IMPACT OF THE PARTISAN ROLE OF THE GOVERNOR
ON THE INDIAN FEDERAL SYSTEM

The Founding Fathers of the Indian Constitution have set up a Federal polity in India with the necessary division of powers between the Central government and the constituent States ensuring independence and autonomy to them within the spheres allocated to them. These governments are expected to function within the framework of this Constitution which is the supreme law of the country. The governments of the Indian States draw their authority from the Constitution and no dignitary or functionary can violate the provisions of this document as its supremacy is also guaranteed.

One need not lose in the academic exercise whether ours is a truly federal Constitution or a federation with a unitary bias, but what is essential is as K.C. Wheare said, "it is not enough to say that, in law, a Constitution is federal, we must inquire further and find out whether the Constitution works as a federal government. For the law of the Constitution is one thing; the practice is another". A sincere attempt has been made in this chapter to find out the impact of the partisan role of the Governor on the working of Indian Federation.

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According to Article 154 of the Indian Constitution, the Governor is Executive Head of the State. According to Article 168 the Governor is an integral part of the State Legislature. According to Article 155 the Governor is appointed by the President of India. The very fact that the Governor is head of the State Executive and part of the State Legislature and is in turn appointed by the President, points to a peculiar phenomenon in our federal system.

As the Governor is the Chief Executive of a parliamentary form of government, he is expected to install a government in office. It is not his business to find out a government, it is to be found out for him by the people through the Legislature. Likewise, it is his duty to see that an unwanted government goes out of office. It is not for him to want or not to want a government, he is to register the will of the people as exercised through their representative in the Legislative Assembly.

It is a historical record that the Congress party, which was dominant, not like the idea of non-Congress parties holding office in States and it made attempts to prevent such parties from coming to power or manoeuvred to bring about their removal from office after they came to power. In fact, there is nothing unnatural in this. It is a part of the game of politics in a democracy. It is the ambition of every part to hold power at the Centre and in as many States as possible unless it happens to be a purely regional party. In an atmosphere like this it is natural for the party in power at the Centre to bring pressure
on the Governor to exercise his discretionary power in a way that suits its interests. He yields to such pressures because he holds his office during the pleasure of the President which means that the party in power at the Centre. In any conflict between his loyalty to the Central government and to the State of which he is the constitutional head it is the former that determines the course of his action.\footnote{Haqqi, S.A.H., *The Indian Federal Structure and National Unity*, in Singhvi, L.M., *Union-State Relation in India*, The Institute of Constitutional and Parliamentary Studies, New Delhi, 1969.} In this way the Centre is, on occasion, able to use him as its instrument in setting up in a State a government over which it can dominate or removing from office one which proves hostile. Such a use of his discretionary power results in the erosion of State autonomy. Under these circumstances the government of a State tends to be carried on not in accordance with the wishes of the local electorate but of the party in power at the Centre.\footnote{Siwach, J.R., *Office of the Governor – A Critical Study*, Sterling Publishers Pvt. Ltd., New Delhi, 1977.} Governors have been accused with ample justification,\footnote{Patiala and East Punjab States’ Union which later on became a part of the State of Punjab.} of using their powers to bring about such a result.

This mishapenning started in 1952 when the Congress party came to power in the Centre and almost all the States except one State of PEPSU\footnote{Patania and East Punjab States’ Union which later on became a part of the State of Punjab.} which remained under the control of opposition parties. However, PEPSU was brought under President rule through the...
instrumentality of the Governor and in the elections that followed Congress formed the government here also. The abuse of the office of the Governor by the Central government was criticised by the opposition parties. Since it was the first case of its kind in a small State, the protest by opposition groups remained subdued. But the second General Election held in 1957 brought a major change in the arena of Indian politics. In Kerala, the Communist party of India formed the government, and was doing well as a good government. There was no political instability in the State. When all the attempts of Congress party in the Centre were proved futile, the Governor's office was again used for toppling the government since then the game of toppling the State governments ruled by opposition has been in constant process.

Sadiq Pasha, DMK, while delivering his speech at Srinagar Conclave\(^6\) said, "On January 30, 1976 at about 5.00 pm the then Governor K.K.Shah took part in a function celebrating Mahatma Gandhi Jayanti. The Governor praised the administration of the DMK government. The Chief Minister, K.Karunanidhi was also there along with him. He praised the policy of the State government. It was at 6.00 pm the government was dismissed

On 1\(^{st}\) July 1984, while dismissing the duly elected government of Farooq Abdullah, the then Governor of Jammu and Kashmir. Jag

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Mohan said, "I am satisfied that you have lost the confidence of the majorities of the MLAs in the Legislative Assembly. I, therefore, regret to inform you that I have dismissed you from the Chief Ministership of the State and dissolved the Council of Ministers. It reflects one sided action of the Governor. In a similar fashion, N.T. Rama Rao, the Chief Minister of Andhra Pradesh, was dismissed when he returned from America after by-pass surgery. The then Governor of Andhra Pradesh, Ramlal believed that N.T. Rama Rao lost his majority in the State Assembly, and that the fraction of the Telugu Desam Party leader Nadendla Bhaskara Rao was called to form a Ministry in the State. Then the removed Chief Minister went to Delhi for showing his strength of Legislature before the President of India. It was for the first time it happened in the Indian Parliamentary history that a Chief Minister of the State went to Delhi along with his Legislators to plead his case."

The right of the people of the State to rule themselves according to their own wish within their sphere and by an executive of their own choice has been completely taken away from them. The autonomy of a State comes to naught if its people's mandate can be defied or ignored by a Central appointee (the Governor). The very possibility of the ruling party at the Centre being able to manipulate the selection of the Chief Minister or dismissal of the Ministry or dissolution of the State.

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7 India Today, June 15, 1984, p. 18.
8 Ibid, p. 20.
9 Ibid.
Legislature, not to forget the imposition of Central rule, has an unhealthy impact on State autonomy.\textsuperscript{10}

A Bill passed by the State Legislature is presented to the Governor and the Governor has to declare "that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President". (Article 200). The President may direct the Governor to return the Bill to the State Legislature with a message requesting reconsideration of the Bill; and if it is again passed by the State Legislature with or without amendment, it is presented once more to the President for his consideration (Article 201), but in no case is the President bound to give his assent.

The object of the Constitution-makers in enacting these provisions was simple and clear. While the constitutionality of any State legislation can always be challenged in a Court of law, its wisdom cannot be; and, further, it is better to prevent a clearly unconstitutional measure from reaching the statute book than to have it struck down later by the Court. A Governor is expected by the Constitution to reserve only such Bills for the President's assent as one patently unconstitutional or palpably against the national interest. In practice, Governors have been known to surrender their judgement and act as the

\textsuperscript{10} Noorani, A.G., \textit{Ensuring Governor's Impartiality}, \textit{Indian Express}, April 25, 1983.
deferential subordinates of the Central government in exercising their extraordinary powers.\textsuperscript{11}

There are a number of cases where Governors have reserved Bills passed by the Legislature for the consideration of the President regardless of whether it deals with a subject under the State or Concurrent Lists. Continued exercise of this power upsets the federal balance since State governments, except in conditions, have full competence to legislate on matters within their spheres. However, in 'chronic' non-Congress States like West Bengal and Kerala there have been instances of State Bills pending with the Centre for over 12 years, thereby making a mockery of the federal scheme.\textsuperscript{12} Particularly illustrative in this connection is the case of West Bengal where the Centre has held up a number of Bills passed by the State Legislature on the ground that the legislation is 'controversial'. The Left Front Government is unable to implement some of its programmes because the relevant Legislative measures have not received the President's assent. Seventeen Bills mostly passed since the mid-1980s are still awaiting clearance. Five others had presumably not even forwarded to the President while T. N. Singh was Governor.\textsuperscript{13} These Bills are prestige issues for the Marxist-led Left Front Government and their non-implementation makes a mockery of the governmental process since it cannot even operate the laws it has passed itself. The State

\begin{itemize}
\item \textsuperscript{11} Palkhivala, N.A., \textit{We the People}, Strand Book Stall, Bombay, 1984, p. 254.
\item \textsuperscript{12} The \textit{Indian Express}, October 10, 1983.
\end{itemize}
Legislature and governments must have sufficient freedom and power to fulfil the desires and mandate of the people electing them. Denial of this reduces the constituent federal units to the status of dependencies and lops off one arm of Indian democracy.

Article 356 of the Indian Constitution provides that if the President, on receipt of a report from the Governor of State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, he can declare failure of the constitutional machinery. As a result the President may:

1. assume to himself all or any of the functions of the State or he may vest all or any of those functions in the Governor or any other executive authority; or
2. declare that the powers of the State Legislature shall be exercised by President; or
3. make any other incidental or consequential provisions necessary to give effect to the objects of the proclamation.

During the debate in the Constituent Assembly, the emergency provisions did not have a warm welcome. Several members condemned the provisions as far too sweeping, reducing provincial autonomy to a farce. One member, H.V.Kamath, foresaw the possible end of democracy by a Hitler like over by the Union government. Further, he wanted to delete the words “or otherwise”. To him this was a foul

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transaction, setting at naught the scheme of even the limited provincial autonomy which had been provided for in the Constitution. He said, "I am sure this Article is not intended for resolving any ministerial crisis that might arise in a particular State. For that the remedy lies elsewhere; the remedy lies in the dissolution of the Legislature by the Governor and a reference to the electorate ... A mere crisis cannot empower the President of the Union government to intervene and proclaim an emergency. Nowhere in the world has this been done ... He apprehended that the whole Constitution would be in danger not so much from those who were agitating in the streets as from those who were in power. And it would mean destroying the foundation of democracy."

Shibban Lal Saksena felt that those Articles (355 and 356) the autonomy of the States had been reduced to a farce. These would reduce the State governments to great subservience to the Central government. They could not have any independence whatsoever. Further, he said, "I find this Article scraps the State Legislature and the Council of Ministers ... and the President and Parliament become the rulers of the provinces. I would not have minded, if you had frankly said, we are framing a unitary Constitution." What several Assembly members feared was not the use, but the misuse of the power.

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15 Ibid.
16 Ibid., p. 144.
17 Ibid.
Even B.R. Ambedkar himself did not rule out this possibility, however, he expected that this Article would be sparingly used and the President would take proper precaution before actually suspending the administration of the State. But unfortunately, this expectation of B.R. Ambedkar did not prove to be true and its misuse started immediately after the adoption of the new Constitution in 1950.

In all till 2002, President’s Rule has been imposed more than hundred times (President’s Rule was last imposed in Jammu and Kashmir on October 17, 2002) and this provision, in fact, has been thoroughly misused by:

1. dismissing the State government having majority in the Assembly;

2. suspending and dissolving the Assemblies on partisan consideration;

3. not giving a chance to the opposition to form government when electoral verdict was indecisive;

4. denying opportunity to the opposition to form government when Ministry resigned in anticipation of its defeat on the floor of the House; and

5. not allowing the opposition to form government even after the defeat of the Ministry on the floor of the House.

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18 Ibid., p. 177.
In 1959, President's Rule was imposed on Kerala by Jawaharlal Nehru, acting on the advice of the then Congress President Indira Gandhi, while the ruling party, the Communist Party of India, enjoyed a clear majority in the Legislature, but there was widespread political agitation against the government in the State, described as “mass upsurge” by Jawaharlal Nehru. And then Governor's action in sending the reports of constitutional breakdown under Article 356, were sometimes motivated to serve the interests of the Congress Party in power at the Centre by enabling it to solve the internal crisis in the State Congress parties and to form ministries by manipulating defections and otherwise. Yet on many of these occasions, the Governor had acted properly in sending reports in view of the scandalous floor crossings by legislators and undemocratic manipulations by the State ministries.20

But really the clear-cut violation of the spirit of Article 356 occurred when the D.M.K. Ministry of K.Karunanidhi clearly enjoying a majority in the Legislature was dismissed on the ground of corruption, and alleged secessionist activities. Surely, there are alternative and more directly relevant sanctions against such activities under the penal laws of the country and Article 356 was envisaged by the framers of the Constitution to deal with the very exceptional situation like “physical break down of the State government owing to

large scale internal disturbance or external aggression, or political breakdown owing to ministerial instability", as pointed out by K.Santhanam. While the propriety of the act of dissolution in the above case is certainly questionable. N.A. Palkhivala in his article pointed, "In practice the Governor has been reduced to virtually the same position as that of the resident agent in a native State in the days of the British Raj. Several Governors have debased their high office by lending their services to fulfil the partisan objectives of the political party in power at the Centre". Thus, much labour need not be taken to prove that Article 356 has been flagrantly misused to suit the purposes of a dominant Centre and the dominant party. It has become a potential sword hanging on the heads of autonomous State governments. This is a serious setback for the federal balance.

During the President's rule in a State, Article 356 of the Constitution empowers the Union to suspend the State Legislature and Executive and to assume their powers in case, according to the Union Executive, a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the constitution. Though the provision in Article 356 is virtually an implementation of the duty which is laid upon it by Article 355 "to ensure that the government of every State is carried on in accordance with the provisions of the constitution", it is drastic as to the length to

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which it goes and has no exact counterpart in any of the leading federal Constitution of the world. According to the classical pattern of federalism (as in the USA or Australia), the States are autonomous and independent entities within the sphere assigned to them by the constitutional division of powers. Hence, there is no question of suspending the constitutional machinery in a State by the federal government. The Indian Constitution goes one step further and empower the federal government to supersede the constitutional machinery in a State and to take up its administration, as if it were a sub-division of a unitary State.

The effects of the use of Article 356 in the issue of a proclamation of failure of constitutional machinery are drastic. Its impact on the entire federal fabric is no less than that of a proclamation of an external emergency under Article 352. However, under Article 352 there is no suspension of the State Constitution; the Centre only receives concurrent powers of legislation and the power of issuing administrative directions to the States on subjects included in the State list. Under Article 356, the State Constitution is suspended; there is no legislature and practically no executive authority in the State.

Article 356 is virtually a reproduction of Section 93 of the Government of India Act, 1935. But there is a major difference between the two. Under Section 93 of the 1935 Act, the Governor of a province could through a proclamation assume to himself all the executive and legislative powers of the province. Thus, the operation
of Section 93 merely involved a shift of power from a popular possession to an irresponsible executive of the State; it did not result in alteration of the federal balance of power. But the operation of Article 356 of the Constitution would lead to suspension of the State Constitution and transfer to the Centre of all executive and legislative authority of the State. Consequently, the balance of power in the Indian federation would be profoundly disturbed. By virtue of Article 356 the State governments operate virtually at the mercy of the Central government and this is a serious inroad in the operation of State autonomy and federalism in India.

Thus, it is clear that the Governor has contributed to the growth of the paramountcy of the Centre. Owing to his partisan role the federal balance of power tilts in favour of the Centre in normal times and completely upsets it during the times of President's rule which is nothing but rule of the Centre. Under such a rule State autonomy is disregarded and the State is administered directly by the Centre. Unitarism takes the place of federalism under Article 356.

The successful working of a federal system requires, more than anything else, a federal spirit which is a firm determination to maintain both diversity and unity by way of continuous process of mutual adoption. Ours is a vast country with social, religious and linguistic diversities. Diversity is our strength and not a weakness. What we cherish is "unity in diversity" and not "uniformity". Lack of internal democracy invariably leads to the growth of the unitarian ethos.
Federal principles provide an ideal compromise between centrifugal and centripetal forces. The problem of every federation is to keep the centrifugal and centripetal forces in equilibrium, so that neither the planet States shall fly off into space nor the sun of the Central government draws them into consuming fires.