is bigger than many countries of the world. According to the 2001 census report the population of U.P. was nearly 162 million, which is higher than that of any country in West Asia or the Arab world.

Many factors have played their role in the creation of states in India a discussion on which would not serve the purpose for which this thesis has been developed. We would, therefore, concentrate on how the state governance is conducted.

An Indian state is different from a Syrian province in many respects. For instance the state assembly in India has much more powers than its counterpart, the provincial council in Syria. Similarly it is the Chief Minister of State rather than its governor who enjoys more power. Above all the state in India has the cabinet system, as is the case with India's central government, which is missing in Syria. There are many other differences but, of course, similarities also exist which we shall discuss in the course of ensuing discussion.

In this chapter we shall discuss what is very important in an Indian state such as the office of the governor, the chief minister and his cabinet, the state legislature and the High Court. These are the important organs of state or provincial governance in India and deserve to be discussed thoroughly for an appropriate appreciation and understanding of the subject.
The Office of the Governor

Let us begin our discussion on the office of the governor by quoting a leading expert on the Indian constitution, Mr. M.V. Pylee. He has made the following observation regarding the nature and pattern of government in the states of the Indian Union:

As in the Union, the government in the states is also organized on the parliamentary model. The head of the state is called the Governor, who is the constitutional head of the state as the President is for the whole of India. The chief of the state is called the Chief Minister who is the counterpart in the state of the Prime Minister of India.\(^1\)

This is the reason that all executive powers of the state have been vested in the governor and likewise all actions and decisions are taken in his name. But unlike the President of India, he is not elected directly or by an electoral college; he is rather appointed by the President of the Union. Although the governor is normally appointed for a five-year term, it is a pleasure appointment and therefore the president has the right to recall or dismiss him before the expiry of his term. There is no specific qualification that one should possess in order to be appointed as governor. Only the prospective governor should be a citizen of India and his age must be 35 years. Once appointed governor, he can not hold any other office of profit nor can be a member of Parliament or of any state assembly. Instead he receives an honourable monthly salary and is entitled to many privileges and allowances befitting his stature.

Although no specific qualification has been prescribed for the governor, but normally it is expected that he would be a man of distinction, an elder statesman who is able to exercise moral influence besides performing his constitutional duty. With the passage of time many political parties appointed party loyalists to
the offices of governors but, by and large, the practice has been to appoint erudite, experienced and mature persons as governors who would rise above party politics and help the state administration in its complex duties with his rich experience and intellectual capabilities. There are people who feel that the office of governor is useless and serves no meaningful purpose, hence it deserves to be abolished. A majority of experts, however, are of the opinion that despite some governors having become over-active, it is necessary to have this office, for it serves the all important purpose of acting as a link with the centre specially during crises which occur in the states with alarming frequency. The need therefore is to have an experienced gentleman in each of the Indian states who would steer them whenever required.

Why then governor is appointed and not elected? The constitution does not shed any light on it. It merely says that "there shall be a governor for each state" (Article 153) and "the governor of a state shall be appointed by the President by warrant under his hand and seal" (Article 155). It also says that "the governor shall hold office during the pleasure of the President" and that he "may, by writing under his hand addressed to the President, resign his office. Subject to the foregoing provisions of this article, a governor shall hold office for a term of five years from the date on which he enters upon his office" (Article 156). As can be seen, there has been offered no reason why governor would be appointed and not elected. This matter, however, was discussed by India's Constituent Assembly which made the constitution. The Constituent Assembly had discussed four options which were as follows: election by adult suffrage, election by the lower house or both houses of the state assembly, selection by the President out of a panel submitted by the lower house of the state legislature and appointment by the President. India finally adopted the last method of selecting and appointing a governor, because it was felt that election by people of governor was not compatible with the parliamentary democracy that this country had opted for. A very prominent member of the Constituent Assembly had to say the following:
politics and governance. The political instability paved the way for frequent imposition of president rule. Not only this, often it became difficult to form a government after state assembly elections as there used to be no clear winner and post poll efforts at government formation brought in to focus the importance of the role of the governor. Quite frequently he was called upon to use his discretionary powers. But again this was not an easy job to perform. He found it difficult to maintain a balance between his two roles as head of the state and agent of the Union. Only a few governors rose above petty party politics and performed their role impartially. Many followed the party line and acted in a partisan manner which put a good deal of stress on the State-Union relationship.

The governor's use of discretionary powers expectedly received mixed response from the political class with the party at the receiving end normally condemning his actions. But it must be said, as many Indian commentators have pointed out, that some governors in deed acted in a partisan manner. This prompted academics and constitutional experts to restart the discussion on the office of the governor and his role. Many came to the conclusion that some governors had indeed failed to display the good qualities of impartiality and sagacity which they are expected to do because they occupy an august constitutional office. What was required of them was to act with necessary objectivity while exercising their discretionary powers. Critics also pointed out that by acting as an agent of the Union government, the governors failed to play their role as a vital link between the states and the union. This failure of the governors specially prompted many academics and intellectuals to reopen the debate on the nature of the appointment of the governor. They opined that the governors sided more with the centre as they were its appointees. That it is mainly the central government which advises the President to appoint governors. The governors, specially if they were ambitions and a little indiscreet, they chose to please the central government rather than act objectively. Some governors did not show necessary objectivity while imposing the President rule in state or reserving state bills for the consideration of the President. This they did to curry favour with the Union
government. They realized that their remaining in office solely depended on the pleasure of the centre, hence they decided to remain loyal to it. Such behaviours of the governors have naturally lowered the esteem of the office of the governor. It has been further lowered by frequent transfer and removal of the governors before the expiry of their terms which, in most cases, were effected because the Union government wanted it for gaining political capitals. In order to remain in office or to seek further favours from the centre the governors acted to please the centre, and thus lowered the higher image of their office.

Powers and Functions of the Governor

Like the President of India, the governor, too, has been vested with executive, legislative and judicial powers. In fact, the executive powers of the state have been vested in the governor who is constitutionally entitled to exercise them directly or indirectly i.e. through the officers working under him. As head of the state (province) he has to discharge such duties as to appoint the chief minister and the members of his cabinet. The ministers, including the CM, hold office as long as they enjoy the pleasure of the governor. The governor is entitled to make rules for smooth and convenient transaction of the business of the government of the state. He also allocates portfolios to the ministers. The chief minister, who in fact, holds the real powers like the Prime Minister, is duty-bound to convey to the governor all decisions of his cabinet relating to administration of the affairs of the state. All proposals for legislation have also to be communicated to him. The governor may demand, and in such a situation the chief minister must furnish information about administration of the affairs of the state. If a minister takes a decision which has not been considered by the council of ministers, the governor may ask the CM to take that matter to the cabinet and discuss it there. The CM would be duty-bound to do so. The governor is also empowered to appoint the Advocate General who can hold this office as long as he enjoys the pleasure of the governor. He also appoints the members of State Public Service Commission but he has no power to remove or dismiss them.
The governor has the power, rather a special responsibility to see that a special minister is appointed to look after the welfare of the tribals in the states of Bihar, Madhya Pradesh and Orissa. In Assam the governor has certain special powers regarding the administration of the tribal areas which have been provided in the sixth schedule of the constitution. To summarize the discussion, we may say that all executive actions and decisions of the state government are taken in his name.

The governor is also vested with a good deal of legislative powers. He is a part of the state legislature in that he summons either or both houses of the state assembly to meet at a time and place he deems appropriate. The only condition he has to abide by is that a six-month period shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. He is empowered to dissolve the assembly or keep it in suspended animation. He is entitled to address either chamber of the assembly or he can send messages to it on a bill pending in the legislature. The house to which the message is sent has to consider the matter contained in it. The governor addresses the joint session of the two houses when they meet after elections and also at the commencement of the first session of each year. Every bill passed by the assembly has to be presented to the governor who can give his assent to it, withhold it or may reserve it for the consideration of the President of India. After receiving a bill the governor would go through it and if he feels some thing should be added or deleted, he may return it to the assembly which will soon reconsider it. The assembly, however, has the right to accept or reject the suggestions of the governor, and if it passes the bill again without any amendment, the governor has to give his approval.

The governor is empowered to promulgate ordinances when the state legislature is not in session and it is felt that the law is necessary. Such an ordinance would be on part with an act of the state legislature. Such an ordinance can either be converted into an act by the state legislature or may be allowed to lapse. Also it
may not be converted into an act but is kept alive either through re-promulgation or by being renewed by the assembly. The governor has the power to nominate members of the Anglo-Indian community to the Legislative Assembly if he sees that they are not adequately represented in the assembly. He can also make nomination to the upper house of the state legislature of persons having special knowledge and experience in such things as literature, science, art, cooperative movement and social works.

The governor has also many judicial powers. He is entitled to be consulted by the President of India when he appoints judges of the state High Courts. He can grant pardons, reprieves, respites or remissions of punishment. He can also suspend, remit or commute the sentence of any person convicted of an offence against a law to which the executive power of the state extends.

The governor enjoys some emergency powers. For instance he can send a report to the President of India after being satisfied that the state government is unable to carry on constitutionally. The opposition parties have often accused some governors of having misused this power. The governor has another power which deserves a mention here. He is entitled to receive the annual report of the State Public Service Commission. After receiving the report he passes it on to the council of ministers headed by the chief minister for its comments. Along with the comments of the state cabinet he sends the report to the speaker of the state assembly who places it before the house.

Discretionary Powers of the Governor

The governor has discretionary powers which he can use according to his wisdom and understanding of the situation obtaining in the state at a particular moment. His discretion may be described as constitutional and "situational". The constitutional discretion is obvious. But the situational discretion needs some explanations. It means that there may arise a situation about which there is no
clear constitutional guidance. This gives the governor marginal scope to apply his own wisdom and come to a solution to break a political deadlock. As it depends upon the governor how he applies his mind, it is natural that there will be differences in the approaches of various governors. It will continue so, unless a law is made keeping in mind the past experiences which are numerous. But still it is possible to pin-point certain occasions when the governor may apply his discretionary powers to solve a problem. These are as follows:

Appointment of a Chief Minister: If the general election in a state throws up a single party with absolute majority and with a recognized elected leader capable of forming a stable government, the governor will not be required to use his discretionary power to appoint any one as chief minister. In this situation he will appoint as CM only the person who enjoys the confidence of the majority in the house. That only the elected leader of the legislature party of the victorious political outfit will be called upon by the governor to form the government.

But in a situation when no party has a clear and stable majority in the house, the governor will use his discretion to appoint as CM the person whom he considers to be able to form a stable government. Such a situation arose in many states such as U.P., Madras, Orissa and Rajasthan after the first general elections in 1952. In all these states Congress had emerged as the single largest party. After the polls many parties came together to form a post poll alliance and thus managed more seats than the Congress and staked their claims to form the government. All such post poll formations just managed to secure more seats than the Congress but failed to get absolute majority. The governors in the above-mentioned states, all Congressmen, used their discretionary powers and appointed the Congress leaders as chief minister. The same formula, however, was not followed where a non-Congress political outfit had emerged as the single largest party. Thus it was made clear that the discretionary power of the governors were liable to be misused by the governors.
There may arise quite complex situation as well. Ms. Jayalalitha of Tamil Nadu was held guilty in a case and sentenced to three years imprisonment. She was disqualified and barred from contesting elections. But in the 2001 state elections she emerged victorious with her party having obtained an absolute majority. Her party elected to be their leader in the house. The party also passed a resolution whereby it was suggested that no other person except Ms. Jayalalitha was acceptable to the party as chief minister. The governor, Ms. Fathima Bibi invited Ms. Jayalalitha to form the government. Many people have been quite unhappy with her decision. But as many legal luminaries including Justice H.R. Khanna have argued she had no choice but to appoint a convicted person as chief minister of the state.

To take stock of such matters the central government set up a commission, known as Sarkaria Commission, which, among other things, dealt with the question of appointing a governor. The Sarkaria Commission's recommendations are as follows:

1. An alliance of parties that was formed prior to the elections.

2. The largest single party staking a claim to form the government with the support of others, including independents.

3. A post-electoral coalition of parties, with all the partners in the coalition joining the government.

4. A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including 'independents' supporting the government from outside.

Dismissal of a Ministry: The other situation in which the governor can use his discretionary power is to dismiss a state government. Before doing so the
governor has to satisfy himself if the situation is really that bad that it requires the dismissal of the state government which was elected to power by the people. The situation should really be bad as to make the governor believe that the state government is engaged in activities which are likely to endanger national security or solidarity. Such a situation may arise in insurgency-infested states. If it is found by the governor that his ministry is hand in glove with the anti-national elements, he may dismiss it.

Another situation may be like this: "It is possible that the ministry has lost the confidence of the legislature as a result of a split in the party in power and the ministry may like to continue in office and it may advise the governor to prorogue the Assembly with a view to avoiding a censure motion which is likely to be passed. In the meantime a majority of members in the assembly may submit a petition to the governor to the effect that the ministry does not enjoy the confidence of the legislature any longer and that it should be dismissed. What should the governor do under such conditions? Here is a clear case where he is called upon to use his discretion. He may adopt any of the alternatives including the dismissal of the ministry."16

In about 60 years history of India's democracy, the governors have used their discretion many times to dismiss a state government. But a careful study of such cases reveals that on many occasions the governors behaved in a partisan manner or did not act objectively. It is seen that for one governor one particular reason or a set of reasons is enough to dismiss a state government. But another governors in similar situations have acted otherwise. The reason being the governors are often members of the ruling party at the centre and tend to work against the party which is in opposition but is ruling in the state of which he is the governor. Perhaps unless this practice of appointing party loyalists as governors is not abandoned, Indian democracy will remain embroiled in such situations of petty politicking tarnishing its otherwise very impressive record and image.
Dissolution of the Legislative Assembly: Normally the practice in a parliamentary democracy is to allow the legislature to complete its full term. But dissolving the assembly prematurely and seeking a fresh mandate thereafter to solve a situation or problem of political instability and turmoil is also an accepted principle of parliamentary system of government. The power to dissolve the assembly is vested in the governor of the state. The question is if the advice of his ministry to dissolve the assembly is binding on the governor? The British convention, which carries weight in India, is that a defeated ministry has a choice between facing the electorate to seek vote in favour of its policies and resignation. That the government may either dissolve the house or may resign paving the way for others to form a government or allowing the governor to act as per his wisdom and discretion. But it must be noted that in Britain such a situation arises rarely whereas in India it is quite frequent. And unfortunately the constitution has no specific provision to deal with a situation of this nature. This gives the governors an opportunity to use their discretion. Few governors have been able to rise above party line and do the right things. It is seen that some time a governor dismisses a state legislature for one reason which for another governor is not the reason enough to do the same. In plain words the governors have not adopted any one criterion to use their discretionary powers. We see that sometimes a governor dissolves the assembly to punish the defectors and sometimes another governor does not dissolve the assembly to reward the defectors by providing them an opportunity to form a government.

There may be other situations, besides the ones elaborated above, when the governor may be called upon to use his discretionary powers. These are, in the words of Fadia, as follows:

1. Asking information from the chief minister relating to legislative and administrative matter;
2. Asking the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council;

3. Refusing to give assent to a bill passed by the legislature and sending it back for reconsideration;

4. Reserving a bill passed by the state legislature for the assent of the President;

5. Seeking instructions from the President before promulgating an ordinance dealing with certain matters;

6. Advising the President for the proclamation of an emergency;

7. In the case of the governor of Assam, certain administrative matters connected with the tribal areas and settling disputes between the government of Assam and the district council with respect to mining royalties; and

8. Likewise governor of Nagaland, governor of Sikkim, governor of Arunachal Pradesh and governor of Mizoram, Meghalaya and Tripura have been entrusted certain specific functions to be exercised by them in their discretion.7

A cursory look at the governor's discretionary powers might suggest that it would be quite easy for him to become an autocrat despite being the head of a state/province meant to be governed democratically. Because neither the cabinet nor the state legislature has any constitutional powers to keep him under check and he seems to be quite free to exercise his discretionary powers, even in arbitrary manners. A look at the performance of most governors to date, specially
of their power to dismiss a state government also justifies the above point or apprehension. However, there is one office, the highest office of the country: of the President of India which alone seems to be in a position to bell the cat called governor. The point intended to be conveyed is that the governor is not a free agent in the exercise of his discretion, rather he is responsible before the President and through him to the central government. If he misuses his discretionary power to promote his personal ambitions, and takes active part in the current and cross-current of the state politics and exhibits obvious partisan attitude, the President of India is always there to check him; in fact, the President may even dismiss him.

But looking at recent and past events involving the governor's role, it is clear that an exercise of moral influence by the President on an ambitious governor is not enough to make him see reason. This is the reason that the concerned sections of the society want a law in this regard. And if a law can not be made soon, at least the central government should behave with responsibility and appoint governors of impeccable character. The voices of concerned citizen about appointing impartial governors have been captured well by the Commission on Centre-State Relations, also known as Sarkaria Commission; the following words of wisdom are specially worthy of appreciation:

In all the evidence before us, a common thread is that much of the criticism against the governors could have been avoided if their selection had been on correct principles to ensure appointment of right types of persons as governors.

The Sarkaria Commission has also elaborated the criteria for selecting the right types of persons to be appointed as governors. These criteria suggest what a governor should be:

1. He should be eminent in some walk of life
2. He should be a person from outside the state

3. He should be a detached figure and not too intimately connected with the local politics of the state, and

4. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.¹⁹

The Dual Role of the State Governor

Controversies abound about the roles played by governors because their role has not been properly defined and explained. Added to it is their dual role that their jobs demand from them. The governor is the constitutional head of the state on the one hand and a representative or agent of the central government on the other. His position and functions get complicated when the state and the centre are ruled by parties with opposite ideologies and programmes. As he is appointed by the centre and is responsible to the President of the country, in effect to the Council of Ministers headed by the Prime Minister, he normally tends to be loyal to the central government. Naturally this is bound to create problems for the state government run by a party opposed to the party ruling at the centre.

The governor is the figure-head of the state and for most part his role is ceremonial. The constitution says that in every state there shall be a council of ministers headed by the chief minister whose job is to aid and advise the governor in exercising his functions. In certain situations, as elaborated above, the governor will not be bound by the advice of the council of ministers and use his discretionary powers; otherwise the governor has but to heed to the advice of his council of ministers. It should also be noted that the council of ministers is not responsible to the governor but to the state legislature. The cabinet or the council of ministers is empowered to exercise all executive powers in the name of the governor who acts constitutionally as per the advise rendered to him. The
The governor, however, is not just the constitutional head of the state. Also he is a representative of the centre to the state. Some governors have elaborated their own position. V.V. Giri, when he was governor of the erstwhile Mysore state, called the governor to be an ambassador of the central government. A former governor of Rajasthan described himself as a link between the state and central governments. And some governors preferred the term, 'agent', for describing their status and position. The reality is that the office of the governor is the only constitutional link between the centre and the states. A governor is appointed by the President on the advice of the Prime Minister. His job is to ensure that the guidelines and directives issued by the central government are implemented by the state government. He also sees that the state government functions in accordance with the provisions of the constitution. When the situation demands, such as the breakdown of law and order in the state, he recommends to the President to proclaim emergency in the state. Even when a state is brought under the President rule, the governor, though ceases to be the constitutional head of the state, remains an agent or representative of the centre and rules over the state on its behalf. But states are brought under the President rule rarely. And normally the governor acts as a link between the state and the centre. His dual
role is important. As constitutional head of the state he represents it to the centre and as a representative of the centre he represents it to the state. Writes Fadia:

Thus, the governor represents the centre in the state, and the state at the centre. That he does in his periodic reports to the President, in his meetings with the President and at the time of the governors’ conferences. It is he who helps in building up the image of the state and of the state government at the centre. He focuses on the needs and the interests of the state at the central level. As a matter of fact, the terms ‘agent’ and ‘constitutional head’ are two independent and contradictory things in the sense that the constitutional head is supposed to be impartial, whereas an agent is always partial.¹⁰

It would not be a completely hopeless situation if the governor is able to balance between his two roles and isn’t influenced by the centre to play a partisan role. Then, it is not just the centre, but sometimes the governors themselves are ambitious, even over-ambitious and go out of the way to please the centre in order to curry favour with it. The biggest problem is that due to political bickerings the roles and responsibilities of the governors have not been institutionalized because of which problems arise time and again. No one can deny the importance of the office of the governor as a link between the states and the centre. But the need is to institutionalize his official duties that the scope for playing political game is reduced and this august office is not brought into dispute time and again.

The Chief Minister and the Council of Ministers

The position that the Prime Minister occupies in the centre, is held by the chief minister in the state he rules over. He stands out prominently in the state and wields wide-ranging authority that no one else enjoys in the state. He is the head of the government, shapes its style, guides its performance and owns the
responsibility for its failure. He, being the leader of the party that holds majority in the state assembly, is appointed by the governor but is responsible with his cabinet to the legislative assembly for his acts of omissions and commissions.

In the history of India there have been many powerful leaders who served a state as its chief minister before moving to the centre stage of politics in Delhi. Many powerful leaders preferred to remain chief minister of their states than hold the office of a ministry in the central government. The reason has been that a powerful chief minister is no longer just a regional leader but often gets opportunity either to play important role in national politics or influences its course because he controls the politics of an important state. As long as a towering figure like Nehru was the prime minister of the country, the regional leaders, despite being important political players, rarely had the opportunity to influence the politics and powers of Delhi. But after Nehru disappeared from the political scene due to his demise, even the Congress chief ministers became powerful for a while. With her growing powers Mrs. Gandhi later on crippled the wings of her party’s chief ministers and other leaders but failed to suppress the chief ministers belonging to other parties who have been playing an important role in India’s national politics. Today many opposition parties control some big states and their chief ministers are known all across the country. For over a decade India is having coalition government at the centre and the chief ministers of some states with over two or three dozen members of parliament have become vital for the survival or continuance of government in office.

**Appointment of the Chief Minister**

According to Article 164 of the constitution the chief minister is appointed by the governor of the state. The constitution provides that the governor will invite the leader of the party holding majority in the state assembly to form the government. If no party has an absolute majority, the governor will use his discretion to appoint a chief minister which has been discussed in detail in the preceding
The constitution is silent about what qualification a person should possess in order to become the chief minister. All that is needed under the constitution is that prospective chief minister is a citizen of India and possesses such qualifications as are required to become a member of the state assembly. He is not required to possess any educational or other such qualifications for occupying the seat of the chief minister. He has just to be a member of either of the two houses. Even he can be appointed chief minister as a non-member but has to seek the membership of the state assembly within six months, failing which he will forfeit his office. This provision has been used by almost all parties to appoint their leaders as chief ministers who became a member of the legislature only later on through election or nomination.

Powers and Functions of the Chief Minister

Although constitutionally the governor is the executive head of the state, it is, in fact, the chief minister who is the real executive head of the state. He enjoys wide-ranging powers and performs a great deal of functions of vital importance. These powers and functions are summed up as follows:

1. As working head of the state government he advises the governors in matters relating to the selection of his ministers, allotment of or change in their portfolios and also regarding their dismissal or removal from office. He may advise the governor to drop a minister from his ministry.

2. The chief minister presides over the meetings of his council of ministers and ensures that all the ministers follow the principles of collective responsibility. He has therefore the right to advise a minister to tender his resignation and may advise the governor to dismiss a minister in case he differs from the policy of the council of ministers or the cabinet.
3. The chief minister communicates to the governor all the decisions of his cabinet relating to the general administration of the state, its all affairs and proposals to make new laws and make amendments in them.

4. He provides the governor with information that the later seeks from him relating to the administration and management of the state's affairs and the proposals of legislation.

5. He places before his council of ministers all matters which need to be considered by it, specially if the governor requires him to do so.

6. He is the sole channel of communication between his council of ministers and the governor.

7. Also he alone acts as the sole channel of communication between his ministers and the legislature of the state. No bill or resolution can be moved by any minister in the assembly without his prior approval. When any of his government's policy or decision is subjected to harsh and bitter criticism in the assembly, it is he who takes the floor, faces the opposition onslaught, answers their questions and tries to satisfy his opponents, so that the government is not defeated.

8. Being leader of the majority party, he takes it as his duty to maintain discipline in the assembly. To this effect he appoints the whips and ensures that the orders of the whips are followed by all the concerned.

9. He is empowered to resign as per his will, and he can do so any time and in any condition. In such a situation he has the right to advise the governor to call on a person to install another ministry or to dissolve the house and thereby place the state under President's rule.
10. Apparently and theoretically all appointments in the state are made by the
governor but in fact the real power lies with the chief minister. The
governor is obliged to consult him while appointing the judges of the state
High Court. All postings and transfers in the state also take place with his
approval. The governor also consults him when he appoints the state
Advocate General as well as the members of the powerful and
autonomous State Public Service Commission. In sum, the chief minister
is required to act as the real and powerful leader of his ministerial team so
that it works as a cohesive unit for the development of the state.

Chief Minister's Relationship with the Legislature

Ideally speaking, a parliamentary form of government which the Indian
constitution has prescribed for its states also, requires the executive, headed by
the chief minister, and the legislature to work in close cooperation with one
another. The chief minister's role is very important in this regard. He is the leader
of the house and as such makes all policy statements therein. Besides,
whenever he feels or sees that one or another minister is not able to satisfy the
house on an issue of importance, he himself takes the floor to answer questions
and satisfy all the concerned. He explains the policies of his government and
outlines the programmes in the house and faces difficult questions, scrutiny and
criticism from the opposition. Being leader of the house as well as head of the
council of ministers, it is the chief minister who communicates the views of the
house to the executive head of the state, the governor. Thus he acts as a
channel of link between the legislature and the executive. Although others may
come in with their suggestions or the opposition may also suggest its agenda but
it is mainly the chief minister who practically decides the agenda of the house.
But as regards the legislature his most important power is that he can get the
house dissolved. At any time and in any condition the chief minister can use this
essentially negative power to advise the governor to dissolve the house or the
assembly. Normally this advice of the chief minister is accepted but, it must be
clarified here, that the governor is not bound to accept it; he can resort to other options too.

The Governor and the Chief Minister

In the parliamentary form of government that India has, the chief minister, like the prime minister, is finally responsible to the people as he has to face elections to get, in a sense, approval of his performance, programmes and policies. He wields the real powers in the state no doubt. But in the true spirit of democracy the chief minister, the head of the state government, has the duty to facilitate the exercise of the governor's "right to be consulted, to warm and encourage". But the governor can not do his duty as a philosopher-friend unless he is kept well-informed about the affairs of administration of the state. To help the governor discharge his duty of being a guide to the chief minister and his council of ministers, the chief minister has to be in close relationship with the governor. Only such a smooth relationship between the two highest offices of the state is essential if the governor has to work as a sentinel of the constitution and as the state's vital link with the centre. But it must be borne in mind that the chief minister's cooperation is not taken for a ride by the centre or by its representative, the governor. The parliamentary form of government requires that the chief minister and the governor work in close collaboration respecting each other's jurisdiction. It should be a two way traffic, only then the two high offices will be able to accomplish what the constitution requires from them. The governor has a right to be informed by the chief minister about all that happens in the state but he should not try to be a counter-magnet of power. His job is to advise as a friend, philosopher and guide and should not try to create obstacles for the chief minister. A balanced relationship between the two high offices of the state is what the constitution has sought to establish to run the state's administration smoothly. This is the reason that the governor is nominated by the centre and not elected by the people. An
elected governor might aspire to be another centre of gravity and power in the state, but as it was not to be in the interest of the state as well as democracy, the founding fathers of the constitution opted for nomination of the governor by the central government and rejected the idea of an elected governor.

But there has always been a difference between the ideal and the practice. True, some governors have played their constitutional role perfectly and responsibly. But there have been others who acted more as agent of the centre and tried to undermine the office of the chief minister by their questionable and debatable actions. Two examples will suffice.

A few years back Mr. Digvijay Singh was chief minister of Madhya Pradesh and Bhai Mahavir the governor. Mr. Singh was Congress chief minister at a time when the BJP, a hard-line nationalist outfit with a communal ideology and agenda was in power at the centre. The governor started acting as an agent of the centre and started creating problems for the chief minister. Keeping aside the constitutional propriety Mr. Mahavir started to summon senior government officials to the Raj Bhavan or the Governor's House and issue verbal orders to them. Understandably the chief minister was upset as he felt the governor’s requests for access to information should be routed through him and that he had no right to directly issue orders to the government officers. He ordered the Director General of Police Mr. V.P. Singh not to give any information to the governor that he had sought regarding a gang-rape case. The governor took the line that people come to him with their grievances because they have more faith in him. Moreover, he felt he was doing no wrong; instead he was helping the government by bringing to its notice the flaws in the administration of justice. The governor went a step ahead and held a press conference and criticized some measures of the Digvijay government as populist the purpose of which was to influence the voters during the assembly elections which were due to be held very soon. From the above story one can easily understand that this kind of
tense relationship between a governor and a chief minister was not what the founding fathers of the constitution had envisioned.

Let us narrate another story which perhaps would explain the kind of smooth relationship that should exist between a governor and a chief minister. In May 2001, the then chief minister of Kerala, a state in Southern India, Mr. A.K. Anthony tried to induct Mr. Bala Krishna Pillai in his cabinet. The chief minister had all the right to do so and the governor should not have any objection. The governor, Mr. S.S. Kang, however, intervened in a judicious manner and prevented Mr. Pillai’s induction on the ground that he was found guilty by law. At most the governor had only the force of morality on his side. He impressed upon the chief minister that it would be improper to entrust a person with making laws who has been found guilty of breaking them. The chief minister agreed with the moral force of the argument and did not insist on Mr. Pillai’s induction in his cabinet. Here both the governor and the chief minister played their roles to perfection and thus became able to function the way that the spirit of the Indian constitution wanted from them.12

The Sarkaria Commission, which studied the centre-state relationship, has put a good deal of emphasis on developing a good personal relationship between the governor and the chief minister which is essential for proper working of the parliamentary system that obtains in India. One way to develop such a relationship is that the centre consults the chief minister at the time when the process of appointment of the governor is started. Nehru, the first prime minister of independent India, had expressed a similar opinion during the Constituent Assembly’s debate on the subject that the governor of a state should be one who is acceptable to the chief minister. Another good suggestion is that the party ruling in the centre should not appoint one of its politically active members as governor to a state where an opposition party is in power. If this suggestion is heeded, it surely would reduce tension and facilitate a harmonious relationship between the governor and the chief minister.
The governor's power to dismiss a minister or the council of ministers has often created controversy in India. For instance there arises a situation when it appears that the chief minister has lost the confidence of the state assembly. In one such instance the governor asked the chief minister to convene a session of the assembly at a short notice and win the confidence of the house. The chief minister refused to abide by the order and the governor dismissed him. But in a more or less similar situation the chief minister was willing to face the house which was scheduled to meet a few days later. But the governor did not wait for that to happen and dismissed the chief minister. This demands a discussion on Article 164 of the Indian constitution which, among other things, says the following:

(i)... and the minister shall hold office at the pleasure of the governor; (ii) the council of ministers shall be collectively responsible to the legislative assembly of the state.

Fadia's commentary on the above Article 164 of the Indian constitution deserves to be quoted here:

The legitimate conclusion that can be drawn is that:

(a) The governor has the power to dismiss an individual minister at any time

(b) He can dismiss a council of ministers or the chief minister whose dismissal means a fall of the council of ministers, only when the legislative assembly has expressed its want of confidence in the council of ministers, either by a direct vote of no-confidence or censure or by defeating an important measure or the like, and the governor does not think fit to dissolve the assembly. The governor can not do so at his pleasure on his subjective estimate of the
strength of the chief minister in the assembly at any point of time, because it is for the legislative assembly to enforce the collective responsibility of the council of ministers to itself, under Article 164(2).

Importance of the Office of Chief Minister

Under the constitution the chief minister of a state has many powers but his actual standing depends on his personality, political experience and administrative capability. Added to this, is his position in the ruling party, specially with those people who are running and managing it. if the chief minister belongs to an all India party, specially the one that rules at the centre also, his standing will also depend on his equations with party's national leadership and the prime minister. India has both kinds of chief ministers; ones who belonged to a regional party and enjoyed control over both the party and the government, and those who belonged to a big national party which ruled or did not rule over Delhi. The second kinds of chief ministers have to enjoy not only the support of the party legislators in the state, but also of the leaders who matter in state and national politics including the state and national presidents of the party and of the prime minister, if the party was in power at the centre. Some times it happens that the prime minister is very powerful and only his sole support to a chief minister makes him very strong and affords him to run the state effectively.

An important point deserves attention here. Under the constitution it has not been clarified as to what kind of relationship there ought to be between the chief minister and the state and national leadership of his party. It has been left to the parties to decide the nature and level of relationship between the organizational and legislative wings of the ruling party. The things become more complex if the chief minister belongs to a party which is part of a coalition, a collection of parties which have joined hands to rule over the state. One can imagine that in situations
explained above, a man with little political experience will face a lot of problems and even might fail to deliver the results expected of him.

The position of a chief minister is really weak if he happens to be leading a coalition government. In many cases the chief ministers of coalition governments have been so weak that they were forced to appoint powerful deputy chief minister who even tried to outsmart him. Often such a chief minister is also forced to assign key portfolios to men whom he does not trust or whose capabilities and qualities are questionable. This erodes his moral and political authority and renders him a weak chief minister. Also there have been situations when parties with different ideologies and programmes joined hands to form a government. Not only such a government has to constantly breathe in the suffocating atmosphere of contradictions but has also to grapple with uncompromising pulls and pressures all the time. To keep such governments solvent, sometimes, coordination committees consisting of people outside the government have been created. This coordination committee some times becomes so powerful that the chief ministers and ministers not only take orders from it but are also compelled to submit their resignations to it instead of the governors. One can imagine that a chief minister heading such a coalition government will be weak and ineffective, even if he has enough political experience, administrative capability and a charming personality. The poor chief minister is always busy with fighting the all important battle of survival. Not only he has to keep the ministers and coalition partners in good humour but sometimes he has also to placate the prospective defectors by offering them ministerships or other lucrative assignments.

Not only the chief ministers of a coalition government but also those of a party enjoying comfortable majority in the state assemblies had to be constantly on guard if their party happened to be in power at the centre with strong prime ministers like Mrs. Indira Gandhi and Rajiv Gandhi. In the time of these prime ministers the Congress ruled over many states with comfortable majority in state
assemblies. The states also had chief ministers of proven capabilities and most of them enjoyed the support of their legislatures. But this was not enough for them to remain in the office of the chief minister. They had to develop very strong relationship with the prime minister or seek the patronage of some other powerful leader or minister in the centre. So, despite being capable they had to rush to Delhi either to take orders from the prime minister or the Congress High Command or keep them in good humour. The following will prove the point under debate: According to an India Today estimate, the number of days spent in capital (New Delhi) by the eight chief ministers who completed 100 days in office are: Bihar’s Jagannath Mishra – 29; Rajasthan’s Jagannath Pahadia – 48; U.P.’s Vishwanath Pratap Singh – 31; Gujarat’s Madhav Singh Solani – 15; Orissa’s J.B. Patnaik – 15; Punjab’s Darbara Singh – 38; Maharashtra’s Abdul Rehamn Antulay – 30; and Madhya Pradesh’s Arjun Singh- 36. In statistical term it means that on average, these Congress (I) chief ministers spent one day out of three in capital. While Haryana chief miniser Bhajan Lal’s geographical proximity has enabled him to spend every second day in New Delhi, Channa Reddy, chief minister of Andhra Pradesh made short work of the yawning distance between Hyderabad and Delhi to chalk up 40 days. Thankur Ram Lal of Himachal Pradesh and Gundu Rao of Karnataka totaled up a score of one day in four. All the above chief ministers, many of them quite capable, had comfortable support in the state assemblies but that was not enough for them to continue as chief minister; they needed the blessings of the central leadership which practically meant the pleasure of Mrs. Indira Gandhi, the then very powerful prime minister of India.

Role of Chief Ministers in National Politics

From the above discussion one should not get the impression that India had always had lame duck chief ministers. In fact, even during the time of Nehru some chief ministers exhibited independence of mind and also played their roles in the national politics. Mrs. Indira Gandhi was India’s most centralizing prime
minister but even in her time there were many talented chief ministers who rose to greater height in later days. In later days, the Congress has been in and out of powers and towards the end of 1980s it has not been a major player in some states like U.P. and Bihar. Moreover, many states have been ruled by opposition parties with some towering personalities as chief minister who played a very important role in the national politics. These chief minister have specially been effective in bringing about coalition governments at the centre. The pulls and pressures of the coalition government have allowed many chief ministers to play larger than life role in national politics. In this process even the Congress chief ministers have enjoyed relatively less control and more freedom from their central leadership.

Nehru, too, believed in a strong centre and wanted centralization of power but only to a certain extent. His was not a habit of undermining the chief ministers, so he gave them freedom to function in their states with more freedom. Moreover, he was too towering a leader to feel any threat from any of country’s chief ministers. He, however, became weak after India’s defeat in its war with China. But before facing any real trouble he died in 1964.

After Nehru’s demise the party president and some chief ministers became very powerful. Morarji Desai was a strong prime ministerial candidate but a syndicate of chief ministers led by Kamraj managed to instal Mr. Lal Bahadur Shastri as prime minister. After his death Morarji Desai again tried to become prime minister but the Kamraj-led syndicate once again frustrated his ambition and installed Mrs. Indira Gandhi as prime minister. In her first term Mrs. Gandhi was not able to overrule the syndicate or ignore the powerful chief ministers. She began to get rid of the syndicate after her resounding victory in the general election of 1971. She broke the syndicate and dumped Kamraj for ever. Thereafter no chief minister ever dared to challenge her authority or play any role in the national politics that she did not like. Without doubt some chief ministers continued to be a force even after 1971. But in Mrs. Gandhi’s third term after 1980 the chief
ministers became almost lame duck and powerless despite being personally quite qualified and experienced.

But the dawn of the era of coalition after 1989 elections has enhanced the importance of chief ministers again. A chief minister having control over three or four dozen MPs is very important and he becomes a king maker. Smaller parties with their power base just in one state and their chief ministers are playing a vital role today in the national politics of the country.

The State Council of Ministers

It has been stated earlier too that constitutionally the executive head of the state is none other than the governor. But in reality all the executive powers are enjoyed by the state council of ministers headed by the chief minister. In theory or according to the constitution the council of ministers exists to aid and advise the governor but this advice is such that the governor can not ignore or refuse to implement. Constitutionally he is bound to act in accordance with the advice rendered to him by the council of ministers which is headed by the chief minister.

The chief minister, thus, holds the real power. He is aided in his works by the council of ministers or by his cabinet, a smaller body consisting of important and senior ministers. It is the cabinet that helps the chief minister in formulating the state's policies. It also initiates the process of legislation and coordinates the works of various agencies of the government. The CM-headed cabinet also guides, directs and controls the public administration and implements or makes the bureaucracy implement the policies of the state government. The performance of the bureaucracy thus depends upon the quality of leadership the cabinet provides to them.

The convening or organization of the council of ministers is a simple affair. The governor invites the leader of the majority party to form the government which is
headed by the chief minister. It is the leader of the legislative party of the ruling party who normally becomes the chief minister. And on the advice of the chief minister the governor appoints other ministers. Constitutionally the chief minister is free to pick up his team. But practically he is bound by many considerations which he cannot ignore. Political pressure, demands of different interests, existence of factionalism and many other constraints tie the hand of the chief minister compelling him to accommodate even those whom he would not have liked otherwise to have a place in the council of ministers. The chief minister's choice and freedom of selecting his ministers is thus limited.

The ministers may continue in office as long as they enjoy the pleasure of the governor which, in fact, means the pleasure of the chief minister. The council of ministers is collectively responsible to the state assembly. A minister can assume his office only after he has been administered the oath of office by the governor. A person who is yet not the member of the state assembly can be appointed minister and administered the oath of office by the governor. But he must get the membership of the assembly within six months of becoming a minister.

The constitution of India has not defined the size of the state council of ministers. But now the 91st Constitutional Amendment Act has imposed a ceiling on the number of ministers in a state. The operative part of the amendment in Article 164 is as follows:

(1A) The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed fifteen per cent of the total numbers of the Legislative Assembly of that state or, in case of a state having a Legislative Council, the total number of both the Houses of the Legislature of that state.

Provided that the number of ministers, including chief minister in a state shall not be less than twelve. Earlier there was no restriction.
on the numbers of ministers and the size of ministry depended upon the likes and needs of the chief minister. A chief minister heading a coalition government was specially perturbed as it was difficult for him to accommodate various aspirants. Often against his desire he had to shake hands with and appoint ministers who had no skill to run a ministry.

The salaries and perks of the ministers have not been specified in the constitution which merely says that “the salaries and allowances of ministers shall be such as the legislature of the state may from time to time by law determine and, until the legislature of the state so determines, shall be as specified in the second schedule”. In accordance with the above, various state assemblies have specified the salaries and allowances of ministers and MLAs. These are liable to be revised and so far most revisions have resulted in enhancing the salaries of the ministers and the legislators. Moreover, they vary from state to state which is quite natural.

A council of ministers is composed of senior and junior ministers. At present there operate three categories of ministers, namely, the cabinet minister, minister of state and deputy minister. Of the three the most important are the cabinet ministers who hold important portfolios. The cabinet consists of senior and experienced ministers which is the nucleus of the council of ministers. The cabinet ministers are not just the heads of their ministries but they also provide direction to entire state administration and shape the policies and programmes and the government. Thus the cabinet is the most important body both in state governments as well as in the centre.

As mentioned above, a minister is the political head of the department or the ministry. The administrative head of the department or ministry is the secretary who is a career civil servant. Normally the minister-in-charge runs his ministry and deals with its all matters keeping in mind the broader policies of the
government. But if a matter is of vital importance, it is brought before the cabinet for its consideration and decision. The decisions of the cabinet are presented to the governor by the chief minister who normally approves of them. The governor may send back a decision taken by an individual minister asking the chief minister to take it to the cabinet for discussion and decision. The cabinet can consider any matter it likes. But generally the matters brought before it for consideration and decision are of the following categories:

1. Proposals for appointment or removal of the advocate general and relating to his remuneration.

2. Proposals to summon, prorogue or dissolve the legislature.

3. Proposals for legislation, including issue of an ordinance.

4. Cases in which the attitude of government to any resolution or bill to be moved in the legislature is to be determined.

5. Proposals relating to rules regulating recruitment and conditions of service of government servants including judicial officers.

3. The annual financial statements to be laid before the legislature and demands for supplementary, additional or excess grants.

1. Report of the State Public Service Commission and action proposed to be taken with reference thereto.

1. Proposals for imposition of new taxation, or changes in taxation.

1. Annual audit review of the state finances and reports of the public account committee.
10. Proposals involving important changes in policy or practice or in the administrative system.

11. Reports of committees of enquiry set up for such a purpose.

12. Proposals for creation of posts on maximum salary exceeding Rs. 1000 per month.

To sum up, the office of the chief minister is the most important office in a state. Next to him, from responsibility point of view, are the cabinet ministers. The chief minister and his team should have functionally cordial and smooth relationship with the governors of the states. Ideally they all should work within the constitutional framework, so that the development of the state is ensured. But practically the situation is quite different. Very few chief ministers had or have the necessary qualifications to be an effective chief ministers. Often they do not get the peaceful and congenial atmosphere which is essential for good performance on their part. Either they are troubled by an over-active governor or they face problems from within their parties or from their coalition partners. In order to ward off such problems they are compelled to have an oversized council of ministers which is more a burden than an effective team of colleagues assisting them in their works.

Likewise the people who join the council of ministers, not because of their qualifications but because of their extraneous values such as their being leaders of important castes, communities or of regions, usually fail to deliver. A non-performing ministry is thus one which harms the state and hinders its development. It is still difficult to suggest what the shape of democracy in India will be. It is almost certain that democracy has come to stay here. Whether it will perform to the desired level and deliver is yet to be seen.
In India, unlike Syria, the states or provinces have a legislature whose job is to make laws for the concerned state. A state legislature consists of the governor and one or two houses. Under the constitution every state is entitled to have legislative assembly. It is upto the states to have two houses of the state legislature or just have the one which is composed of the elected members. At present only Bihar, Maharashtra, Karnataka and U.P. have the upper house commonly called the legislative council. The state of Jammu and Kashmir, too, has the legislative council under its own constitution. Some other states also had the legislative councils but later on they decided to dissolve them for which the constitution has a provision (Article 169(1). The lower house of the state legislature is generally known as the legislative assembly. In the ensuing pages we shall discuss the two houses of the state legislature.

The Legislative Council

The constitution of India has provisions either to create or abolish the legislative council of a state. In January 1950 when the constitution came into force, only six states had the legislative councils. Today only three of them maintain the upper house whereas three others have got rid of them in proper constitutional manner. One state Karnataka has used the provision of the constitution to create its legislative council. But other states have not used this provision to have their own legislative councils. In fact some of them have used the constitutional provision to abolish the one they had.

There has always been a debate about the utility of a state having a legislative council. Those who favour the idea of having this upper chamber in the states offer the following arguments:
1. With the upper house in place the unrepresented social interests of the state get a chance of being represented.

2. The legislative council, consisting of experienced and learned persons, functions as a revising chamber.

3. Being a chamber of cool-headed persons, it acts as safeguard against the legislations passed by the lower house in haste and without much consideration.

4. It gives an opportunity to seasoned and experienced people to contribute politically, who otherwise would not join active politics of hectic electioneering.

5. It makes valuable suggestions about matters of public interest and importance during debates in the legislative council which the government of the day can benefit from in order to implement its policies and programmes.

On the contrary there are people who are highly critical of the legislative council. In their opinion it is a useless house, a burden on the state's finances and hardly contributes anything to the smooth functioning of the state. The arguments they offer against having a legislative council are as follows:

1. It is a superfluous institution, useless, meaningless and therefore a huge burden on public exchequer.

2. Contrary to the argument in its favour, the upper house has not made any significant contribution as a revising or delaying chamber.
3. Through its discussions it usually debates or repeats what has already been said in the lower house.

4. It has no power to vote demands for grants or to amend money bills and certain categories of financial bills.

5. It provides back door entry to the candidates defeated in the assembly elections which is not good for the parliamentary democracy.

6. Large numbers of states, besides the five, have chosen to be without the upper house, and have never encountered shortage of wisdom which it is supposed to be having in abundance. In fact, states without the legislative councils are performing as effectively as the ones which have the upper chamber. This suggests that things can move on without it and therefore it is not needed.

The Constitution Assembly, which made India's constitution, had also debated whether the states should have an upper house. Some favoured the idea but a good many people opposed it tooth and nail. "H.V. Kamath, for instance, admitted that an upper house at the centre was acceptable, but in provinces such houses were 'pernicious' and 'vicious'. Professor K.T. Shah also did not believe in the utility of bicameral legislature at least for the states. Renuka Ray felt that it was unnecessary to have a second chamber. O.V. Alageson was more caustic when he said that a second chamber was a sort of an old age pension. Biswanath Das from Orissa was also not in favour of a second chamber in the states. He was of the view that a chamber with indirectly elected members and nominated elements did not enjoy much prestige and influence."15

Composition of the Legislative Council: The legislative council is mainly composed of people who otherwise would not like to join active politics. "The total number of members in the legislative council of a state having such a council..."
shall not exceed one-third of the total number of members in the legislative assembly of that state. The total number of members in the legislative council shall in no case be less than forty, unless parliament by law otherwise provides. Of the total number of members of the legislative council of a state; (i) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the state as parliament may by law specify; (ii) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the state who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of such university; (iii) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the state not lower in standard than that of secondary school, as may be prescribed or under any law made by parliament; (iv) as nearly as may be, one-third shall be elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly; and (v) the remainder shall be nominated by the governor from among persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

According to a law passed by the Indian Parliament the constituencies to elect the members of the legislative council have been so designed that all territories of the state are covered and thus get their representation in the upper house.

Qualifications and Terms: A person seeking the membership of the legislative council must be a citizen of India. His age has to be 30 years and he should also possess such other qualifications as may be prescribed by the Indian Parliament. The following can not be the members of the legislative council.
1. a member of the lower house of the state assembly. In fact a person cannot be a member of both the houses at the same time.

2. a person holding an office of profit under the union or the state government is not eligible to be a member of the legislative council.

3. a person who has been held guilty of election malpractices or of other crimes by a court of law is not eligible for being elected to the legislative council.

The term of the legislative council is six years. It is a permanent body and cannot be dissolved. To maintain its continuity elections are held periodically and the composition is such that one-third of its members retire every two years. For a meeting of the council to be legal the quorum is one-tenth of the total strength or ten member, whichever is greater.

Presiding Officer: The legislative council will have a chairman who presides over its proceedings. The members of the legislative council elect one from among themselves as chairman. There is also a deputy chairman who is elected by the members from among themselves. The deputy chairman presides over the proceedings of the council in the absence of the chairman. Both the chairman and his deputy can be voted out and removed from their office if the legislative council passes a resolution to that effect by a majority of the members present and voting.

Powers of the Legislative Council: The legislative council is not like the Rajya Sabha, the upper house of Indian Parliament. In fact it is a subordinate component of the state legislature. As far as its powers are concerned, it has been designed to play only an advisory role. A money bill can never be introduced in the legislative council; other bills, however, can originate in it. As far as legislative matters are concerned, the legislative council only has the delaying
power. That it can withhold legislative bill for a maximum period of four months. It
does not have any absolute power over financial matters. A money bill can be
introduced only in the state legislative assembly. The legislative council can
withhold it only for 14 days. There is no provision for a joint sitting of the two
houses of the state assembly to resolve a deadlock between them, over
legislative matters if any. In every respect the state assembly is superior to the
legislative council.

This is the reason that many people in India feel that there is no need to continue
with a body whose performance has been poor. The poor performance is
because of its composition. Some of its members are elected on the basis of
their functions, some are elected indirectly by the legislative assembly and some
are nominated by the governor of the state.\textsuperscript{17} Such a hotch-potch body can
hardly be expected to perform well. In fact some people have studied the working
and performance of the legislative councils, and have come out with the
conclusion that these are dismal\textsuperscript{18} hence deserved to be abolished.

\textbf{State Legislative Assembly}

It is in fact the legislative assembly that matters as it is the most powerful body.
This is the reason that most Indian states or provinces have opted for it only.
Even some states which had a legislative council have preferred to abolish it.

Under the Indian constitution each Indian state should have a legislative
assembly. According to the constitution a legislative assembly can not have more
than 500 members. The members of the legislative assembly are directly elected
from the territorial constituencies in the state. The constituencies are demarcated
in a way that they cover the entire state in a proportionate manner, so that the
ratio between the population of each constituency and the number of seats
allotted to it, as far as practicable, be the same throughout the state. Moreover,
the constituencies are recast at the end of each decennial census, and its purpose is to make necessary adjustments to meet the variation in population.

Every five years there is a universal adult franchise to elect the members of the legislative assembly. Constitutionally caste, religion and creed have no consideration as members are not supposed to be representing them. But practically such factors are important and these play a role during the elections.

It should be mentioned here that some castes have been historically backward, hence some seats have been reserved for them. These are scheduled castes and scheduled tribes for whom some constituencies are demarcated in every state from where only a scheduled caste or scheduled tribe's member can contest elections. Besides these two weaker groups there is the Anglo-Indian community for which seats have been reserved. This has been done keeping in mind their very thin and small population. The governor, when he feels that the Anglo-Indian community has not enough representation in the assembly, he can nominate a fixed number to ensure their presence in the assembly. At present the nomination of this community in the state assemblies is as follows: two each in Karnataka and West Bengal, and one each in Andhra Pradesh, Kerala, Madhya Pradesh, Maharashtra and U.P.

The legislative assembly of a state has a five-year term if it is completed. The term starts from the date on which the first meeting of the assembly is held. The term of the assembly will be shortened if it is dissolved. If emergency is proclaimed in a state, the five-year term of the assembly may be extended by a law of Parliament for a period not exceeding one year at a time, and not extending in any case beyond a period of six months after the proclamation of emergency has been terminated.

Qualifications and Salaries: In order to be qualified for becoming a member of the state legislature a person, first and foremost, must be a citizen of India. He has then
to make and subscribe before same person authorized in that behalf by the
election commission an oath or affirmation according to the form set out for the
purpose. Moreover, he has to be 25 years old. He also has to fulfil any conditions
which the Parliament may prescribe by passing a law.

Once elected to the state legislature, the members become entitled to get such
salaries and allowances as may be determined by the state legislature. The
legislature is empowered to review and change the salaries and allowances of its
members from time to time. While a member of the state legislature, he can not
hold another office of profit either in the state or in the centre.

It has been provided in the Indian constitution that the state assembly will meet at
least twice a year. There is no bar on maximum number of sittings. The interval
between the two sessions of the assembly should always be more than six
months. The quorum of the assembly to meet and transact business is one-tenth
of the total membership of the house, but not less than that in any case.

Functions and Powers of the State Assembly

The assembly is the most important legislative body in a state. The council of
ministers is responsible before it. Therefore the assembly enjoys a good deal of
powers and performs some very important functions which are as follows:

1. The assembly is empowered to make law on any subject provided in the
State List. It is also empowered to make laws on subjects of the Concurrent
List provided it does not conflict with a law made by the Indian Parliament.

2. It exercises control over the council of ministers. The members of the
assembly are entitled to ask any questions from all the ministers including
the chief minister. They are also entitled to introduce resolutions or motions
and equally empowered to pass a vote of censure to dismiss the
government of the day. The council of ministers headed by the chief minister is collectively responsible before the assembly. If the assembly passes a no-confidence motion against the ministry, it will cease to exist.

3. The assembly has the right to control the finances of the state. A money bill can be originated only in the state assembly. Sure, it refers the money bill to the legislative council which can withhold it only for a period of 14 days, and if it fails to return the money bill in 14 days to the state assembly, it will be taken as passed. Moreover, no tax can be imposed or withdrawn without the approval of the assembly. "The assembly may pass, reject the demands or reduce their amount implying adoption or rejection of the budget and thereby victory or defeat of the government."19

4. It has constituent powers too. According to Article 368 of the Indian constitution, a bill of constitutional amendment first passed by the Parliament shall be referred to the states for ratification. It is here that the assembly has its role to play. It can give its verdict by passing a resolution by simple majority showing approval or disapproval of the said bill. It is also provided that the President of the country shall refer to the assembly of the concerned state a bill seeking alteration in its boundaries or its reorganization in a way so as to increase or decrease its territory for eliciting its opinions and views in this regard before he recommends that such a bill be introduced in the Parliament.20

5. It is empowered to elect its speaker and deputy speaker and can remove them by passing a vote of no-confidence against them.

6. It takes part in the election of the President of the country. Also it ponders over reports which various independent agencies and departments such as State Public Service Commission, Auditor-General and others submit to it.
The legislative council, compared to the legislative assembly, is surely inferior and can not equal the status that the upper house of the Parliament enjoys. Except in the case of money bills, the Rajya Sabha, the upper house of Indian Parliament, has co-equal powers with the lower house of the Parliament in all legislative matters. If there arises an irreconcilable dispute between the Rajya Sabha and the Lok Sabha, the lower house of the Indian Parliament, a joint meeting of the two houses is convened to solve the problem. On the contrary there is no such provision to resolve a deadlock between the legislative council and the legislative assembly. In fact, the functions of the legislative council are of advisory nature only. During the Constituent Assembly’s debates on the subject, Dr. Ambedkar pointed out emphatically that the provisions adopted by the constitution of India to resolve a dispute between the two houses of the state legislature were based on the provisions of the British Parliament Act of 1911 whereby a bill can only be referred twice by the assembly to the council. The council will have only four alternatives after receiving the bill from the assembly:

1. It may reject the bill.
2. It may amend it.
3. It may take no action on it, but after a lapse of three months, the bill will be deemed as rejected specially if the council does not inform the assembly as to what action it has taken.
4. It may pass the bill as sent by the assembly.

In the first three cases the assembly considers the bill for a second time. While reconsidering the bill the assembly has the right to accept or reject the suggestions made by the council and pass the bill and sends it to the council for a second time which can adopt any of the three alternatives except that this time it can not withhold the bill for more than a month. Thereafter the assembly will follow the same procedure that it had adopted for the first time. It will pass the bill
again and it will become effective even without the consent of the legislative council. Because there is no provision to send a bill to the council for a third time. It is clear that not only in the case of a money bill but also in the matter of other bills the state assembly is superior to the legislative council.

The Speaker and Deputy Speaker

Like the Indian Parliament, the state assemblies too are required to have a speaker as well as a deputy speaker. After the assemblies are convened after the general elections, their first task is to elect a speaker. If it is not possible to elect a permanent speaker in the very first meeting, a senior member is temporarily elected as speaker who runs the house till his services are required. Along with the speaker, there is also a deputy speaker who presides over the proceedings of the assembly in the absence of the speaker. Both the speaker and deputy speaker must be a member of the assembly, and if their membership ends because of any reason, they have to vacate their office by resigning their posts. Otherwise also they can resign, if they so desire. The speaker will address his resignation letter to the deputy speaker and the later to the former whenever they decide to resign. Both the speaker and deputy speaker can also be removed from their offices if the assembly passes a resolution to that effect by a majority of the members present and voting. However, no resolution for removing the speaker or the deputy speaker can be moved unless at least 14 days notice is given stating therein the intention of introducing such a resolution in the assembly. While motion for the removal of the speaker or his deputy is being considered by the assembly, the concerned presiding officer will not preside over its proceedings, even if he is present in the house.

Both the presiding officers are paid monthly salary and allowances which are decided by the state legislature by law. The main characteristics that both the speaker and the deputy speakers are expected to possess are dignity or self-respect, independence of mind and impartiality. It has been rightly remarked that
whereas the legislature is the pivot of the democratic system of government, the speaker is the pivot of the parliamentary machinery. The high office of the speaker has many powers so that he runs the house properly and maintains order during discussions in it. He is also required to enforce the rules of procedure, to control disorder and to take disciplinary action against a member creating disorder in the house.

The speaker is expected to rise above the party line and keep himself away from the state politics so that he is able to command the respect of all the groups and parties. Unfortunately most speakers have not been like this practically, as they have seen acting in a partisan manner. A very good example was established when N. Sanjeeva Reddy resigned from the party to which he belonged, after he was elected speaker of the Lok Sabha. His opinion was that this way he would discharge his duties with complete impartiality which should be the hallmark of a speaker. The appreciable example set by Mr. Reddy has, however, not been followed by any speaker, whether of parliament or of a state legislature. Instead there are examples of speakers who resigned from their post in order to become a minister. Such people, who have ministerial ambitions, can not be expected to be impartial. There are so many instances of speakers who presided over the proceedings of their houses in a blatantly partisan way and as a result delivered faulty judgements or gave flawed rulings which could not stand the scrutiny of the court and were declared null and void.

Limitations of the State Legislature

Under the constitution the state legislatures have a certain residue of authority in what may be called their “area of sovereignty”. This is true as far as theory is concerned. However, practically they are not that independent as there are many restrictions on their powers which make them subservient to the will of the Indian Parliament. These restrictions are as follows:
1. State legislatures can neither legislate on an item of the Union List nor a residuary subject.

2. Though it can enact laws on a subject mentioned in the Concurrent List, the constitution has made it clear that in case of a conflict between the state law and the law passed by the parliament on a subject mentioned in the Concurrent List, it is the law of the Parliament which shall prevail and to the extent the state law violates it, will be considered unconstitutional.

3. It has been provided under Article 249 of the constitution that the Rajya Sabha may pass a special resolution by a two-third majority of members present and voting, to transfer any item from the State List to the Union or Concurrent Lists for a period of one year on the plea that doing so is expedient as well as in the national interest.

4. Some bills passed by the state legislature can be reserved by the governor for the consideration of the President. Likewise the bills dealing with compulsory acquisition of private property, being derogatory to the powers of the High Court, or seeking imposition of tax on a commodity declared "essential" by an act of Parliament, or any other bill likely to be in conflict with some Union law already in force fall within this category. That they may be reserved by the governor for the consideration of the President.

5. Understandably the state legislatures have no authority to override the veto of the President of India.

6. Some kinds of bills can not be even introduced in the assembly without the prior permission of the President. Bills seeking to impose restrictions on trade, commerce or intercourse with other states or within the state, need President's nod before being introduced in the state assembly.
7. Under the constitution the President is authorized to proclaim emergency in the country without consulting the states. Also, when the country is in a state of emergency, the parliament is empowered to make laws even on subjects included in the State List.

In view of the above facts, it would be appropriate to conclude that “the position of the state legislatures, in practical terms, is like that of a local and vassal parliament working under the over-lordship of the Parliament of India.”

**Member of Legislative Assembly: His Role and Status**

The member of a legislative assembly (MLA) is an important component in India’s political life. He is very much attached with the masses, specially the rural people who still constitute the bulk of India. He has to occupy a position of increasing importance, for it is the state assembly rather than the national parliament which is closer to the people, specially the ones living in rural areas. Similarly the elections of assemblies are examined more critically in the states than the general elections for parliament. A parliamentary constituency is quite big, and for a member of parliament it is difficult to be in close touch with all his electorates. Moreover, he spends considerable time in Delhi. In comparison an MLA’s constituency is small, he is, in most cases a locally born leader, grounded in grassroots politics and therefore he knows the people and lives among them more than a member of parliament. It is because of this that the masses make their contact with the elites and also with the bureaucracy mostly through their MLAs. It is often seen that more than a member of parliament, it is the local MLA who is highly astute politically and more adept in local politics. Barring a few charismatic leaders most others depend upon MLAs for their election to parliament. Further the MLA is mostly available to the people through him they get their works done or approach the local civil servants for meeting their demands or redressing their grievances. F.G. Bailey has conducted a very good
study of Orissa in which he has described the growing importance of an MLA in the following words:

The MLA is not the representative of a party with a policy which commands itself to them, not even a representative who will watch over their interests when policies are being framed, but rather a man who will intervene in the implementation of policy and in the ordinary day to day administration. He is there to divert the benefits in the direction of his constituents, to help individuals to get what they want out of administration, and to give them hand when they get into trouble with officials.  

Immediately after independence, the people were not politically mature and did not know who will represent them in the best possible way. As a result they elected people who did not know their problems well, and rarely identified themselves with them. In fact, culturally and educationally they belonged to the class of the elites with whom the common masses had hardly any thing in common. For example in Tamil Nadu, the first assembly was dominated by highly educated, westernized, English speaking elite, middle class lawyers, land lords and a variety of hereditary notables. But later on the situation changed, not only in Tamil Nadu but also all over India as the state politics increasingly came under the dominance of the rural people. As a result, more and more traditional and less-educated people, instead of the English-speaking elite, began to make it to the state legislatures, and today it is they who dominate the political scene in the states. These MLAs, less-educated but closely associated with the masses living in rural areas and small towns, have also come to dominate the ministries. This has increased the importance of bureaucracy as these leaders mostly depend on its professional skills to move things in the right direction. Sure it has increased corruption as well. But it is a fact which can not be ignored.
And it is also a fact, as explained above, that today's MLA has strong ties with his constituency and it is through him that localism has come to dominate the political scene in the states. Being tied more with his people, the MLA always influences, even the day to day matters in the lives of the people he represents. Forrester has rightly remarked:

The average MLA comes into his own not on the floor of the assembly but in helping his constituents to get places in colleges, permits, licenses, and jobs. It is this kind of work that occupies most of his time and this is what pays the greatest electoral dividends.24

The phenomenon of rural dominance is no longer confined to the state legislatures and state politics; it has rather reached the Indian parliament in Delhi as well. Surely it does not yet dominate the political scene in Delhi but a powerful presence of leaders of rural background can be easily felt everywhere. Even the most educated leaders are increasingly being compelled to try to comprehend what the masses of India want from them. In fact many leaders of humble background have reached parliament after having received good political and parliamentary training in the assemblies. Many more such leaders will surely get elected to the parliament. It does not require a great deal of intelligence to understand or know that these leaders are the politicians who are very different from the western-educated elite which has dominated India's political life until today25 but its future can not be ensured.

In the final assessment the state legislatures, despite many limitations, have been able to achieve many things. There is no denying the fact that these legislatures have many drawbacks. But some of these drawbacks have been caused by some constitutional provisions. In many states the governors have acted more as an agent of the centre than executive head of the state. Therefore they reserved a great deal of bills passed by the assemblies for the consideration of the President of India. A great majority of such "reserved bills" are returned to
the assembly as they were passed. The assemblies, therefore, cannot be faulted for something which is constitutionally beyond their control.

But there are weaknesses and shortcomings for which the state assemblies have to blame themselves. It has been witnessed time and again that large numbers of MLAs often abstain from the house causing the closure of proceedings of the house due to shortage of quorum. The MLAs also often indulge in unruly activities, and sadly the incidences of indiscipline are on the rise. Along with these the defection politics has brought a bad name to the state assemblies and politics.

However, it must be accepted that despite many shortcomings the state legislatures have an admirable record of achievements to their credit. But they also have many challenges ahead and their future, good or bad, reputation will depend on how they cope with them.

The State High Courts

Judiciary is the third pillar of the federal democracy that India claims to be. The Indian constitution provides for an integrated judicial system. On the top is the Supreme Court whose decisions are applicable all over the country. Then there is the High Court which every Indian state has, and the state is the area over which the High Court has its jurisdiction.

A High Court is composed of a Chief Justice and some judges whose number has not been specified by the constitution. It is the President who determines the number of High Court judges from time to time. It is also the President who appoints the judges including the Chief Justice. While appointing the judges the President consults the Chief Justice of India, the governor of the state concerned and also the Chief Justice of its High Court, specially when he makes the appointment of other judges. And in the appointment of the Chief Justice of a
High Court the President consults only the Chief Justice of India and the governor of the concerned state. It should be clarified here that the President's consultation with the Chief Justice does not mean to consult the Chief Justice only. In fact, the Chief Justice of India (CJI) is one among other judges in appointing colleagues. And “for appointment in the High Courts there is a collegium which consists of the CJI and his two senior most colleagues. This collegium will elicit the opinion of the Chief Justice of the High Court and those of the Supreme Court judges who are conversant with the affairs of the concerned High Court.

Qualifications of Judges: Only a citizen of India can qualify to be appointed as a judge of a High Court. Besides, he should have either held for at least ten years a judicial office in the territory of India or should have for at least ten years been an advocate of a High Court in any state of the country. While considering the ten year period for the purpose of appointing a High Court judge, experience as an advocate can be combined with that of a judicial officer. The whole exercise is aimed at getting the best judicial talents available in India.

Oath: Before entering upon his office, every judge is required to take an oath in the prescribed form before the governor of the concerned state or before some one whom the governor has authorized or appointed for this very purpose.

Salary and Allowances: The judges of the state High Courts are entitled to get their monthly salaries regularly. Besides, they are also entitled to such allowances as free residence, car, medical assistance etc. The salary and amenities enjoyed by the judges can not be modified in a way that brings disadvantage to them, while they are in office. Their salaries can be reduced or amenities withdrawn only by the President if financial emergency has been proclaimed in the country. The expenses of maintaining the High Courts and the salaries of the judges are charged to the Consolidated Fund of the state, and as
such these are not subject to the vote of the state assembly, except that it may only discuss them.

As per norms the judges get monthly pension after their retirement from services which is paid to them from the Consolidated Fund of India. It is the Parliament that decides such rights of judges as leaves etc.

Tenure of a High Court Judge: In this regard the rules are, more or less, similar to other employees of the central government. The age of superannuation is 62 years. However, a judge, like other employees, can resign his post by writing directly to the President. There is also a provision in the constitution to remove a judge from his office if he is found guilty of misbehaviour and incapacity. The procedure is as follows: The President will remove a judge of the High Court if both the houses of parliament pass a resolution to that effect by a two-third majority of the members present in each house which should also be the majority of the total membership of the house. The President and the parliament will take this drastic step only after proved misbehaviour and incapacity of a judge.

A permanent judge of the High Court is not authorized even after his retirement to plead or act in any court or before any authority in India expected in the Supreme Court and other High Courts.

Transfer of Judges: Under Article 222 of the Indian constitution the President of the country is empowered to transfer a judge to another High Court. While doing so, the President will consult the Chief Justice of India. A judge is entitled to compensatory allowance in addition to his salary if he is transferred. The compensatory allowance is determined by the Parliament or may be done so by an ordinance of the President.

Additional and Acting Judges: The President of India is empowered to appoint a judge of a High Court to be a judge of the Supreme Court of India. He can also
appoint an acting Chief Justice of a High Court from among the judges of the court. If the President forms the opinion that the number of judges in a particular High Court is not enough to cope with the increasing number of cases, he may appoint additional judges for a period not exceeding two years. An additional judge can not serve beyond the age of 62 years.

Jurisdiction of High Courts

The High Courts were in existence when the constitution of India was being framed. Not only they existed but also they had their well-defined jurisdictions. Compared to the High Courts, the Constituent Assembly paid more attention to the Supreme Court which it was trying to create. The Constituent Assembly perhaps felt that the High Courts already had their by-laws while the new institution, the Supreme Court, which was being created, was in need of everything from its jurisdiction to the by-laws. Thus, the constitution of India did not make any special provision relating to the jurisdiction of the High Courts, which, however, it did not the case of the Supreme Court of India. It means the jurisdiction of the High Courts remains what it was at the time of the commencement of the Indian Constitution. Their civil and criminal jurisdictions are mainly by the two codes of civil and criminal procedure. Today the jurisdiction of a High Court or the powers it enjoys are as follows:

1. Original Jurisdiction: The High Courts based in the Presidency towns, namely, Madras, (Chennai), Bombay (Mumbai), and Calcutta (Kolkata), had an original jurisdiction, both civil and criminal, over cases arising within the three cities. The Criminal Procedure Code, 1973 has now replaced the original criminal jurisdiction of the High Courts. However, the original civil jurisdiction has been retained by the Courts in respect of actions of higher value.

2. Appellate Jurisdiction: The appellate jurisdiction of the High Courts is both civil and criminal. Let us first explain the civil jurisdiction. An appeal to the High
Court is either a first appeal or a second appeal. Appeals against the decisions of the District Judges and against those of Subordinate Judges in a case of higher value, has to be directly made to the High Court. And an appeal against the judgment of any subordinate court which involves questions of facts as well as law, is a second appeal and has to be made to the High Court.

The criminal appellate jurisdiction of the High Court extends to appeals against the decisions of a Session Judge or an Additional Sessions Judge, where the sentence of imprisonment exceeds seven years and against the decisions of an Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases.

3. Power of Superintendence: Under the Indian Constitution (Article 277) every High Court has the power to superintend over all courts and tribunals, except those dealing specifically with the armed forces functioning with its territorial jurisdiction. In this regard the High Court will have the following powers:

1. to call for returns from such courts as mentioned above;

2. to make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

3. to prescribe form in which book entries and accounts will be kept by the officers of any such courts as mentioned above.

There was some ambiguity regarding the superintendence of the High Court over some tribunals. The Supreme Court's intervention was sought in the matter which declared that all kinds of tribunal including the election tribunals which are operating in a state will be subject to the superintendence of the concerned High Court. If further clarified that this "superintendence is both judicial and administrative".
4. Control over Subordinate Courts: The High Court of a state has administrative control over the subordinate courts in the state, beside the appellate and supervisory jurisdiction over them. A High Court is empowered to transfer constitutional cases from the lower courts. That if the High Court feels that a particular case would require the interpretation of law and the constitution, it can transfer that case to itself and after determining the constitutional question or issues, may send the case back to the court where from it was initially withdrawn.

5. The Writ Jurisdiction of High Courts: "Every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including the government within those territories, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for enforcement of the fundamental rights guaranteed by the constitution, and for any other purposes (Article 226). The power may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercises of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories. Thus, according to Article 32(2) of the constitution both the Supreme Court and the High Courts have concurrent powers to issue such orders." Another important provision is that the High Courts can issue directions, orders or writs including writs in the nature of the prerogative writs for any other purpose for which they could applied for under the law. It may be noted that before the enforcement of the present constitution only the High Courts of Calcutta, Bombay and Madras had the power to issue writs of prohibition, certiorari and quo warranto and an order in the nature of mandamus, and that only within the limits of their original jurisdiction. But now all High Courts can do all these both for the enforcement of fundamental rights as well as for other purposes throughout the territories in the state. The Supreme Court's following decision is relevant in this respect:
The constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the state, including the government, acts *bonafide* and within the limits of its power and we consider that when a court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the court to offer justice to the individual. 27

It must be stated here that the Supreme Court has come to the rescue of the individual citizens who often felt harassed by the arbitrariness of the state and its authorities. B.L. Fadia's following remarks are appropriate here:

In view of the state entry into the economic and industrial field, ever increasing controls in various sectors, the establishment of an increasing number of administrative tribunals, and due to a phenomenal increase in litigation between the state and the citizen, this jurisdiction has been very useful to secure prompt relief and justice to the citizen. In fact, the process of judicial review has exercised a tremendous educative and awakening influence on the minds of the people. The exercise of this jurisdiction for 'other purposes' has proved to be very useful and effective in maintaining and strengthening rule of law and has, in fact, proved an effective safeguard against the abuse of power by the executive, statutory authorities, administrative tribunals and officers, a safeguard which is absolutely necessary when the functions of a welfare state are increasing every day involving grant of additional powers to the executive and creating a number of administrative tribunals and when the impact of government and laws on the lives of the citizens is all pervasive and ever-increasing. In fact, a good deal of litigation in High Courts is under this Article and it has been successfully invoked under various situations and contexts. 28
6. Power of Appointment: The Chief Justice of the High Court has the power to appoint officers and servants of the court. In this regard, the governor of the state may require him or the court to consult the State Public Service Commission. The governor would also consult along with the State Public Service Commission, in the appointment, posting, and promotion of district judges and also in appointing person to the judicial service of the state. The Chief Justice of the High Court also has the power to regulate service conditions of the staff subject to any law made by the state legislature in this respect. The Chief Justice of the High Court has the right to dismiss a staff of the court, as he has right to appoint him. He also has the power to promote, post and grant leave to the employees of the High Court. Under the constitution he can charge all the administrative expenses of the High Court to the Consolidated Fund of the State.

In mid 1980s, the parliament passed what is known as the Administrative Tribunals Act, 1985. The express intention was to implement Article 323A. Thereafter the central government has established the Central Administrative Tribunals under this Act which decide matters relating to services under the Union government. Now all courts of law, including the High Courts, have ceased to have any jurisdiction or authority to entertain any litigation regarding service matters of the employees of the central government. But under Article 136 the Supreme Court will still have appellate jurisdiction of appeals against these tribunals.

Position of High Courts

From the above discussion on the jurisdiction and powers of the High Courts, it is quite clear that these have enough power and freedom to dispense justice to the people who seek it. Moreover, they also have the power and independence to prevent both the executive and the legislature from interfering unduly in daily routine life of the citizens. Like the Supreme Courts the High Courts are also the
courts of record and as such have the power to award punishment to those who are held guilty of contempt of court. This is a great deterrence against the officers who often commit injustice against the common people.

The decisions of the High Courts are binding and can not be challenged in a lower court. "As the judiciary has a vital role in the working of the constitution and in the maintenance of the balance between authority and liberty and as a safeguard against the abuse of power by the executive, its independence is secured by permanence of tenure and the conditions of service of the judges. It will be noted that the salaries of the judges and of the staff of the High Court are charged on the Consolidated Fund of the States". 30

There is no denying the fact that the judiciary in India has by and large fared well in India. Much of the credit will surely go to the Supreme Court. Nevertheless the role of the High Courts has also been immense and can not be overlooked. One must give the credit to the High Courts that they deserve. But there are many people in India, including those who are relatively satisfied with the performance of their High Courts, who feel that these are not free from shortcomings. They think there are certain inherent defects because of which the permanence of these courts has not been upto mark. These defects are as follows:

1. Securing justice is a prolonged process and, therefore, it is relatively very costly, almost beyond the reach of an average common man in India. As large numbers of people can not afford to bear the expenses of court's fees, lawyer's fee and other such charges they bear in silence the atrocities of the executive instead of approaching the courts for redressal. Further, the administration of justice is so slow and dilatory that the person taking a case to the court has to wait for years together before he can expect the delivery of a favourable judgment. This deters many a people from approaching the court, even if they are sure about the genuineness
of their case and are also sure that ultimately they will get justice from the court.

2. The court's rules and procedures are quite complex which the ordinarily educated people find difficult to understand. As a result they have to depend either on a lawyer or a highly experienced litigant to file cases. This makes the justice costly for the common people.

3. The constitution provides for the appointment of judges of the High Courts purely on the basis of merits in which the executive should not interfere. Ideally this should have been the practice. But in independent India, like many other provisions of the constitution, this one has also suffered, and the executive has some times been able to influence the appointments of the judges of the High Courts. The executive interference started immediately after independence. But the good thing in India is that there always arise reformers and warners along with the wrong-doers. As early as in 1954 M.C. Setalvad, the then Chairman of the Law Commission, is reported to have observed the following "... appointments in the past had not been satisfactory because of executive interference with the recommendation made by the Chief Justice of the State". If the state ministry continues to have a powerful voice in the matter, in my opinion, in ten years time or so, when the last of the judges appointed under the old system will have disappeared, the independence of the judiciary will disappear and High Courts will be filled with judges who owe their appointments to politicians. 

4. The Constitution of India has banned the judges of the High Courts from holding any government office even after their retirement. But this directive has not been followed all the time. There are instances of retired High Court judges who have been appointed as governors, ambassadors,
ministers and vice-chancellors. This explains the nexus between the judges and the politicians.

5. The salaries of the High Courts and the perks and allowances they get are not lucrative and as such fail to attract the best legal talents. Many good lawyers, whose practice is quite rewarding, decline to be a judge of the High Court. As a result the judiciary at the High Court level has been suffering from the dearth of talents.

6. The biggest problem facing the High Courts is that they have not been able to dispose off cases on time because of which these have been constantly piling up. On December 31, 2000 there are 3.4 million cases pending before the High Courts in the various states. The most disappointing thing is that there seems to be no possibility of the arrears getting reduced. It appears as the country has reconciled with this discouraging scenario.

Misuse of Transfer Clause

Besides the above defects in the judiciary at the level of the High Courts, what has harmed the judiciary the most is the executive interference in transferring the judges. The executive in India is addicted to finding unique ways of maintaining its stranglehold on the country, and it has not spared even the judiciary.

In May 1949, while participating in the Constituent Assembly debates, Pandit Jawaharlal Nehru had remarked that the judges should be first rate men of the highest integrity who could stand up against the executive government and whoever may come in their way. There indeed have been such men of high integrity in the Indian judiciary but the executive has been finding ways to get rid of them. It has been witnessed time and again that the executive gets those judges transferred to other High Courts whom it finds inconvenient or who stand
their ground against it. Some times such men of integrity are transferred on such ‘lofty’ grounds as furthering national integration. Palkhivala was to the point when he commented on this “noble practice of transfer for a noble cause”: “In reality, the policy of transfer of judges is calculated to accomplish disintegration of judicial independence rather than national integration.” Similar sentiments or remarks were passed by Justice Chandrachud while dealing with a transfer case that happened during the infamous emergency imposed in mid 1970s: “There are numerous other ways of achieving national integration more effectively than by transferring High Court judges from one High Court to another... Considering the great inconvenience, hardship and possibly a slur which a transfer from one High Court to another involves, the better view would be to leave the judges untouched and take other measures to achieve that purpose.”

But the concern and warnings of the legal luminaries of India do not seem to have had any effect on the executive as they continue playing their game with the judiciary. The executive interference has mainly occurred in the forms of appointments and transfers. The inconvenient judges are transferred and new appointments are delayed till a suitable person is found.

The Union government of India has its own excuse why the appointments get normally delayed. It says that the main reason of the delay in appointing judges on vacant posts in the High Courts is the unusually long time that the chief ministers of various states take to send the recommendations that they are required to do in consultation with the concerned governors to the Government of India on the proposals they receive from the Chief Justice of the High Courts. On the contrary some state governments have alleged that the names sent by them after unanimous approval of the Chief Justice, the governor and the chief minister were/are not approved by the central government from one to two years. The blame game may continue unhindered but the net result will be the loss of judiciary which is bound to affect the common people. Their desire to get cheap and speedy justice will remain a dream and cases in the High Courts will
continue to pile up so much so that all hopes of their disposal will be lost for ever. Many concerned quarters in India feel that the main reason for piling up of the cases in the High Courts is the delay in filling up the vacancies of judges there in. Sometimes these vacancies are not filled up for four years. This kind of inordinate delays have become a matter of serious concern. The Sarkaria Commission, which was set up to study the centre-state relationship, has also touched on the subject under discussion. Its suggestion is to amend Article 217. In fact, it has suggested what should be inserted in Article 217 through an amendments. It is as follows:

The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (i) of the Article, and in order to ensure that vacancies in the posts of judges of the High Courts are promptly filled in, these rules may prescribe a time-schedule within which the various functionaries having consultative role in the appointment of judges under this Article, shall complete their part of the process. 

To sum up the long discussion on provincial governance in India, it may be said that by and large it has worked well. It has its failings which people are quick to note and highlight. However, the success of the provincial governance can be assessed by the fact that for about sixty years this system has not only survived but has in fact served the people. Its greatest achievement, according to many Indian authors and commentators is that it has taken democracy to the people which, in turn, has given the common man an opportunity to participate in the processes of decisions which affect his life and destiny in one or another way.

Theoretically, too, India's system of provincial governance seems to be quite healthy and sound. There exists the possible, if not the required or ideal, balance in the divisions of powers and authority between three vital organs of the state: the executive, the judiciary and the legislature. Above all there also seems to be a visible trend in favour of federal governance. Right, at present the Central
Government is very powerful and a state government can not ignore it but only to its own peril. The good sign or the ray of hope, according to the Indian observers, is that there is growing realization that the federal structure of the country's governance needs to be strengthened, and herein lies the hope.

Notes & References


10. Fadia, B.L., op. cit., p. 518.


15. Fadia, B.L., op. cit., p. 539.


27. As quoted in Fadia, B.L., op. cit., pp. 555-556.


