CHAPTER - IV

GOVERNOR AS HEAD OF THE STATE

The institution of crucial importance, on whose soundness and integrity the autonomy of the State and the soundness of Centre-State relations depends, is the Governor of the State. He occupies a pivotal position in the federal system of India. A federal structure was intended to preserve a union of autonomous States without jeopardising the unity of the nation. The Constitution of India provides for a parliamentary system of government with a federal structure. The acceptance and adoption of the federal structure posed the problem of the status of the Governor, his role as an agent of the Central government and as a constitutional head of the State government.

Since the Fourth General Elections, there has been a radical change in the balance of power in the federal system. The emergence of coalition of politics gave rise to extreme fluidity in the State politics. In this situation, the Governor has to play an important role to settle constitutional issues. In other words, the principal role of the head of the State is to act as a communicator and balancer in the working of governmental structure. However, a necessary condition of his effective role-performance is that the style of his decision-making should reflect an adequate awareness of the principles of constitutional propriety. But recent happenings in the appointment of Chief Minister
and dismissal of ministers, convening, summoning and dissolving the Assembly show a complete deviation from the accepted principle. The manner in which the Governors have hitherto used the discretionary power is no less controversial.

**Discretionary Powers of the Governor**

There has been a lot of controversy regarding the actual position of the Governor of an Indian State. Under the Government of India Act, 1935, there were provisions relating to the 'discretionary powers' 'individual judgement' and 'special responsibilities' of the Governors. But the present Constitution has done away with all these because the makers wanted to establishing 'Responsible Government' in the States.

The exact constitutional position of the Governor figures prominently in deliberations of the Constituent Assembly. In a "Memorandum on the Principles of a Model Provision Constitution" prepared by the constitutional advisor,¹ it was provided that, "there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."² In a note appended there to B.N.Rau observed that while for the most part of the Governor would act on the advice of his ministers, there were certain functions which even a responsible Head

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had to exercise in his discretion, namely, the choice of the Prime
Minister (Now Chief Minister), the dissolution of the Legislature (in
certain events) and so on.  

The Memorandum prepared by the constitutional advisor was
discussed by the Provincial Constitution Committee, headed by Sardar
Vallabhbhai Patel, wherein divergent views were expressed about the
functions of the Governor. The final proposals of the Committee were
incorporated in its report entitled, ‘Memorandum on the Principle of
Model Provincial Constitution’, which envisaged the conferment of
“special responsibility” on the Governor besides discretionary powers.
Sardar Patel, who presented the report to the Constituent Assembly on
July 15, 1947 assured the members that vesting the Governor with
discretionary powers would in fact be no invasion on the ministerial
responsibility as it was not the intention of the Committee to confer on
the Governor any special powers in a situation involving a grave
menace to the peace and tranquility of a province. The Committee, in
settling this question, he maintained, “intended to convey that the

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3 Ibid., pp. 657-63.
4 Ibid., Clause 15(1) provided, “in the exercise of his special responsibilities, namely, the
prevention of any grave menace to the peace and tranquility of the province; Clause 15(2)
prescribed that in the discharge of his special responsibilities, “the Governor shall act in
his discretion.”
5 Ibid., Clause 9, in a Note appended to his Clause it was stated that for the most part, the
Governor will act on the advice but he is required to act in his discretion in the following
matters:
   a. The prevention of any grave menace to the peace and tranquility of the province or
any part thereof [Clause 15(2)],
   b. The summing and dissolving of the Provincial Legislature (Clause 20),
   c. The superintendence, direction and control of elections [Clause 22(2)], and
   d. The appointment of the chairman and members of the Provincial Public
Commission and of the Provincial Auditor-General (Part III).
Governor shall have only the authority to report to the Union President about the grave situation arising in the province which would involve a grave menace to the peace of the province. As regards to other discretionary powers of the Governor, he explained that the power of summoning and dissolving the State Legislature, "is a normal power which is given in every Constitution to a Governor, and therefore, there is nothing special about it. So far as the power of appointing the Chairman and members of the Public Service Commission and the Provincial Auditor-General was concerned, they were generally appointed on the recommendation of the Provincial Cabinet or Ministry. To sum up, Sardar Patel said, "therefore, when we analyse Clause 9, practically the only power left to the provincial Governor is the power to report to the Union President when a grave emergency arises threatening the pace and tranquility of the province and summoning and dissolving of the Province Legislature."7

On July 1947, the Constituent Assembly had accepted the principles of a model Provincial Constitution as framed by the Provincial Constitution Committee.8 These principles provided for the election of the Governor of every province on the basis of adult franchise; while the Governor to act normally on the advice of his Council of Ministers, he was to be required to act in his discretion in a number of matters. In this respect, the Committee broadly followed the

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7 Ibid.
8 Ibid., No. 2, Appendix, p. 596.
provisions of the Government of India, 1935. The safeguard against the abuse of discretionary powers by the Governor was the fact that he was to be elected by the people. In place of the Instrument of Instructions issued to the Governor under the Act of 1935, the Committee had proposed the introduction of a schedule that would outline the conventions of a responsible government. In short, in the first place of the Constitution-making, the framers have visualized for the Governor broadly a role similar to that provided under the Act of 1935 with the important difference that the Governor was to be elected by the people of the province on the basis of adult suffrage. Later on when the Governor’s position was defined to conform to the British pattern of a constitutional Head of the State, the Constituent Assembly decided to delete reference to special responsibilities and the list of discretionary functions.

When the mode of appointment of the Governor was under discussion in the Constituent Assembly. B.R. Ambedkar categorically stated that the Governor would not exercise any functions in his discretion and that according to the principles of the Constitution, which envisaged a parliamentary system of government, he would be required to act on the advice of his ministers. When Article 143 of the Draft Constitution (present Art. 163) was under consideration in the Constituent Assembly, H. V. Kamath moved an amendment seeking to

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9 Ibid.
10 Ibid., Vol. VIII, pp. 467-68.
delete the reference to the exercise of discretionary powers of the Governor. While speaking he said that Ambedkar's promise made it obvious that the Governors were bound to accept the advice of their ministers and that having created nominated Governors, it was wrong to invest him with discretionary powers. He added, 'no departure from the principle of constitutional government should favour except for reasons of emergency, and these discretionary powers must be done away with'.

Rohini Kumar Chaudhry drew pointed attention to B.R. Ambedkar's earlier statement that the Governor would merely be a symbol and, as such, he would be required to act on ministerial advice. But B.R. Ambedkar took a different stand this time. He maintained that "the retention of vesting the Governor with, certain discretionary power is in no sense contrary to, or in no sense a negation of responsible government". He cited the example of Canada and Australia and opposed Kamath's amendment. The Constituent Assembly supported B.R. Ambedkar and negatived the amendment.

It is, however, significant to note that when various Articles of the Draft Constitution which conferred discretionary powers on the Governor, came up for consideration, the Drafting Committee suggested an amendment seeking to deal with the provision that the Governor would act in his discretion, and the Constitution as finally adopted established complete responsibility in the States, except for the State of

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Assam where the Governor could act independent of his ministers in relation to certain tribal areas the administration of which was made a Union responsibility and the Governor was to act as the agent of the President. But no change was made in Article 143 and the reference to the Governor exercising certain functions in his discretion still remained. It seems that provision was allowed to remain in the final draft, not out of indifference, but because of a feeling on the part of fathers of the Constitution that a margin of general discretion was necessary for the Governor to insure that the Central government is given an opportunity of overseeing the functioning of the provincial government.\textsuperscript{14} It was obvious that the Governor's discretionary powers were more related to the needs of the Central government in its relation with the State government rather than restrict the obligation of the Governor to abide by the 'aid and advice' of the Constituent Assembly, a principle that was inherent in the Cabinet government which was assigned to the States.\textsuperscript{15}

However, Article 163 is still very much misunderstood and the opinions are sharply divided over the Clause "so far as ... in his discretion" of Article 163 of the Constitution, for the present, the Article does not specify the range of area where the Governor is required to act in his discretion. The Draft Constitution contained in the IV Schedule the "instructions" for regulating the discretionary

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powers of the Governor. In the Constituent Assembly these provisions were dropped not because the framers found them unnecessary in a federal set up but because they wanted these to be developed as the 'conventions' of the parliamentary democracy. T. T. Krishnamachari expressed the opinion that it would be "entirely unnecessary and superfluous to such discretion in the Constitution which really should arise out of conventions that grow up from time to time." Further, B.R. Ambedkar pointed out in this context that there was no functionary in our Constitution who could see that "this Instrument of Instructions is carried out faithfully by the Governor". Ambedkar, however, did not want that the Courts should be permitted to interfere in the working of legislature and the executive of our democracy. For him the instructions and conventions had "equal values".

The role of the Governor is identical to the President of India in the context with the Clause (1) of Article 163 where he is to act on the advice of the Council of Ministers. So far as his discretion is concerned, he has the marginal discretion with respect to the later part of the Article 163(1) of the Constitution. Moreover, it should be remembered that the 'marginal discretion' of the Governor cannot be exercised arbitrarily or capriciously because he is 'required by or under' the Constitution to exercise his discretion according to the well established norms of the parliamentary democracy. It is necessary to

17 Ibid., p. 115.
recall what Lord C.J. Mansfield said way back in 1770 the discretionary power should be exercised "according to rules of reason and justice, not according to private opinion – according to law and not humour".¹⁹

The Governor's discretion may be underlined into two parts. Firstly, the express discretion mentioned in the Constitution, i.e., the constitutional discretion. Secondly, the hidden discretion which is derived from exigencies of the political situation. In the former case the Governor is permitted under the Constitution to exercise his discretion, while in the latter case he exercises it on the existence of a political situation in the State. The Article 163(2) covers both the areas of discretion; but it does not extend the field of constitutional discretion, nor it allows the Governor to exercise his discretion at his will, he would exercise it only when he is "by" or "under this Constitution" required to act in his discretion.²⁰ Once the decision is taken in his discretion, it cannot be called in question.

Express Discretionary Functions

On several occasions the Courts have held that "all the powers exercisable by the Governor can be exercised on the advice of the ministers except in so far as the Constitution expressly or perhaps

necessary implication says that he can exercise those powers in his individual discretion.\(^{21}\)

There are some provisions in the Constitution which specifically provide the Governor to exercise his powers and functions independently of his Council of Ministers. These specific provisions which require the Governor to act in his discretion are Articles 239(2) and 9(2) and 18\(^{22}\) of the VI Schedule of the Constitution. Article 239(1) very clearly provides that if a Governor when appointed also as the administrator of an adjoining Union Territory, shall exercise his functions as such administrator independently of his Council of Ministers. Likewise, Para 9(2) of the VI Schedule also gives discretionary power to the Governor of Assam to determine the shares of royalties from licences or leases for prospecting or extracting minerals in an autonomous district to be made over to the District Council in a tribal area of that State. And the Governor's decision in his discretion shall be final.\(^{23}\)

In addition to this, Articles 371 and 371(A) which impose special responsibility on the Governors of Andhra Pradesh, Maharashtra, Gujarat and Nagaland for specific purposes,\(^{24}\) also come under this


\(^{22}\) Para 18 has been omitted by Section 71 of the North-Eastern Areas (Reorganisation) Act, 1971.

\(^{23}\) While expressing his experience the former Governor, Singh L.P. said, "During a period of about eight years when I was Governor of Assam and Megalaya, not a single dispute about royalty was referred to me, which shows how unimportant this discretionary power is", \textit{Guide, Philosopher and Friend, Governor Sage or Saboteur}, Roli Book International, New Delhi; 1985, p. 47.

\(^{24}\) For details see Articles 371, 371 (A) of the Constitution of India.
category. However, by imposing special responsibility on the Governor, these Articles 371 and 371 (A) authorise the President to give directions to the Governor to implement the specific purposes of these Articles and in case of non-compliance to take action under Article 365. Thus, we can draw an inference that the Constitution-makers provided expressly wherever they intended that the Governor should exercise his own discretion and except in these situations, the Governor should always act on the advice of his Council of Ministers.  

**Implied Discretionary Powers**

The Constitution also provides discretionary powers to the Governor, not directly but by necessary implications under certain situation, in which the Governor has to exercise his discretion. These situations are:

1. Appointment of the Chief Minister, Article 164(1),
2. Dismissal of Ministry, Article 164(2),
3. Dissolution of the State Legislative Assembly, Article 174(2)(b).
4. Reservation of a Bill for the consideration of the President Articles 200 and 201,
5. Promulgation of Ordinance, Article 231(1), and
6. Report to President, Article 356.

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In the sphere in which he is required by the Constitution exercises his direction, it is obvious that it is his discretion and not that of any other authority and, therefore, his discretion cannot be controlled or interfered with even by the Centre. This is why the Governor's independence in exercising his discretionary power is indispensable to a State's autonomy. Thus, there is no scope for making the Governor responsible to anyone for the exercise of his discretionary powers. The only rider over the Governor's discretionary power is the Constitution itself. While entering upon his office, the Governor is required to take an oath of office whereby he undertakes to preserve, protect and defend the Constitution (Article 159).

Appointment of the Chief Minister

Article 144 of the Draft Constitution, initially, provided power for the Governor to exercise his discretion in selection of the Council of Ministers. But, B.R. Ambedkar, Chairman of the Drafting Committee, moved an amendment to delete this Article because it was thought that granting such discretionary power to the Governor would serve no useful purpose, and after a long debate in the Council of Ministers this Clause was deleted. While replying to the critics of the Constitution, Ambedkar said, "I shall not, therefore, enter the merits of the Constitution. Because I feel, however, good a Constitution may be, it is sure to turn out bad because those who one called to work it, happens to be bad lot. However bad a Constitution may be, it may turn
out to be good if those who are called work it, happens to be a good lot.”

Thus, a Constitution alone is never a guarantee of good government, howsoever well framed and well phrased it may be. In fact, the real success of a Constitution, much depends on the quality of the people who happens to work it and less on the words used in it.

Article 164(1) of the Indian Constitution says, the Chief Minister shall be appointed by the Governor and other ministers shall be appointed by the Governor on the advice of the Chief Minister, and the ministers shall hold office during the pleasure of Governor.

Article 164(2): The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

Article 164(4): A minister who for any period of six consecutive months not a member of the Legislature of the State shall at the expiration of that period cease to be a minister.

Apparently, the words in Clause (1) of Article 164 give an unregulated power to the Governor to appoint any one as the Chief Minister and thus exercise of Governor’s pleasure under the Article cannot be fettered by any condition or restriction. Formally, it is the discretion of the Governor to exercise his personal judgement in

27 This has been held so by Calcutta High Court, See Mahabir Prasad vs. P.C. Ghose, Air, Cal., 196.
selecting the Chief Minister but not unconditional by an essential feature of the Parliamentary form of government, namely, the collective responsibility of the Council of Ministers to the State Assembly under Clause (a) of Article 164. Thus, only such a person can be appointed a Chief Minister who carries or can carry with him the majority of the Legislative Assembly. If the discretion in appointing a Chief Minister is exercised in such a way that the leader of the party or parties commanding majority in Legislative Assembly is not appointed as Chief Minister, the Governor would definitely by violating the spirit of the Constitution, if not, the letter of the Constitution. Furthermore, if a Chief Minister is appointed who does not command majority in the House then he is bound to fail in the House. Hence, it becomes clear that the Governor has no discretion in the appointment of Chief Minister in case when there is one party having absolute majority party to form the government. Once it is acceded that the Governor has discretion in this respect, he may even refuse to invite the leader commanding the majority in the Legislature on some pretext or the other.28

However, the Governor faces task when no single party or a combination of parties emerges from the election with a clear majority. Under such situation what should the Governor do? Under such a

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28 The Rajasthan Governor, Sampoomanand, went to the extent of ignoring the support of the independent MLAs while calculating the relative strength of the rival claimants and at last chose to invite the Congress which had no majority then. But to his ill luck the Congress leader declined to oblige the Governor when 93 Opposition MLAs paraded before the President of India in March, 1967.
situation, the onus for the next step with the immense responsibility going with it of setting up a precedent for good or evil, is squarely on him (Governor) under the Constitution, which other than laying down the modalities of the President's/Governor's election, prescribing the language of his oath, granting power of pardon, reprieve, remission, etc., and binding him to act in accordance with the advice of the Council of Ministers in the exercise of his functions, offers no specific or clear cut guidance. In one sense, it can be argued that the very impracticality of visualising the innumerable contingencies in a polyglot polity operating under a federal scheme with a unitary bias leading to the appointment of the Prime Minister/Chief Minister or installation of the government had weighed on the founding fathers in leaving a blank for the President/Governor to fill by exercising his best and non-partisan judgement. But the actions of the Governors in recent past belied the expectations of the found fathers. Following are the few cases in point.

**Madras 1952**

The first and in some ways the most interesting instance of Governor acting wrongly on his own, even against the wishes of the Prime Minister, is the installation of the Rajagopalachari Ministry by Governor Sri Prakash in Madras in 1952. After the General Election, the opposition parties, which had contested the elections separately,

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however, formed a United Front under the leadership of T. Prakasham, with a combined strength of 166 members and advanced their claim to be invited to form the government. The Congress party was in a minority as a result of the General Election and Jawaharlal Nehru recommended the democratic procedure of allowing the other parties, if they could muster a majority, to form a ministry. In a letter to Rajagopalachari, he said, "The one thing we must avoid in giving the impression that we stick to office and that we want to keep out others at all costs". Rajagopalachari wrote to Nehru that "it would not be justifiable from any point of view, even of ideological democracy to leave patches of rebel areas and go into disorder; and that we cannot work our democracy in fractions of India". Nehru vetoed this suggestion of permanent Congress hegemony and observed that the electoral defeat of the Congress did not amount to a failure of the Constitution. He was convinced and said categorically that others would have to be given a change to function.

Without informing Nehru, the Governor nominated Rajagopalachari to the Upper House. He was thereupon elected leader of the Congress party, and the Governor, ignoring Nehru's specific reminder that a Chief Minister should be a member of the Lower House, invited Rajagopalachari to form the government. Rajaji, who inspired wide respect, subsequently won the confidence of the House. What

31 Ibid.
happened in fact was that 16 members from the opposition parties crossed the floor to join the Congress soon after Rajaji formed the government.

The Prime Minister and the President disapproved of the whole business, but the matter had to be left at that as the Governor had acted within his constitutional discretion, even though his action was violative of democratic morality and was dubious constitutional propriety.\(^32\)

**Rajasthan 1967**

In the 1967 elections, the Congress party could not get an absolute majority in the Legislative Assembly to form the ministry. However, it emerged as the single largest party. On February 24, 1967, the President of the Opposition parties sent a letter to the Governor, Sampoornanand requesting him that he should give them a fair opportunity to form a coalition government as they had a majority of 92 against the Congress strength of 89 members in a House of 183. The leader of the Opposition, Laxman Singh even brought all the MLAs supporting him and constituting a majority in the House to Rashtrapati Bhavan and presented them before President, Radhakrishna. Even after this, the then Governor, invited Mohan Lal Sukhadia to form the government. The Governor justified his decision on the following grounds:

\(^{32}\) *Ibid.*
1. Since the independents had not fought the election on the basis of any policy unlike the party candidates, they cannot be taken into account,

2. Cited example of Madras wherein C. Rajagopalachari was called upon to form the government even though Congress did not command a majority, and

3. Congress being the largest party in the Legislative Assembly.\textsuperscript{33}

Singh who was Governor of Assam and North-Eastern States, expressed his opinion that an independent member, "having been duly elected by the voters, had as much weight as a member of a party; in fact, the term 'political party' does not find any mention in the Constitution".\textsuperscript{34}

It was generally believed that the Congress party did not command the majority support in the Assembly on the very day when Sukhadia was invited by the Governor for the formation of the ministry. This was clear when Sukhadia declined to form the government and subsequently President's Rule was imposed under Article 356. Whereas in Madras, Rajaji won the confidence of the House.

One should also not forget that the formula of the single largest party was not applied uniformly in the States of Punjab, Bihar and West Bengal where non-Congress parties had emerged as the largest single parties in the State Legislature.

\textsuperscript{33} Fadia Babulal, \textit{State Politics in India}, Radiant Publisher, New Delhi, 1983, pp. 219-22.
\textsuperscript{34} Singh, L.P., \textit{op. cit.}, pp. 48-49.
West Bengal 1971

There are precedents when the Governor ignored the claims of the largest single group and invited the United Front to form a coalition ministry. For instance, in West Bengal in 1971, Jyoti Basu, leader of the United Front, requested the then Governor, Justice S.S.Dhavan, to invite him for forming the ministry because he claimed that United Left Front was the single largest group. On the other hand, the Congress (R) and other groups formed a democratic ministry. Ajay Mukherjee called on the Governor and presented letters signed by leaders of several groups declaring their support to the Mukherjee ministry. Governor, Justice S.S.Dhavan, invited Ajay Mukherjee to form a coalition ministry, irrespective of the fact that the United Left Front was the single largest group in the Assembly.35

Maharashtra 1978

In Maharashtra, the election was held in February 1978. No party secured an absolute majority in the State Legislative Assembly. The Janata party, however, emerged as the single largest party in the Assembly with a strength of 99 in a House of 288 members. Congress and Congress (I) decided to come together despite their split in the recent past. In this case, there were two alternatives before the Governor; either to invite the leader of the Janata party, the largest

group, or to invite the leader of the United Front to form a coalition ministry. There were claims and counter claims.

The leader of the Janata Party, U.R. Patil, and the President of the Maharashtra unit of the party, S.M. Joshi, told the Governor that in such a fluid situation in the State, majority of members would not ensure stability of the government. S.M. Joshi told newsmen that stability should be judged on the basis of performance and functioning of one party. During the last one year the Janata party had ensured stability and was having its own government at the Centre.

On 6th March after being convinced that the Congress and Congress (I) were in a majority, the then Governor, Sadiq Ali invited Vasant Rao Patil, leader of the Congress, to form the government.

One can conclude that the Governor of Maharashtra had done well in asking the Congress and Congress (I) coalition to form the government, and thereby he set a healthy convention and exercised his discretion thereof. Moreover, he left the impression that he acted impartially without getting pressurised by their claimants.

Kerala 1981

A parliamentary history was created in Kerala Assembly on February 4, 1982, when the Speaker exercised his casting vote to defeat a no-confidence motion against the government. On December 28.

37 The Hindustan Times, March 5, 1978.
1981, the Governor of Kerala, Jyothi Venkatachellum appointed Congress (I) leader, K.Karunakaran, as a Chief Minister of a minority government of United Democratic Front. The people of Kerala had to witness the sad spectacle of the ministry trying to survive by the casting vote of the Speaker before it finally decided to quit. Thereafter, the Governor did not give the Opposition a chance to form the government when Karunakaran lost his majority by one vote.38

Assam 1982

In early 1982, the Governor of Assam, Prakash Mehrotra installed Gogai as Chief Minister without a clear majority to back him. The Governor refused to accept the claim of Opposition of having 64 members in the rank, but asked Gogai to form the government, though he had the support of only 48 members. The Left and Democratic Front (LDF) alliance denounced the Governor for acting as a party agent and demanded his resignation. Eventually, the Gogai ministry had to quit office without facing the Assembly.

Haryana 1982

After the General Elections in Haryana on May 19, 1982, no party obtained majority in the Legislative Assembly. The Congress (I) party, however, emerged as the single largest party in the Assembly with a strength of 36 in a House of 90 members.

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On May 22, 1982, Devi Lal, then a Lok Dal leader supported by BJP, Congress (I) and some independents, met the Governor, G.D. Tapase and put his claim to be invited to form the government; and he also submitted a list of his supporters to the Governor. The Governor advised Devi Lal to parade his supporters before him on May 24, 1982, for physical verification. But on May 23, 1982, Bhajan Lal, leader of the Congress (I) party, met the Governor and submitted a list of his supporters and also put his claim to form the government as being leader of the single largest party in the House. The Governor accepted his claim to form the government and appointed him the Chief Minister on the same day evening ignoring his own direction to Devi Lal to parade his supporters before him for showing the majority the next day morning. Although Bhajan Lal was asked to prove his majority in 38 days in the House and Bhajan Lal did succeed in proving his majority in the House as anybody also could do after being Chief Minister.

Whatever is the outcome of all this, the way a minority leader was sworn in as Chief Minister even before the Election Commission had notified the constitution of the Assembly has brought the office of the Governor into disrepute. The haste with which it was done clearly points to a command performance.

The Constitution does not prescribe any method by which the majority support is to be ascertained. The Governor's satisfaction on this point has to be subjective but not capricious and when the House is
not in session, it is open to him to use any method he chooses. But what made him to go back on his word and swear in Bhajan Lal in such unseemingly hurry, allowing him one month’s time to prove his majority even before Devi Lal could comply with his own instructions? It is evident that the Governor must have received instructions from the Centre, which he had to follow if he wished to continue in office.\textsuperscript{39}

\textbf{Tamil Nadu 2001}

A debate over Jayalalitha, Chief Minister of Tamil Nadu, arose after she was disqualified from contesting the election under Section 8(3) of the Representation of People Act (RPA) as she had been convicted in two cases. Her nominations to contest from four constituencies were rejected by the Returning Officer. The RPA also barred candidates from contesting from more than two constituencies simultaneously.

On May 14, 2001, the 133 newly elected AIADMK legislators elected their General Secretary Jayalalitha as the leader of the Legislature party. Immediately she met the Governor of Tamil Nadu, M.Fatima Beevi and handed over to her the text of the resolution passed by the Legislature party, electing her its leader. Accordingly, the Governor invited Jayalalitha to form the ministry and asked her to send the list of persons to be appointed as ministers. The decision immediately came under attack.

\textsuperscript{39} \textit{Fadia Babulal, op. cit.}, p. 229.
The DMK Legislature party attacked the Governor’s decision and said it was “totally violative of the provision of the Constitution.”\textsuperscript{40} Chidambaram said, “Fatima Beevi has set a wrong precedent” and created “legal problems”. It is surprising that the Governor did not consult the Attorney-General of India.\textsuperscript{41} Subramanian Swamy said, Fatima Beevi’s decision brought “ignominy by this patent sacrifice of the rule of law at altar of expediency”.\textsuperscript{42}

However, Jayalalitha claimed that the Governor was right in inviting her to form the government, Fatima Beevi was a retired Supreme Court Judge and so “no one need to teach her about the law and the Constitution”. And a Governor’s decisions were not justifiable, she said.\textsuperscript{43}

At Thiruvananthapuram, the Governor defended her decision to appoint Jayalalitha as Chief Minister. She said, “The decision was my own”. I took it after considering various aspects like law and order and the people giving a massive mandate to the AIADMK”.\textsuperscript{44}

The action of the Governor raised two questions of great constitutional importance. Firstly, can a person who has been convicted of criminal offence, whose conviction has not been suspended and disqualified to contest election, eligible to be sworn in

\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
\textsuperscript{44} \textit{The Week}, October 7, 2001, p. 28.
and continue to function as Chief Minister of a State? Under the Constitution, a person who is a member of the Legislature can be sworn in as a minister but he or she has to get elected as a legislator within six months. Article 164(4) stipulates: "A minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period, ceases to be minister". Secondly, is the Returning Officer's decision binding on the Governor?

Opinions were divided on both the questions. Senior Advocate N. Natarajan, Chidambaram, Subramaniam Swamy and others asked that, "how she could get elected when the disqualification had started under the RPA from the date of conviction and continued for six years even after she served the sentence. They argued that even after six months she would suffer the same disqualification". According to their opinion she is not eligible to be sworn in as Chief Minister.

On the other side, Ch. S. Ramaswamy, Advocate and Editor, Thuglak and Vaiko, General Secretary, MDMK, among others said that there was no legal bar on the Governor swearing in Jayalalitha as Chief Minister. However, they said convention demanded that she opted out of the Chief Ministership. Opinion also divided on the second question, can the decision of the Returning Officer is binding on the Governor. According to one view, it is misnomer to say that the Returning Officer had declined Jayalalitha “disqualified” under the law.

45 Subramanian, op. cit.
46 Ibid.
They had only rejected her nominations, an act that could be challenged in the High Court, it could hardly be binding on the Governor. Anupam Gupta, an advocate from Chandigarh and a columnist and legal advisor said, “Returning Officers are primarily State Officials, though they are subordinate to the Election Commission, while on election duty. Therefore, pressure on them by the State government and the Election Commission cannot be ruled out. It is going too far to except that the Returning Officers’ decision would be completely independent and objective.’ Their decision cannot be binding on the Governor. A senior advocate of the Supreme Court said, “the trial Court’s verdict in the corruption cases against her had not reached the final stage when she was appointed Chief Minister. Therefore, the Governor cannot decide her disqualification and deny her claim to head the State government.

Those critical of the Governor’s action argued that as Jayalalitha was found ‘ineligible’ to contest the elections, the Governor could not have taken recourse to Article 164(4) of the Constitution which enables one to be a minister for six months without being a member of the Assembly. This view implicitly suggests that the Returning Officer’s decision is binding on the Governor. Senior advocate, Rajiv Dhavan

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48 Ibid.
49 Ibid.
50 Ibid.
has expressed the opinion that the Governor could not have ignored the decision of a statutory authority, the Returning Officers.51

Example can be drawn from other cases where candidature of a candidate have been disqualified from contesting elections under Article 173 (Qualification for membership of State Legislature, Article 191, Disqualifications). It is suggested for instance that, “any member of Legislative Assembly cannot be insane, Article 191(b), but an insane person can become the Chief Minister for six months. Again, critics say that a non-citizen cannot become a MLA, Article 191(d), but if you apply Fatima Beevi’s logic, a non-citizen could be Chief Minister for six months. Extending the same logic, one could ask whether a person who would be completing 25 years of age ... the minimum age prescribed for a MLA under the Constitution ... Within the next six months could become Chief Minister. Bihar Governor Suraj Bhan had dismissed a non-MLA minister in the Rabri Devi government whose age was discovered to be less than 25 years.52

Holding the aforesaid view, the Supreme Court Bench held that a person who is disqualified from contesting elections to a legislative body cannot assume office in the executive branch of the government. It also held that membership of the Legislature is a prerequisite for holding ministerial authority and the expedient Clause that enables a non-member to assume office for a period of six months cannot be

51 Ibid.
52 Ibid.
applied in the case of an individual who has been disqualified from contesting.53

The Bench was confronted with two rival interpretations of Article 164(4). K.K. Venugopal, senior counsel Jayalalitha, suggested that the Article should be interpreted as it is, and since it is devoid of any qualifications or disqualifications, none could be read in isolation of the others. A minister who secures appointment under Article 164(4) should satisfy the qualifications for membership of the Legislature specified in Article 173 and should not suffer any of the disqualifications under Article 191 on the date of his or her appointment.54 While interpreting Article 164(4) of the Constitution the Bench held that “an individual to hold office as a minister even without being a member of the Legislature, to mean that such a person would be eligible to seek election. In the event of that person failing to secure a seat in the Legislature within the stipulated time of six months, he or she would cease to be a minister. Thus, a five-member constitutional Bench of the Supreme Court quashed the appointment of Jayalalitha as the Chief Minister of Tamil Nadu and established a new orthodox that constitutional legitimacy takes precedence over electoral legitimacy.55

54 Ibid.
55 Ibid.
Uttar Pradesh 2002

After the General Election of February 2002, no political party obtained a clear majority in the Uttar Pradesh Legislative Assembly. The position of the different parties is as shown in Table 4.1.

**TABLE – 4.1**
Position of Political Parties after the General Elections of February 2002

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Party</th>
<th>Seat secured</th>
<th>Total seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Samajwadi Party</td>
<td>146</td>
<td>402</td>
</tr>
<tr>
<td>2.</td>
<td>BJP</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>BSP</td>
<td>99</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>INC</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Independents</td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

The Samajwadi party emerged as a single largest party and the BJP, which was ruling party was reduced to minority. It also decided to set in Opposition and categorically ruled out any support to BSP in forming the government. The BJP Chief Minister Rajnath Singh also announced that his party will not try the formation of coalition government.

Facing a hung Assembly the Governor V.K. Shastri made it clear that he would prefer “stability” over “single largest party” for government formation.

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57 Ibid.
58 Ibid.
On February 25, Mulayam Singh Yadav was elected leader of the SP and consequently he staked his claim in the formation of new government in Uttar Pradesh and sought a month time to prove his majority. The Governor asked him to submit a list of supporters and set March 6, as the deadline for submission of list. During their meeting, Mulayama Singh argued that the list was secondary as anyway I have to prove the majority on the floor of the House, “I will do it”. Further, he questioned Governor, “how did the demand for a list of legislator come into vogue ? Further, he reminded the Governor that there was a precedent when the Governor had invited the largest party without asked for the list.

However, the Governor took the stand that the single largest party need not necessarily provides a stable government. He cited the example of former Governor Romesh Bhandari who had refused to call the BJP to form the government after the 1996 Assembly elections as he was not “satisfied” that the largest party could provide a stable government. Further, the Governor said it was his constitutional obligation to appoint a Chief Minister who could provide a stable government, to explore, he will hold talks with other major political parties.

Eleven days after a badly fractured verdict in the election, the Uttar Pradesh Governor recommended to the Centre imposition of the

60 Ibid.
President's Rule under Article 356(1) keeping the Assembly in suspended animation. In his report, the Governor told the Centre that in the present situation with no major political party offering support to another major group, he came to the conclusion that no party nor combination of parties was in a position to form a stable government. Accordingly, the Union Cabinet decided to impose President's Rule in Uttar Pradesh. The Cabinet also decided that the Uttar Pradesh Assembly be kept in suspended animation.

The Opposition parties accused the Uttar Pradesh Governor for undermining the spirit of Parliamentary democracy. CPM leader Somnath Chatterjee said there was precedent when the single largest party had been invited to form the government and the Governor should follow the practice. He cited the example that Atal Behari Vajpayee was given a chance to form the government for 13 days even without having a majority. In Bihar Samata Party leader Nitish Kumar had been invited though he did not had a majority. But now the Governor does not want to invite the Samata Party leader Mulayam Singh Yadav. This shows the double standard of the Governor.  

Quoting the Sarkaria Commission Report, the former Speaker P.A. Sangma said that the Governor should select a Chief Minister from

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61 Deccan Herald, March 8, 2002.
the single largest party staking claim in the absence of any pre-poll alliance. The Governor’s decision was premeditated, he said.\textsuperscript{63}

While defending the President’s Rule in the Lok Sabha, Prime Minister Vajpayee said, the Governor, V.K.Shastri had no other option as the Samajwadi Party, the single largest after the last election, was not in a position to muster a simple majority required for formation of government. He also asked, "if the parties wanted to set a new convention that the single largest party should be called to form the government in any eventuality, the House will consider, if all parties prepared for it.\textsuperscript{64}

In the Rajya Sabha the government defended the imposition of President’s Rule, recommended by the Governor, by saying that the decision had been taken to prevent horse-trading. However, the Opposition, especially the Samajwadi Party said that the Governor’s recommendation was against federal character of the Constitution.

In the meantime, there was an engagement between the BSP and BJP behind-the-curtain. The BSP leader Mayawati, who had resigned her Lok Sabha seat to play a bigger role in Lucknow, again sensing of a chance to return to power on the BJP’s support. That her party is ahead of the BJP in terms of the numbers in the Assembly has convinced Mayawati of claims to lead the government in a possible

\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid.
political marriage with the BJP for a third time. As for the BJP, much as the outgoing Chief Minister, Rajnath Singh, might publicly say that the party would sit in the Opposition, he is actually hoping that the BSP would eventually help him retain this job. To disabuse Singh of any such notions, Mayawati has made it clear to the Governor that her party would support none to form a new government. Given some time, she could be hoping that Singh would reconcile to making the way for her. That is why she has welcomed that move to impose President' Rule in the State.

On expected line the BJP and BSP struck a deal for the formation of a coalition government in Uttar Pradesh. The pact between the two "unnatural allies" was finalised as Prime Minister A.B.Vajpayee had strongly favoured a coalition government in his home land. He had insisted that the BJP should not lose control of the Hindi heartland by allowing its political rivals to come together and make a bid for power in Uttar Pradesh.65

On May 17, Mayawati led alliance government won the confidence of the Uttar Pradesh Assembly. She secured 217 of the 397 votes polled, seven more than the list of 210 submitted to the Governor.

After a careful study, it seems that the Governors have adopted different criteria in the same situation in various States. The Governor in most of the cases took the stand which apparently smacked of their

65 Deccan Herald, April20, 2002.
partisan attitude. On one or the other plea they served the interest of the ruling party at the Centre and denied the opportunity to form the government to the leader of the Opposition parties, which secured the largest seats or formed the United Front. In some States, the Governor invited the leader of the largest party, on the other hand some Governors took the stand that single largest party need not necessarily provides stable government. They prefer “stability” over “largest party” in the formation of the government. In case of their failure, they recommended imposition of the President’s Rule.

It seems that the Governor has also assumed the responsibility of providing a stable and responsible government despite the fact that their stability largely depends upon their responsibility to the Legislature Assembly.

Perhaps in their anxiety to provide stability, the Governors forget that instability is a characteristic of the Parliamentary set up. Therefore, it can be said that the Governors need not bother about the stability or instability of the government, unless the government frequently falls down. It would be better if the claims of majority and ability to command stability are left to the Legislative Assembly. This will not only relieve the Governor of an onerous duty, but also save him from public criticism and allegation of partiality. If it is left to the Governor in case of States or to the President in the case of Centre to decide if any elected party is capable of forming the government then the democracy is a guided one.
It will not be out of place to mention here that the imposition or re-imposition or continuance of the President’s Rule immediately after the elections under the pretext that a stable government cannot be formed, is highly undemocratic, particularly when the largest party or combination, which was formed before the elections is prepared to form the government.

As things stand today, it can be said that what satisfied the Governor rather mysterious and it is difficult to analyse these factors as the Governors have taken stand in identical situations for which they have been subjected to much criticism and censure. This is so because we have not established some set of conventions as they are in England. Therefore, it is essential that general principles be formulated for guiding the direction of the Governor for the purpose of establishing precedents which may be applicable according to the facts in each case. This will not only relieve the Governor of an onerous duty but also save him from public criticism and allegations of partiality. Besides, in a country like India where the Parliamentary tradition is not deeply rooted the necessity of developing healthy conventions guiding the exercise of discretionary powers by the Governors assume considerable importance. In the absence of formulated conventions our Parliamentary set up bound to collapse.

In a case when number of different parties returned to the House and none of them got an absolute majority support in the House, what should the Governor do? The question was raised in the Lok Sabha on
April 5, 1967 with reference to Rajasthan ministry. Y. B. Chavan, the then Home Minister, promised to seek legal opinion. In a letter dated May 17, 1967 to former Chief Justice of India, he posed the questions. Three distinct views have been expressed on this matter:

1. One view is that the leader of the largest single party in the Legislature should be invited to form the government irrespective of the consideration whether or not such a party commands a stable majority. Supporters of this view have also suggested that the Governor should use his influence to secure advice to summon the newly elected Legislature as early as may be possible so that the extent of the support behind the ministry may be tested in an open constitutional forum.

2. The second view is that if the party in power had failed to secure an absolute majority in the newly elected Legislature, the leader of the party should not be invited to form a government even if it were the largest single party in the Legislature and that instead the leader of the Opposition or the leader of the next largest party should be invited to form the government ...

3. The third view is that the Governor should make endeavours to appoint a person who has been found by him as a result of his soundings, to be most likely to command a stable majority in the Legislature.

Siwach is in favour of first view. According to Siwach, to avoid an undue and partisan interference of the Governors in the appointment

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67 Ibid.
of the Chief Ministers, the leader of the largest party should be invited to form the government.⁶⁸

The test is objective and appeared satisfactory. It is also supported by a British precedent of the Queen inviting Herald Wilson, leader of the largest party in the House of Commons to form the government in 1974. A.B.Vajpayee was accordingly appointed Prime Minister. However, the failure of Vajpayee to demonstrate his majority in the House brought into doubt the correctness of the principle. Some have strongly criticised this approach of the President as a mechanical application of mind.⁶⁹ The criticism, it appears, is not without substance.

This is also refuted by some jurists on the plea that the Governor acting upon this would form a government of minority. That would be futile and also against the basic concepts of the Constitution.⁷⁰

The second view is favoured by late M. C. Setalvad. According to him “If the party in power fails to obtain a majority, the Governor should treat it as a popular rejection and call upon the leader of the Opposition to form the government.”⁷¹ He made the suggestion on the

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⁷⁰ Pal, Chandra, op. cit.
principle that electorate mandate should be respected. But this suggestion militated against the principle of Parliamentary democracy.72

Eminent jurists like A.K.Sarkar, P.B.Gajendragadkar and M.C.Mahajan favoured the third view that a person who can ensure a stable government should be invited by the Governor to form the government. The third view seems sound and should be followed.

The Governor’s Committee also recorded the view that in such a situation the leader of the largest party has no absolute right to be appointed as the Chief Minister. The Committee further records that the relevant test is not the size of a party but its ability to command the support of the majority in the Legislature.73

The Sarkaria Commission which was appointed by the Union government in 1983 to look into the aspects of Centre-State relation, recommended that in choosing a Chief Minister, the Governor should be guided by the following principles.

1. The party or combination of parties which command the widest support in the Legislative Assembly should be called upon to form the government.

If there is no such party, the Governor should select a Chief Minister from among the following parties or group of parties by sounding them, in turn, in the order of preference indicated below:

An alliance of parties that was formed prior to the elections,
The largest single party staking claim to form the government with the support of others, including independents,
A post-electoral coalition of parties, with all the partners in the coalition joining government,
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.

The Governor while going through the process described above should select a leader who in his (Governor’s) judgement is most likely to command a majority in the Assembly.74

The Commission further recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should religiously adhere to with the sanctity of a rule of law.

The Governor should not risk determining the issue of majority support on his own, outside the Assembly.75

The jurist, the Governors’ Committee and Sarkaria Commission, all agree that a person who is most likely to command a stable majority

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75 Ibid.
in the Legislative Assembly should be invited to form the government. The Assembly should be the main ground for testing the confidence in a new government without any delay. And also the Governor should not also ignore the independent members in assessing the strength of the ministry or party. The Governor’s duty is not to try to form a government but to secure a government.

Dismissal of the Ministry

The makers of the Indian Constitution, in the interest of a healthy functioning of our Parliamentary democracy and of federal system, intended that the Governor should be the instrument to maintain the fundamental equilibrium of the people of the State and to ensure that the mandate of the Constitution are respected in the State. That necessary follows that the Governor, who symbolises as Head of the State, should obviously and necessarily be above the party politics. But due to arbitrary actions of some Governors in dismissing the ministry, the office has undergone devaluation and debasement in the recent past. Some Governors have been openly and widely accused of partisanship towards one party or another, and allegations have been made that they had acted as the agent of the Central government, not as holder of an independent constitutional office.

According to Article 164(1) of the Indian Constitution a ministry shall remain in office during the pleasure of the Governor. In normal circumstances, the ministry remains in office so long as it retains the
confidence of the Legislative Assembly. In the Constituent Assembly, Ambedkar, Chairman of the Drafting Committee, maintained, “I have no doubt that it is the intention of this Constitution that the ministry shall hold office during such time as it hold the confidence of the majority. ‘During pleasure’ is always understood to mean that the ‘pleasure’ shall not continue notwithstanding the fact that the ministry has lost the confidence of the majority. The movement the ministry has lost the confidence of the majority, it is presumed that the President will exercise his ‘pleasure’ in dismissing the ministry and therefore, it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible government”.76

The explanation given by Ambedkar seems to be in consonance with the principle of parliamentary democracy. But there are divergent opinions among jurists, academicians and politicians. Some interpreted the phrase “during pleasure” literally and some in totality of the constitutional scheme. For the correct interpretation of the Constitution, they argue, have to be read and construed harmoniously.

The Calcutta High Court, in the case of Ajoy Kumar Mukharjee’s dismissal case, held that the exercise of his pleasure by the Governor under Article 164(1) had not been fettered by any condition or restriction. The withdrawal of his pleasure by the Governor, it was held, was a matter entirely in the Governor’s discretion. It was further

76 C.A.D., Vol. VIII, p. 520.
held that the provision in Article 164(2) that the ministry shall be collectively responsible to the Legislative Assembly of the State had not the effect of restricting in any manner the Governor's power to withdraw his pleasure, during the continuance of which alone the ministry holds office. Collective responsibility meant that the Council of Ministers is answerable to the Assembly. The Constitution has not conferred any power on the Assembly to dismiss or remove from office the Council of Ministers. The power to appoint the Chief Minister and Council of Ministers on the advice of the Chief Minister and the power to remove the ministers from office by withdrawing his pleasure, had been conferred exclusively upon the Governor of State.77 Late Y.B. Chavan, the then Home Minister, making a statement on West Bengal situation said, "that according to the best legal advice available to the Government of India, it was within the competence of the Governor to dissolve the Council of Ministers headed by Ajoy Mukherjee.78

M.C. Setalvad, the former Attorney-General opined that the Governor has the power to dismiss the ministry. If he is satisfied that the ministry was in a minority and it was not prepared to hold an Assembly session within a reasonable time.79 Narasimha Rao, the then Home Minister, making a statement on Andhra Pradesh situation said, it was the unfettered right of the Governor to dismiss N.T. Rama Rao once

77 M.P., Sharma vs. P.S. Ghose, AIR, Col. 198.
78 Lok Sabha Debates, November 30, 1967.
79 Setalvad, The Role of Governor, Indian Political Science Review, Vol. 2, Nos. 3-4, p. 164.
he was convinced that the Chief Minister has lost his majority and that Ram Lal's 'Subjective satisfaction' was enough. The Governor could not have acted otherwise at the given movement.80 Defending his action in dismissing Farooq Abdulla, Jagmohan said, "having regard to the general powers of the Governor, the particular fact of the case, and the political and administrative environment in which he was called upon to exercise his judgement, his decision had been constitutionally valid, administratively justified and in the overall national interest.81

The other opinion is that the Governor has no discretionary power to dismiss a ministry without obtaining the verdict of the Legislative Assembly. The then Chief Justice of India, Justice B.K. Mukherjee, in his judgement delivered in 1955 categorically declared that the Governor of a State in India is a mere constitutional head should function as such: But it is virtually the Council of Ministers in each State that carries on the executive government of the State. In Indian Constitution we have the same system of Parliamentary executive as in England. Under Article 164(2) the Council of Ministers shall collectively be responsible to the Legislative Assembly of the State. That excludes responsibility to the Governor of the State.82

In M. R. Deka vs. N. F. Frontier Railway, the Supreme Court of India held that "the rule of English law which is in the Latin phrase

'durante bene placito' (during the pleasure) has not been adopted by the Constitution of India. The absolute doctrine as pleasure as known to English law is not the law in India ... or in other words, the pleasure of Governor is not absolute. It is subject to the Clause (2) of the Article 164.83

The British conventions, which form the pivot of Parliamentary government, provide useful clues. In the United Kingdom, the Crown appoints ministers who hold office during pleasure. But conventionally, the leader of a majority party in the House of Commons, appointed as Prime Minister. Theoretically the ministers are Crown’s servants, but in practice they are collectively responsible to the House of Commons. It would be unconstitutional if the crown dismisses them while they are enjoying the confidence of the House of Commons. The Crown though hereditary, therefore, be in danger if it prefers to dismiss the Council of Ministers at pleasure disregarding the wishes of the House.84 Likewise, any dismissal by the President of a ministry having support of the Lok Sabha would be constitutional impropriety which may entail impeachment of the President under Article 61(1) of the Constitution.85 The principle of Parliamentary democracy is ingrained structurally in the States in the same way as they are in the Centre except Article 163(2).

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83 AIR, 1964, SC, 600.
If the contention, the Governor can dismiss the Chief Minister at his discretion, is accepted, there is no significance of Article 164(2), which says that the Council of Ministers shall be collectively responsible to the Legislative Assembly. During the Constitutional Assembly discussion, objection had been raised to the provision regarding ministers holding office during pleasure of the President of the Centre, and of the Governor in the States. Several members of the Constituent Assembly severely assailed this provision on the ground that it would violate the principle of responsible government. They argued that the bestowal of discretionary power on nominated Governor acting during the pleasure of the President would amount to a travesty of constitutional government. Many of the grew suspicious and were apprehensive about the role of the Governor under the new set up; particularly when they found that the same language used in the Act of 1935 dealing with the powers of the Governor was taken word for word in the new Constitution.86

However, the provision had been retained only when it was explained in the notes of the constitutional advisor that it was necessary to enable the Prime Minister or the Chief Minister, to have an unwanted ministers dismissed, if he was unwilling to resign. In the course of the debates it was further stated by Ambedkar that the words ‘during pleasure’ were always understood to mean that the ‘pleasure’ should not continue when the ministry had lost the confidence of the

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majority the Governor would use his 'pleasure' in dismissing it. There is no provision in the Constitution, under which a ministry would automatically cease to hold office, following a vote of no confidence in the Legislature. It can resign, but if it does not, it can only be forced out by dismissal.  

In the minds of the framer of the Constitution, it was primarily to meet the contingencies mentioned above that the provision regarding ministers holding office during the pleasure of the Governor was made. It was assumed that the conventions of Parliamentary government would be followed by all concerned, and that would not be necessary for the Governor to withdraw his pleasure in other circumstances.

But, unfortunately, Governors have been sadly mistaken in allocating to themselves a role which does not belong to them. The way this direction has been construed, and used, in some of the States in recent past has in fact brought disreputation to the office of the Governor.

West Bengal 1967

The dismissal of Ajoy Mukherjee's United Front ministry by the State Governor Dharma Vira on November 21, 1967 was an unprecedented event in the annals of constitutional Government of India.

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On November 2, 1957, P.C. Ghosh, a Minister in the Ajoy Mukherjee ministry, resigned along with 17 other legislators withdrew support to the ministry, thereby reducing it to a minority. On November 6, Governor at meeting with the Chief Minister expressed doubt as to whether the ministry retained its majority. He advised the Chief Minister to summon the Assembly session as early as possible to settle the issue. The Cabinet after considering the Governor's suggestion decided to convene the Assembly on December 18. The Governor, however, felt unhappy and urged the Chief Minister to call the Assembly session not later than November 30. The Cabinet met on November 17 and expressed its inability to accept the Governor's suggestion for an early Assembly session.

At this juncture, the Ajoy Mukherjee Ministry decided to request the President to seek under Article 143(1) the advice of the Supreme Court on the following constitutional points:

1. Whether the Governor has authority to dismiss the Council of Ministers without taking the verdict of the legislators under Articles 163 and 164 of the constitution?

2. If the Governor, on the basis of the information available to him, entertains a doubt that the Council of Ministers does not enjoy the confidence of the Legislature can he, in his individual discretion, dismiss the ministry?

3. As the Governor is bound to act on the advice of the Council of Ministers in the matter of summoning the Legislature, is it open to him to disregard the advice of the Chief Minister?
4. Can the Governor be advised to insist that the Chief Minister should summon the Legislature on any other date?

5. If the Chief Minister fails to comply with the Governor's advice, can he dismiss the Council of Ministers on the ground that non-compliance with the advice was tantamount to a violation of the Constitution?^{88}

The President soon informed the Chief Minister of Centre's decision to reject his request to refer to the Supreme Court the issue of the Governor's powers, thus depriving the nation of an important clarification by the highest judiciary.

The Centre felt that the Constitution is clear on this issue, and the gaps in the Constitution could be filled "by political conventions and a flexible interplay of political forces".^{89} On November 21, the Governor exercised his discretionary power in dismissing the United Front Ministry, on the same day P.C. Ghosh's ministry was sown in.

The dismissal of the Unit Front Ministry raises some important questions. Is the Governor competent to call a session of the State Assembly at his discretion? Should the Governor insist upon the Chief Minister to alter or advance the date for summoning the Assembly that has already been fixed by the Cabinet? Can the Governor dismiss the State Ministry at his discretion?

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^{88} Fadia Babulal, *op. cit.*, p. 223.

At this point one should recall the proceedings of the Constituent Assembly in order to be sure as to the nature of the constitutional set up. The Assembly accepted the setting up of Cabinet system of government on British model recommended by Sardar Patel, Chairman of Provincial Constitution Committee. Under this system it is the exclusive privilege of the Prime Minister to fix the date for calling the Legislature into session and the sovereign can in no way share in it. The only limitation on this otherwise unfettered right of the Prime Minister is that he must not evade his constitutional obligation. In India the Constitution is clear on this point. Article 174(1) says, "six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session". According to Parliamentary convention, the Governor of the State has no discretion in calling the session of the State Assembly. He is expected to act on the advice of the Council of Ministers, if Governor is given the right to summon the Assembly as and when he pleases, he will cease to be a mere constitutional head.

The Governor's action in dismissing the ministry may be, to some extent justified, if the ministry is not prepared to face the Assembly or it had not tendered its resignation after an adverse verdict of the Assembly. Surprisingly, he presumed that P.C.Ghosh had a majority in the House when it was not given a chance to express its opinion. The action of the Governor in dismissing the ministry, therefore, is "an improper act".
So far as the issue of the dismissal of a ministry is concerned, Article 164(1) states that the ministry shall hold office during the pleasure of the Governor. Article 164(2) provides that the Council of Ministers is collectively responsible to the State Legislature. The only logical inference is that the dismissal of the ministry falls within the exclusive jurisdiction of the Assembly. The Governor of West Bengal by arrogating to himself a right which under the Constitution belongs to the Legislature alone, committed a wholly unconstitutional act.

Moreover, in the absence of any clear constitutional command Article 164(2) cannot be made subservient to Article 164(1).90

Bihar 1967

The Governor of Bihar, A. Ayyanger, acted in a different way. He did not press the Chief Minister, M.P. Sinha for calling an early session of the State Assembly nor did he dismiss the United Front Ministry, though there was a chain of defections in the State.91

On the other hand, when B.P. Mandal, the Socialist Dal leader, submitted a list of 185 members in a House of 318 and demanded the summoning of the Assembly for the trial of strength, the Governor said, “when you met at Ranchi, and gave me the list of 185 supporters, you specially requested me not to send the list to M.P. Sinha, the Chief Minister and in your letter of Monday you have affirmed the same.

90 Ibid., p.204.
position, but you wanted me to verify the list. I have not got the machinery to verify your list but it is only the Assembly that can do it under the Constitution on a motion properly moved in the House duly convened.92

When the matter came before the Chief Minister, he made it clear that the Assembly would be summoned at his convenience. Ultimately, on the advice of the Chief Minister the Governor convened the session on January 18, 1968.93

Uttar Pradesh 1970

In 1969 there was a rift between the partners of the coalition - the Congress (R) and the Bharatiya Kranti Dal (BKD). The Congress (R) members refused to co-operate with the BKD Chief Minister, Charan Singh, and also refused to resign. Compelled by the circumstances the Chief Minister advised the Governor to dismiss the Congress (R) ministers. The advice of the Chief Minister was rejected on the ground that “the well recognized principle of parliamentary democracy would not warrant the continued existence of a coalition ministry when the coalition is broken and when none of the two parties which formed the coalition commands an absolute majority in the Legislative Assembly."94 Further, the State Governor B.Gopala Reddy

93 Ibid.
asked the Chief Minister to resign on September 28, 1970 but Charan Singh declined to follow his advice as he was prepared to face the Assembly earlier than October 6, 1970. But the Governor did not agree with him, dismissed the ministry and recommended the imposition of President's Rule in the State for a brief period.95

According to Article 164(1), the Constitution of India reads: "... the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor". Ordinarily the pleasure of the Governor means the pleasure of the Chief Minister because when the Chief Minister asks a particular minister to resign and he refuses to do so, then he can advise the Governor to dismiss him. Unfortunately, the Governor of Uttar Pradesh while rejecting the advice of Charan Singh said, "the Chief Minister of a coalition government cannot be treated at par with the Chief Minister of a single party government in the matter of removal of ministers, of reconstitution of the Council of Ministers which involves a fundamental change in the complexion of the government". From the constitutional point of view this is a doubtful proposition because the Governor made a distinction between the one-party Chief Minister and a coalition Chief Minister, for which there is no basis.96

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95 Gehlot, N.S., op. cit., p. 90.
It is interesting to know that in West Bengal the Chief Minister was dismissed because he was not prepared to face the Assembly immediately but in Uttar Pradesh Charan Singh was not allowed to face the Assembly though he was ready to face it within 24 hours. It is strange that the Governor, B.Gopala Reddy could tolerate C.B.Gupta in office as a Chief Minister for more than two months after he had lost majority but he was not prepared to tolerate Charan Singh just for three days and that to when he had a majority in the Assembly which was to meet after three days only. To dismiss the government, the Governor came out with a new concept of major partnership which has no constitutional basis. The decision of the Governor was partisan because the Governor instead of accepting the advice of the Chief Minister, asked him to resign which exposed him to public criticism.

Jammu and Kashmir 1984

In Kashmir 12 members of the ruling National Conference Assembly party with G.M.Shah as their leader broke away from the parent body and along with one independent member informed the Governor Jagmohan that they no longer support the government head by Farooq Abdullah. Simultaneously Moulvi Iftikhar Hussain Ansari, leader of the Congress (I) Legislative party informed the Governor that the CLP having a strength of 26 MLAs had decided to support

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97 Ibid., p. 130.
G.M. Shah for Chief Ministership. The Kashmir Legislative Assembly had a total strength of 76 including the Speaker. Armed with this information, the Governor asked for the resignation of the Chief Minister as he was "satisfied" that you no longer enjoy the majority support of the Legislative Assembly and have, therefore, forfeited the right to continue as a Chief Minister and to head the government.

In reply to the Governor, the Chief Minister offered to meet the Assembly at once for trial of strength. Abdullah said, "Democratic traditions require that the question of loss of confidence should always be tested on the floor of the House. I would, on behalf of the Cabinet and myself advise you to immediately summon the session of the Legislature so that confidence of the Legislature enjoyed by me is demonstrated". Abdullah added that any alternative could be considered only on his "failure to demonstrate confidence of the House".

The Governor, without giving any thought to these, simply informed the Chief Minister thus, "I am satisfied that you have lost confidence of the majority of the MLAs in the Legislative Assembly, therefore, regret to inform you that I have dismissed you from the Chief Ministership of the State and dissolved the Council of Ministers headed by you".

The action of the Governor is open to criticism on the following grounds.
1. It implied the transference of authority and responsibility for the making and unmaking of government from the Assembly to the Governor himself in patent violation of the spirit if not letter of the Constitution.

2. He was prepared to allow one month time to G.M. Shah to prove his majority in the Assembly and was not prepared to grant any opportunity to Abdullah, though he was ready to prove. The Governor could be accused of partisanship and discrimination.

3. The image of the Governor as an impartial constitutional head standing above parties and above politics has been tarnished beyond repair.

On July 12, 1984, four non-Congress (I) Chief Minister and leaders of 19 opposition parties presented a memorandum to the then President of India, Zail Singh. The memorandum said that "the act of the Governor of Jammu and Kashmir in dismissing Abdullah's ministry was unwarranted and against all democratic norms, propriety and conventions, and deliberate subversion of the verdict of the electorates of Jammu and Kashmir.

The memorandum also said, unlike in other States in Jammu and Kashmir, defection is banned by law. The moment a legislator defects from the party on whose ticket he or she has been elected, he or she forfeits the membership of the Legislature. G.M. Shah and his twelve defectors from the National Conference and Legislators, who under the law of the land cannot even, continue to function as MLAs and MLCs. Still the Governor has given the seal of approval to defections and
installed a ministry composed of defectors. In this way, the Governor who is expected to be the custodian of the Constitution and the laws, has not only conferred legitimacy on the violation of law but also rewarded it with impunity.\textsuperscript{99}

**Andhra Pradesh 1984**

In Andhra Pradesh,\textsuperscript{100} especially, there is no parallel to the sordid drama enacted by the then Governor Ramlal, who dismissed the popular Telugu Desam Ministry headed by N.T.Rama Rao in a blatantly illegal and arbitrary manner and installed in office N. Bhaskar Rao's minority government, throwing to the winds not only democratic norms but also the principle of natural justice.

In January 1983, Telugu Desam Party (TDP) under the leadership of N.T.Rama Rao won the elections defeating the Congress (I). As it appeared almost impossible to defeat N.T. Rama Rao on any stage, the Congress (I) with its usual tactics thought to use N. Bhaskara Rao, the former Congress (I) member and minister in the N.T.Rama Rao Cabinet, who is known for his defections, to split the TDP vertically. To execute this sinister plot Ramlal was appointed as the Governor of Andhra Pradesh.

As a part of this conspiracy, Bhaskara Rao started signature campaign against N.T.Rama Rao when he was in USA and assured

\textsuperscript{99} Indian Express, July 13, 1984.
\textsuperscript{100} For details see, Upendra, P., *A Breach of Democracy*, in Governor Sage or Saboteur, Roli Books International, New Delhi, 1985.
Ramalal to present before him the required number of legislators in support of him, while the Congress (I) and Majlis and other independents supported him. On 15\textsuperscript{th} August, Bhaskara Rao paraded some MLAs, about 35, and other persons in the lawns of Raj Bhavan before the Governor claiming that 91 TDP MLAs support him. The Governor without even look at their identity was ‘satisfied’ that Bhaskara Rao had a majority support. At the same time the Governor refused to see the supporters of Ram Rao, about 163, even though they were all squatting in the Darbar Hall of Raj Bhavan.

While it is undeniable that there was a minor split in the ruling Telugu Desam as evidenced by the resignation of N. Bhaskara Rao and three others, but how did the Governor came to the conclusion that Rama Rao had lost majority support in favour of Bhaskara Rao. He had no data or evidence other than the Telugu Desam leaders’ own word or version of the support in the Assembly. Bhaskara Rao reportedly told the Governor that he had the support of 91 MLAs besides the back of 58 Congressmen in a House of 295.

The Governor took no steps to verify this claim; on the other hand he refused to examine contrary evidence. As a former Governor, L.P. Singh wrote, “the Governor of Jammu and Kashmir had at least some basis for thinking that G. M. Shah had the support of a majority of the members of the Assembly. The Governor of Andhra Pradesh
reached his professed conclusion without even allowing Rama Rao to present his case to the Governor”. 101

On 16th August when all the legislators supporting Rama Rao were having a meeting in Rama Krishna studio, a letter from Raj Bhavan came to Rama Rao, asking him to resign as the Governor was satisfied that Rama Rao had lost his majority in the Assembly. Earlier Rama Rao asked 48 hours time to prove his majority in the legislature. The Governor did not accept this request. While reiterating his stand, Rama Rao and his 163 MLAs supporters paraded to Raj Bhavan in the afternoon of 16th August to show his majority. Rama Rao asked the Governor to see his followers and count them. But the Governor said that “I was satisfied that you have lost the majority”.

Immediately after this, Bhaskara Rao and three others were hurriedly sworn in as Chief Minister and ministers. Ramlal gave 30 days time to Bhaskara Rao to prove his majority in the Assembly.

The entire State and the whole of the country was rocked as never before by this wanton exercise of personal will by the Governor. The entire Opposition walked out in both the Houses of Parliament on August 16. On August 17, Madhu Dandvate moved a motion condemning the action of the Governor in dismissing the Rama Rao Ministry and demanded immediate dismissal of the Governor. On

August 21, Indira Gandhi, Late Prime Minister, emphasised in the House that the decision to dismiss N. T. Rama Rao and installation of Bhaskara Rao as a Chief Minister was based on the Governor's 'own judgement' and clarified that at no stage had the Governor consulted her about dismissing the NTR ministry nor about installing the Bhaskara Rao Ministry. "Governor’s action was based on entirely on his assessment" and was not "influenced by me, my party, or my government." 

On August 22, in the Rajya Sabha she informed the House that the Governor had not consulted the Centre and that she had come to know of it "only from a press report", perhaps it was "the biggest lie of the century". In Lok Sabha, Indrajit Gupta remarked, "then how is she running the government, if Indira Gandhi does not know what is happening under her very nose".

The then Home Minister, Narasimha Rao mentioned in reply to a debate said, "the Constitution gave the discretionary powers to the Governor and they were bound to be used". It was "unfettered right" of the Governor to dismiss Rama Rao once he was convinced that the Chief Minister had lost his majority, and that Ramlal's "subjective satisfaction" was enough. Further, he added that "the Governor could not have acted otherwise at the given moment".

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102 Lok Sabha Debate, August 20, 1984.
103 Upendra, P., op. cit., p. 119.
104 Ibid.
105 Lok Sabha Debate, August 20, 1984.
It is not out of place to mention here that all public acts are required under rule of law to be performed fairly and impartially. If by the Governor's unfettered right is meant that he can act whimsically or arbitrarily or for extraneous reasons, such a right is unknown to the Constitution and to the rule of law. The most significant point here is that a majority can be proved only on the floor of the House and not in the Raj Bhavan. The idea of seeking to parade MLAs before the Governor is infantile and wholly unworthy of the world's largest democracy. The essence of the matter is that the Governor has no right to remove a Chief Minister on the ground that he has lost his majority when the Chief Minister has not been defeated in the Assembly. A majority is an objective fact to be proved in the Assembly and not a matter for the 'subjective satisfaction' of the Governor.

In any case, putting the most charitable interpretation on the action of the Governor, it would appear that he acted in a manner most irresponsible and casual in a matter of the gravest constitutional and political significance requiring utmost caution, judicious calculation and though consideration of all aspects of the issue. The Governor's conduct, while perhaps according his powers of discretion, was politically irresponsible and legislatively indiscreet. Anyone who acts as irresponsible as he did has no business occupying the august position of Governorship. If a Governor appears to act in blatant partisanship, perhaps, with one eye cocked on personal aggrandisement, he must go.
Sikkim 1984

A political drama was staged on May 11, 1984 when duly elected Chief Minister Nar Bahadur Bhandari was dismissed and Bhim Bahadur Gurung was appointed Chief Minister immediately by the Governor of Sikkim Homi Taleyarkhan. It was the Governor who attracted universal condemnation by arbitrarily dismissing an elected Chief Minister and trying to prop up a substitute who did not enjoy public or legislative approval. When the gamble failed, the Governor invoked Article 356 rather than admit his blunder or allow MLAs to exercise their constitutional right to choose the majority leader.

On May 10, 1984, the Governor and an Union Minister ordered the Chief Minister, Bhandari to give up the three demands on which Chief Minister staked his career; reservation for the Nepalese majority in the Assembly, Indian citizenship for the stateless people of Nepalese origin and inclusion of the Nepalese language in the 8th Schedule. Further, if he does not relinquish the demands, he has to quit as the Chief Minister of Sikkim. On May 11, an emissary was sent to bring back the resignation of the Chief Minister who returned empty-handed. Soon after the Governor announced that the Chief Minister had been dismissed under Article 164(1) which reads that, "the Minister shall hold office during the pleasure of the Governor". On the same day

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Gurung who held finance portfolio, was appointed Chief Minister in a four-man ministry.

There was no suggestion of a constitutional breakdown or of a demand by the Legislative party for Bhandari’s removal, which makes the fiat all the more indefensible. Moreover, no efforts were made to ascertain whether Bhandari had lost his Legislative majority or Gurung had acquired one.

Justifying his action the Governor said, “I acted within the framework of the Constitution”. The Chief Minister was given every opportunity by the Centre to resign gracefully. He was dismissed because he ceased to enjoy my confidence.

It was an extraordinary interpretation of the Constitution by a functionary who did not himself enjoy any mandate except of New Delhi’s patronage.

In all the three cases, Jammu and Kashmir, Andhra Pradesh and Sikkim, the Governor dismissed the existing governments on the ground that the Chief Ministers had forfeited the confidence of the majority in the Legislature, they went further and allowed the rival of the Chief Minister to be sworn in as the head of a new government.

The new Sikkim “Chief Minister” whom the Governor had sworn in was found in a few days by the Governor himself to have no majority. But instead of calling back to office, he dismissed former
Chief Minister, who did have the majority in the House, the Governor dissolved the Assembly.

In Andhra Pradesh, on the other hand, the dismissal of the elected Chief Minister and the swearing in of another led to such an uproar throughout the country that within a few days of the Governor's action, the ousted Chief Minister had to be called back to office; the Governor who had 'dismissed' him was made to step down to facilitate this.

**Uttar Pradesh 1995**

Mulayam Singh Yadav was dismissed in June 1995, when the BSP pulled out of the coalition led by him. His Samajwadi Party had then 132 MLAs. Mulayam Singh Yadav insisted the then Governor Motilal Vora, that he should be allowed to face the Assembly and claimed that he would prove his majority on the floor of the House. But the Governor did not convince and dismissed him without summoning the Assembly. Mulayam Singh Yadav called the Governor's action arbitrary.107

**Uttar Pradesh 1998**

On February 21, 1998, the dismissal of Kalyan Singh government in Uttar Pradesh by the Governor Romesh Bhandari will go a long way in the annals of Indian politics. The reckless manner in which the Governor acted in dismissing the BJP-led government of Kalyan Singh

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and swearing in of a new Cabinet under Uttar Pradesh Loktantrik Congress (UPLC) leader Jagadmbika Pal, created a situation that is unprecedented for a multitude of reason. It has for the first time invited judicial intervention in the process of ministry formation, which has always been an area of legislative privilege. It has also attracted the ire of the head of State, whose advice has been grossly disregarded by a constitutional functionary holding office at his 'pleasure'.

On February 21, 12 MLAs of the UPLC and three of the breakaway Janata Dal went to the Raj Bhavan and informed the Governor that they were withdrawing support to the Kalyan Singh government. They also staked their claim to form a government with the support of other political parties. On the basis of this, the UPLC and the breakaway Janata Dal claimed the support of 221 MLAs. Kalyan Singh also met the Governor and asserted that he still enjoys majority support in the Assembly. He said that he was ready to prove his claim on the floor of the House. However, the Governor accepted the claim of the UPLC and the breakaway Janata Dal, at face value. Barely six hours after this, he dismissed the Kalyan Singh government. In its place was sworn in on the night of February 21, itself an 18-member ministry led by Jagaambika Pal. The Governor wanted Pal to prove his majority by February 4. Bhandari contended that he was convinced about the minority status of the Kalyan Singh government.108

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The BJP reacted sharply. One of its ministers, N.K.S.Gaur, filed a writ petition in the Allahabad High Court challenging the Governor's action. On February 23, the two member Bench of the High Court passed an order staying the dismissal of Kalyan Singh government and directed that 'the status quo prior to the dismissal be restored'. The Court said the Governor is free to direct Kalyan Singh to prove his majority.109

The normal course of action for the Governor after the withdrawal of support by the UPLC and the breakaway Janata Dal to the BJP government would have been to ask Kalyan Singh to prove his majority on the floor of the House. Under such circumstances, the Sarkaria Commission also recommends, 'if during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost 'majority' he should not, as a matter of constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House its want of confidence it. He should advise the Chief Minister to summon the Assembly as early as possible so that the 'majority' may be tested.

'Generally, it may be reasonable to allow the Chief Minister a period 30 days for the summoning of the Assembly unless there is very urgent business to transacted like passing the budget, in which case, a short period may be allowed. In special circumstances, the period may

109 Ibid.
go up to 60 days. However, for reasons best known to him. Governor, Romesh Bhandari dismissed the government. He ignored even a fax message from President, K.R.Narayanan asking him not to take any hasty step regarding the future of the Kalyan Singh government. The Governor claims that he went by the book, and said: 'I am fully convinced that I have acted constitutionally. More important is my conscience is clear'.

The tendency to quote high constitutional principle in defence of questionable conduct is alarming. What Governors are increasingly doing, voluntarily or otherwise, may serve the cause of a political party but hardly protect the Constitution. Under the rule of law all public acts are required to be performed fairly and impartially. If by the Governor's unfettered right is meant that he can act whimsically or arbitrarily or for extraneous reasons, such a right is unknown to the Constitution and to the rule of law. A long series of recent decisions of the House of Lords in England and of our own Supreme Court have established that "subjective satisfaction is not final but has to be the satisfaction of a reasonable man. In other words, the fact must be such that a reasonable man could possibly come to that conclusion".

Five hours after the High Court issued its order, the Governor revised his stance and issued a notification stating that the order would

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110 Recommendations of Sarkaria Commission on Union and State Relations, editor, Athre, op. cit., p. 11.
111 Venkatesh Ramakrishna, op. cit.
be implemented. Clearly, the conviction with which he denied Kalyan Singh an opportunity for a floor test was no longer visible. If he had stuck to his position, Uttar Pradesh would have had two Chief Ministers simultaneously, one recognised by the Governor and the other by the judiciary.113 All the argument that the Governor used to justify his action was negated by the High Court.

The High Court did the right thing in ordering the reinstatement of Kalyan Singh and continuation of status quo ante. The Supreme Court also did not interfere with this order of the High Court and refused to stay it. However, it directed convening a special session of the Legislative Assembly with the single point agenda of holding a composite floor test of the respective strengths of the two claimants to the Chief Minister's Chair. In effect, it amounted to an election of the Chief Minister by the House.114 The unusual course chosen by government was clearly to ensure that the Governor, Romesh Bhandari, did not commit any further constitutional mistake. If Kalyan Singh wins, that will close the matter. If he loses, the matter will not go to the Governor, but his rival, Jagadambika Pal will be allowed to show his strength. On February 26, 1992, the floor test was held in the Uttar Pradesh Legislative Assembly in which Kalyan Singh emerged victorious by a margin of 225 to 196 votes.

113 Venkatesh, Ramakrishna, op. cit.
Maharashtra 2002

In Maharashtra the 1999 General Elections returned a fractured verdict by the electorate. Congress emerged the single largest party with 74 MLAs but failed to muster majority. The circumstances forced the Congress (I) and Nationalist Congress Party to come together with the support of PWP, CPM, JD(S) and some independent members. Democratic Front was formed and Vilasrao Deshmukh was appointed as Chief Minister of Maharashtra.

On June 4, 2002, due to the differences in the coalition, the government of Democratic Front, reduced to minority after the Peasants and Workers Party PWP, CPI (M) and some other independent members withdrew their support to it. The leaders of the Opposition, Siv Seana-BJP combine had met the State Governor, P.C. Alexander and claimed that the government has lost its majority. The combine has also said it is in a position to form a government.\footnote{Deccan Herald, June 9, 2002.}

The Governor, Alexander conducted himself fairly and went by the rule book.\footnote{Ibid.} He wasted no time in summoning Deshmukh and Bhujbal (Deputy Chief Minister) for meeting. The Governor agreed to a proposal by the Chief Minister, Deshmukh to allow him ten days to prove his majority on the floor of the House.

\footnote{Deccan Herald, June 9, 2002.}
\footnote{Ibid.}
One June 13, 2002, the Vilasrao Deshmukh government of Maharashtra triumphed by winning the crucial vote of confidence in the State Assembly. The motion of confidence was carried by 143 in favour and 133 against, thus giving a comfortable margin of 10 votes.117

After a careful study of the actions of the Governors in various States, it seems that they have not only misused their discretionary powers but also they have thoroughly misunderstood their constitutional position. Discretionary powers were given by the framers to the elected Governors; and when the method of appointment was adopted by the framers, discretionary powers contained in Articles 144, 153 and 188 of the Draft Constitution were dropped.

When Article 144 of the Draft Constitution came up before the Constituent Assembly for consideration, Clause (6) of this Article concerned with the dismissal of ministers – was deleted on the initiative of Ambedkar,118 and Clause 1(a) of the same Article – 164(2) of the present Constitution – was included.119 Supporting the omission of Article 144(6) of the Draft Constitution, Ambedkar stated that they had decided against giving more discretionary powers to the Governor than what had already been defined in certain Articles.120 All this gives the impression that the Chief Minister remains in office during the pleasure of the Legislative Assembly and not of the Governor.

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119 Ibid., p. 521.
120 Ibid., p. 507.
Pt. Thakur Das Bhargava maintained in the Constituent Assembly that a convention should grow that the Governor is only entitled to dismiss a ministry if the same fails to retain the confidence of the Legislative Assembly. The ministry is accountable to the Assembly and not to anybody else. The Governor should not assume the functions which have been assigned to the Assembly.

Now the question is: What should a Governor do if the ministry is reduced to a minority and the Legislative Assembly is not in session? Should the Governor compel the Chief Minister to convene the session of the Assembly? The answer to the latter part seems to be in the negative. Article 174(1) lays down, "The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session."

It leads us to deduce that during this period (of six months) the Chief Minister cannot be compelled to convene the session of the Assembly. Six month's time is given by the specific provision of the Constitution and not by any other authority. It can be increased or decreased by an amendment in the Constitution and not by the Governor. Kumaramangalam also held similar view. He says, "I think that the only answer to be found at present in the constitution is

121 Ibid., p. 513.
122 Dahiya, M.S., op. cit., p. 73.
that a Chief Minister cannot keep on in power without calling an Assembly more than six months [Article 174(1)] and if he is defeated in that Assembly he has to resign [Article 162(2)]. Further, he said, if the six months period may be considered too long; in that case the Constitution might be amended to make the period shorter.\textsuperscript{123} In matters like this where the individual is left free to form an opinion, the Governor is likely to be politically motivated in favour of the party which appoints him, the party in power at the Centre.\textsuperscript{124}

There is no doubt that some of the Governors, especially, Ram Lal, added a new dimension to the constitutional powers of the Governor under the Indian Constitution in the matter of appointment and dismissal of the Chief Minister. They substituted their own subjective decision of the Assembly in regard to the right of the Chief Minister to continue in office. Such disputes have arisen also in the past no doubt where the Governor made decisions in their discretion, but the Andhra case assumes significance in as much as the majority of the ruling Chief Minister was never in doubt. Quite obviously this was too much for the political system to accept and assimilate and there was bound to be a political and constitutional backlash. Politically, the Governor had already been made to resign. Constitutionally, the demand for codifying the ruling that the Assembly is the sole forum for determining the majority issue, recommended by several such as the


\textsuperscript{124} \textit{Ibid.}
Governor's Committee, the presiding officers conference, and Administrative Reforms Commission gained further momentum. In Union vs. S.R.Bommai, the Supreme Court of India consecrated floor test finally.

In March 1985, following elections to the Karnataka Legislative Assembly, the Janata Party emerged as the majority party. Ramkrishna Hegde was elected the leader of the Janata Legislature Party and was sworn in as the Chief Minister. In August, 1988, Hegde resigned and S.R.Bommai was elected as the leader and sworn in as the Chief Minister on August 30, 1988. In September, the Janata Party and Lok Dal (B) merged resulting in the formation of Janata Dal. On April 17, 1989, a legislator, Kalyan Rao Molakery, defected from the Party along with nineteen legislators and presented a letter to the Governor withdrawing their support to the Bommai government. On the same day, the State Cabinet met and decided to convene the Assembly session on April 27, 1989 and informed the same to the Governor. S.R.Bommai offered to prove his majority on the floor of the House. He even expressed his readiness to pre-pone the Assembly session if so desired by the Governor.

On April 20, 1989, the Governor Venkatasubbiah sent a report to the President stating that the Council of Ministers headed by S.R.Bommai reduced to minority in the Assembly. There is no other party in a position to form the government and recommended action under Article 356(1) of the Constitution. On April 21, 1989, the
President dismissed the government and dissolved the Legislative Assembly.

The validity of the proclamation was challenged by S.R. Bommai in the Karnataka High Court. The three-judge Bench of the High Court dismissed the writ petition on the following grounds:

1. The facts stated in the Governor's report cannot be stated to be irrelevant. They are perfectly relevant.

2. The Governor's satisfaction that no other party is in a position to form the government has to be accepted as true and is based upon a reasonable assessment of all the relevant facts.

3. Recourse to floor test was neither compulsory nor obligatory.

4. Since the proclamation has to be issued on the subjective satisfaction of the Union Council of Ministers, the Governor's report cannot be flouted on the ground legal *mala fides*.

An appeal to the Supreme Court was made against the findings of the Karnataka High Court. The nine-judge Bench of the Supreme Court set aside the decision of the High Court and held that "The Constitution does not hold an obligation that the political party forming the ministry should necessarily have a majority in the Legislature. Minority governments are not unknown. What is necessary is that government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor."

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Whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the house. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. The Supreme Court observed that the High Court erred in holding that the floor test is not obligatory. If one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor. The position would be clear beyond any doubt. 126