CHAPTER V

Governor: Link between Centre and State

There are a number of Articles in the Indian Constitution that make the Governor a link between Centre and State. These include Articles 155, 160, 163, 174, 200, 213, 239(2), 355, 356, 365 and 371. However, the two most important ones are Article 200 and Article 356 because they have a distinct bearing on the Centre-State relationship and consequently have a decisive impact on the state autonomy.

Article 200 of the Constitution – Governor's Power to Give Assent to the Bill

Article 200 says: “When a Bill has been passed by the Legislative Assembly of a State or in the case of State having a Legislative Council, has been passed by the both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

“Provided that the Governor may, as soon as possible, after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a request that the House or Houses will consider or any specified provision thereof and, in particular, will consider the desirability of introducing any such amendments as returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is
passed again by the House or Houses with or without amendment and presented to
the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the
consideration of the President, any Bill which in his opinion would, if it became law,
so derogate from the powers of the High Court as to endanger the position which
that Court is by this Constitution designed to fill.”

The Article 200 is fairly comprehensive. Under it, the Governor has four options:

1. He shall declare his assent to Bill
2. He shall withhold his assent to Bill
3. He may return the Bill for reconsideration, if it is not Money Bill
4. He may reserve the Bill for the consideration of the President

Article 200 makes it clear that for a Bill to become law, the assent of the
Governor is essential. If the Bill, after it has been passed by the State Legislature, is
presented to the Governor for his assent, he may, if he finds there is nothing wrong
with Bill, give his assent and the Bill becomes law. However, he may withhold or veto
the Bill and the grounds for doing so could be some unconstitutionality in the Bill. “If
any Bill is brought in the Legislature, which is in direct contravention of any of the
Directive Principles, the President or Governor may refuse his assent to such a Bill."1

Technically speaking, it appears that Governor’s veto power in such cases is
absolute and cannot be challenged. For example, Governor of Madhya Pradesh,
H.V. Pataskar withheld his assent to the Land Revenue Rationalization Bill on the
ground that it could be harmful for smooth working of the administration. While the Article 200 empowers the Governor to withhold the Bill, such a move is likely to go against the spirit of the Constitution. Therefore, it is only in extreme circumstances that Governor is expected to exercise the power of veto.

Governor also has an option to return a Bill to the Legislature for reconsideration if he feels that the Bill has certain constitutional lacunae. The important issue about Governor’s power to return the Bill to Legislature for reconsideration is there is no time-limit prescribed under Article 200. If the Governor wants to return a Bill, constitutionally he is expected to do it ‘as soon as possible’, which is the phrase that occurs in the Article 200. Obviously then it is up to the individual judgement of the Governor as to what ‘as soon as possible’ means. When this issue came up for discussion in the Constituent Assembly, H.V. Kamath strongly felt that a phrase like ‘as soon as possible’ was vague, purposeless and meaningless and that it should not find any place in the Constitution. However, Dr. Ambedkar persisted with it saying that ‘as soon as possible’ may be worked in such a manner that the matter may be placed before the parliament within one month, two months or even a fortnight and in that sense it was an elastic phrase. Going by the spirit of the Constitution, it means that Governor, if he so wants, should return the Bill at the earliest. But the letter of the Article in question would have him spend as much time as he wants over returning the Bill. Since Supreme Court has decided that letter of the Constitution must prevail over its spirit, this provision under Article 200 can turn
out to be a harrowing experience for the State Legislature in case the Governor takes his own time in returning a Bill.

While returning the Bill to Legislature, the Governor may suggest some amendments to Bill and the House or Houses, as the case may be, are supposed to reconsider the Bill accordingly. However, if the Legislature passes the Bill without incorporating in the Bill the suggestions made by Governor and sends it back for the assent of Governor, should the Governor accord his assent to such a Bill? Under Article 163 of the Constitution the Governor must give his assent. Under Article 163(1) the Governor should act in accordance with the advice of the Council of Ministers. As such, it has happened that the President gave his assent to the Bill even when it was declared unconstitutional by the Supreme Court. The Zamindari Abolition Bill was declared unconstitutional by the Apex Court, but the President, Dr. Rajendra Prasad gave it his assent because it had been re-sent to him after having been passed by the Parliament.

Under Article 200, the Governor can also reserve the Bill for the consideration of the President if he feels that the Bill can endanger the Constitutional position of High Courts. He can also reserve the Bill for President’s consideration if he feels that the Bill which is unconstitutional or contrary to the Directive Principles or the matter falls within jurisdiction of the Centre or there is already a Central Legislation in existence; or it does not comply with Central Statutory Requirements. For example, the Bill passed by Madras Legislature in 1966 advocating right of the State to secede
from the Union was not assented to by the Governor. Instead, it was reserved for the consideration of the President because it brought into question the constitutional validity of India being the ‘union of States’\(^6\). Likewise, the Anti-conversion Bill passed by the Rajasthan Legislature in 2006 was not assented to by then Governor, Pratibha Patil on the grounds that it violated the religious freedom guaranteed under the Indian Constitution\(^7\). The BJP Government in Rajasthan had introduced the Bill as ‘Rajasthan Freedom of Religion Bill, 2006’ on April 7, 2006. Its stated purpose was to prevent ‘certain religious and other institutions from forcibly converting people from one religion to another by allurement or fraudulent means.’ Christian organizations like the AICC and the Christian Legal Association of India, and human rights organizations like the People’s Union of Civil Liberties, had raised serious objections to the proposed anti-conversion law, which they felt, would make it extremely easy for Hindu fundamentalists to lodge false accusations against Christian workers as the Bill provided for the immediate arrest of the accused even before the investigation is done\(^8\).

Once the Bill is reserved for the consideration of the President, it becomes a matter of President’s office. The decision of the President is final on any Bill that is reserved for him by the Governor. If the President gives his assent to it, the Bill becomes law and Governor’s assent is not needed in that case. In fact, in any such Bill where the reservation is mandatory, Governor is not expected to assent to it\(^9\). In this context, it is interesting to note that the power of President to veto the Bill reserved for his assent is absolute. In case of Parliament, if both Houses pass a Bill,
which is other than Money Bill, and send it for the assent of the President, he may
give it or withhold it. If he withholds it, he has to send the Bill in question back to the
Parliament for reconsideration. If the Parliament passes it again with or without
amendments and sends it back for the assent of the President, the President has to
assent to it in any case. Same is, however, not true in case of the Bill passed by the
State Legislatures, but reserved for the President. In case of such Bills though
President may send them back to the State Legislatures for re-consideration, but if
State Legislatures pass them again and re-send them for the assent of President, it
is not mandatory for him to give his assent. Moreover, there is no limit of time
prescribed within which President may give consideration to the Bill reserved for him
by the Governor\textsuperscript{10}. He can take as much time as he wants. For obvious reasons,
here President means Union Cabinet and these powers establish beyond doubt that,
if it so wants, the Union Cabinet can nip in the bud any bill passed by the State
Legislature just by sleeping over it. It is yet another factor that makes India a land of
‘unionised States’ rather than a ‘union of States’. It is important, however, to
underline here that the grounds of President’s action so far in vetoing the Bills
appear reasonable. For example, the President refused his assent to the Madhya
Pradesh Panchayat Raj Bill, 1960 because the Bill sought to introduce the principle
of nomination in the Panchayats whereas the Union Government was of the view
that method of nomination was incompatible with the idea of Panchayat Raj\textsuperscript{11}.

There is a view that powers of the Governor under Article 200 are
discretionary. The observation of Supreme Court in Shamsher Singh vs. State of
Punjab, as cited in the preceding chapter, seems to confirm it. However, the Court pointed out that the discretion under Article 200 is mainly in the area of preventing the position of High Courts from being derogated. Yet scholars of Constitutional law have often been perturbed by the expansive range of powers this Article vests in the Governor. Besides, the fear and confusion is further compounded by the fact that action of Governor under this Article is not justiciable. The Supreme Court has held:

“There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts”.

Consequently, the advocates of state autonomy fear that in the name of Article 200, the Union Government can effectively use the office of Governor as an instrument of subverting the State legislation. They feel that since under Article 200
there is no constitutional limitation to this power of Governor, it can be stretched to
the extent of bringing the entire state legislation (and through it the whole State
Government) under review or even control of central Government – all this without
even the semblance of an emergency\textsuperscript{13}. The Srinagar Convention of Opposition
Parties on Centre-State Relations had suggested that states are supreme in the
matter of legislation under the constitution, and nothing should be allowed to take
away that power of the states\textsuperscript{14}.

Despite the fact that Governor must go by the advice of Council of Ministers,
he can sideline it if he feels that there are reasonable grounds for reserving the Bill
for the consideration of the President. In such a case, the Governor is justified in
acting according to his judgement and discretion, though he should bear it in his
mind that he should reserve the Bill only in special circumstances in which there is a
clear violation of some fundamental rights or a patent unconstitutionality\textsuperscript{15}.

There is, however, another view that says that the Governor must act
according to the advice of the Council of Ministers, no matter what the circumstances
are. It holds that Article 200 does not vest any discretion in the Governor and as
such there is no reason why he should not act according to the Ministerial advice\textsuperscript{16}.

“There is no such thing in the Article 200 that empowers the Governor to act in his
discretion; hence it appears appropriate that he should go by the advice of the
Council of Ministers\textsuperscript{17}.” Some legal luminaries are of the firm opinion that if the
Governor’s power to withhold assent is treated as a matter within his discretion, the
position would become a totally unedifying one. They go a step further to say that even for the Council of Minister to advise withholding of any Bill would be an act of impropriety as the Bill is passed by the Legislature and not Ministerial Council; therefore, the Council should have no right to overturn the decision of Legislature\textsuperscript{18}.

It may be mentioned that whether in case of President or that of the Governor, the discretionary power cannot and should not be used in violation of the spirit of the Constitution. Governor must act under the advice of the Council of Ministers in all matters, except those that expressly require his discretion. He is expected to use his discretion sparingly, only in situations where it is required to prevent the express violation of law.

**Article 356 – Reporting Failure of Constitutional Machinery in the State**

Article 356 deals with President’s power to proclaim emergency in the State on the grounds of the failure of constitutional machinery in the State when the administration of the State can no longer be carried on in accordance with the provisions of the Constitution. This situation may include the following:

1. When the law and order in the State completely breaks down and the Government in the office is unable to control the situation; and,

2. When the Government ceases to retain the confidence of the Assembly and the Governor is unable to form an alternative Government to aid and advise him in the exercise of his functions\textsuperscript{19}.  


The role of Governor is crucial under this Article because it is mostly after the Governor submits his report about the failure of constitutional machinery in the State that the President’s rule is declared. However, the President can also proclaim such emergency without Governor’s report.

Article 356 is probably the most controversial one in the Indian Constitution, not just because of immense possibilities of its misuse, but also because of the fact that it has actually been repeatedly misused. It has been invoked over 120 times in various states so far. By the time the Sarkaria Commission Report was ready in 1987, it had been invoked about 75 times between June 1951 and May 1987, and the Commission remarked that in 52 cases out of 75, the controversial Article had not been used for the purpose for which it was meant.20

What was the purpose for which this Article was meant? The Constituent Assembly Debates throw ample light on the fact that the framers of the Constitution expected that the Article 356 would be used very sparingly and in rarest of rare cases.21 They held that it would be used as a last resort when all other solutions have failed. The President was expected to explore all the possibilities before taking over the State administration. A few members, however, remained sceptical about this Article, which they thought could be misused to throttle the state autonomy. Besides, its seemingly ambiguous wordings also came in for a sharp criticism. Naziruddin Ahmed was plainly blunt about it when he said, “This Article says particularly nothing. It says almost everything. It enables the Centre to interfere on
the slightest pretext and it may enable the Centre to refuse to interfere on the gravest occasion. So carefully guarded in its vagueness; so evasive in its draftsmanship; that we cannot but admire the Drafting Committee for its vagueness and evasiveness\textsuperscript{22}.

The Article 356 indeed looks subversive of the spirit of federalism in that it is so far-reaching in its scope that it can wipe out the autonomy of the States in one stroke. “The power to dismiss the duly elected Government of a State, even while it is enjoying the confidence of the Legislative Assembly, and the very dissolution of a duly elected Legislative Assembly by the Executive of the Union, is a concept which no believer in democracy can easily accept\textsuperscript{23}.” While this is true, the framers of the Constitution had some compelling reasons to retain it. Colossal human tragedy brought about by the cataclysmic events in the aftermath of partition entailed the creation of a strong Centre. Besides, the framers had a fear that within the Princely States where the democracy was unknown, a situation of central intervention could be very much likely. The framers, therefore, recognised that, in a grave emergency, the Union must have adequate powers to deal quickly and effectively with a threat to the very existence of the nation, on account of external aggression or internal disruption\textsuperscript{24}. This was the reason why the framers held on to Article 356 all along while hoping that it would be used conditionally only in very crucial situations. Dr. Ambedkar explained this clearly, “The President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a
province that has erred that the things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle the matters by themselves. It is only when these two remedies fail that he should resort to this Article\textsuperscript{25}." The actual experience, as it turns out, belied the hope of the framers of the Constitution. The Article 356 has ended up being used on an average for about twice year since 1951. Wherever it was put to use, the grounds were usually political, such as ones benefitting the party in power at the Centre that had some definite nefarious designs in dislodging the duly elected State Government. Contrary to the expectations of the framers, it does not appear anywhere on the record that before imposing President’s rule in any State the President ever issued any warning that is expected to be conveyed to the erring State Government through Governor. Second option – dissolving the State Legislature under Article 174 – has also been not used before imposing President’s rule. In fact, the Article 356 has been put to use without the President using any other options that are constitutionally available to him.

Governors have used this Article in such a manner that their conduct looked partisan, favouring the ruling party at the Centre. As mentioned in the preceding chapter, the Governor of Punjab dissolved the Assembly on the advice of the Chief Minister, Prakash Singh Badal on June 13, 1971, following defection of 17 Akali Dal MLAs. The very next day he recommended the imposition of President’s rule in the State, which was uncalled for\textsuperscript{26}. Likewise, the Governor of West Bengal dissolved
the Assembly on the advice of the Chief Minister on June 25, 1971 and recommended imposition of President’s rule the next day\textsuperscript{27}. Governors can use Article 356 as a weapon to extend the date of elections so that the tottering ruling party may get some time to brace itself. In 1970, the Governor of Kerala dissolved the Assembly following the advice of the Congress Chief Minister who wanted to seek fresh mandate. Soon he also recommended imposition of President’s rule\textsuperscript{28}. It has also happened that during the President’s rule the Assembly was not dissolved but kept under ‘suspended animation’ mainly to benefit the party in power to muster the sufficient support during the interim period. In 1971 elections in Orissa, no party could secure absolute majority and the Congress was the single largest party with 51 seats in a House of 140. The Governor, however, did not invite the leader of the Congress, H. Mahtab to form the Government because the majority support to him was not sure. Therefore, while the Governor recommended President’s rule, he did not dissolve the Assembly, but kept it under suspended animation\textsuperscript{29}.

The role of Governor in such cases becomes controversial, but there is nothing that can be technically or legally done about it. Article 356 provides for the Governor reporting about the failure of Constitutional machinery in the State. It does not provide for any specific guidelines to Governor about such reporting. Recommendation to impose President’s rule under Article 356 is usually based on Governor’s subjective assessment of the situation. Even the Committee of Governors was pretty vague about its recommendation when it held that in reporting
for necessity of using Article 356 in a State, “the Governor has to somehow see that constitutional machinery should be as far as possible maintained\textsuperscript{30}.”

Sarkaria Commission listed six categories in which the President’s rule has been imposed in the States\textsuperscript{31}. These include:

1. Cases of Special Category
2. President’s Rule when the Ministry commanded majority
3. Proclamation of President’s Rule without giving a chance to claimants
4. Cases where no caretaker Ministry was constituted
5. President’s Rule in context of Re-organisation of States
6. President’s Rule inevitable

Of these first four categories are important inasmuch as they stem from political opportunism. When the Janata Party was swept to power in 1977, it asked the Congress State Governments in Punjab, Rajasthan, Orissa, Haryana, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, West Bengal and Bihar to seek fresh mandate as rout of Congress at the Centre indicated that the party had lost people’s support. The Supreme Court upheld the decision of the Union Government when the six States – Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa – had challenged it on the ground that such a demand by the Union Government was unconstitutional and illegal\textsuperscript{32}. The Congress did the same by dismissing Non-congress State Governments after it returned to power in 1980. It may be noted that in the above cases, the Governors did not recommend the
President’s rule in the States; rather, it was imposed by the President on recommendation of Union Cabinet.

In Kerala in 1959, the Government of Namboodripad enjoyed the majority support in the Assembly but the Governor recommended President’s rule after there was a mass upsurge against the Government. Clearly, the Governor could have first tried the option of dissolving the Assembly and calling for fresh election before recommending the invocation of Article 356.

It may be mentioned that Article 356 presupposes that the Government is in place and the State administration cannot be carried on in accordance with the Constitutional provisions. However, some Governors have chosen to recommend the imposition of President’s rule even when there was no Government in the State. The case of Rajasthan after the elections of 1967 may be recalled that has already been mentioned in the preceding chapter. After the elections, the Congress emerged as single largest party in the Assembly, but due to a twist in the events that followed, the leader of Congress Legislature Party, M.L. Sukhadiya refused to form the Government. Governor recommended President’s rule, although the proper course seemed to be to invite the leader of opposition to form the Government. Governor did not explore any such options. Interestingly, the Assembly was not dissolved but kept under suspended animation, “which gave Sukhadiya sufficient time for securing defections and succeeding in his game plan.” In a similar vein, the Governor of Kerala recommended President’s rule in the State after the mid-term polls in 1965.
This was despite the fact that while no party managed to secure the majority, the Communist Party was a single largest party and it had staked a claim to form the Government with the support of other parties. But the Governor had felt that no stable Ministry could be formed. Interestingly this time around, the Assembly was not kept under suspended animation but immediately dissolved. Obviously, the Governor did not want to give the benefit of ‘buying the time’ to the Communists that Governors elsewhere had given to Congress in several instances.

It is clear from these cases that the Governors behaved partially towards the ruling party at the Centre. Political considerations rather than ground realities were taken into account when they chose to report the failure of constitutional machinery in the States. They often jumped to hasty conclusion that President’s rule was necessary when it was not. They advised the President’s rule when the Government in the State was yet to be formed. Besides, while deciding whether to dissolve or keep the Assembly in suspended animation, an obvious political bias predominantly reflected in the decision of Governors, insofar as how their action would benefit the ruling party at the Centre. All this is clearly against the concern of the framers that all options should be thoroughly explored before the Union finally takes over the State administration because, as Ivor Jennings said, a good Government is no substitute for self-Government. H.N. Kunzru had posed a question in the Constituent Assembly, “Is it the purpose of Article 278 and 278-A (Articles 355 and 356 in the present Constitution) to enable the Central Government to intervene in the provincial affairs for the sake of good Government?” Dr. Ambedkar replied, “No, no. The
Centre is not given that authority…whether there is good Government or not in the Provinces is not for the Centre to determine. But the Centre often determined, especially after 1967, what kind of Government suited its interests in the States and practically went about installing one such, no matter how unethical and unconstitutional precedent its manoeuvres tended to set. In the process, the office of the Governor took the beating because it is a link between Centre and State for good as well as bad things. Sins of Centre, therefore, visited upon this office every time the Union Government proceeded to execute its unholy game plan against the opposition Government in the State. In public perception, this gubernatorial office gradually began to lose its pristine aura with position of the Governor getting increasingly reduced to “being an employee of the Central Government, or the spy of the Centre.”

**Governor and Article 356: Judicial Interpretation**

The judicial interpretation of Article 356 and especially the role of Governors in recommending its use in various States constitutes a valuable insight into not only the way office of the Governor has been used or misused in different States but also into the broader role of President and Union Government in maintaining or destabilising the state administration. In the initial period, the Courts held that Article 356 was beyond judicial review. This stand of the Courts, however, underwent a gradual change in that there have been some landmark judgements that may not have overruled the Presidential proclamation or Governor’s decision to recommend
President’s rule, but have certainly shed light on what is constitutionally appropriate for the Governors while recommending President’s rule. The Bommai judgement in 1994 established that Presidential proclamation can be subjected to judicial review. Based on this judgement, the Allahabad High Court stayed the decision of the Governor to dismiss the Kalyan Singh Government in 1998\textsuperscript{38}. What follows is a brief review of the evolutionary judicial perspective on the role of Governor vis-à-vis Article 356 that had a significant bearing on the larger issues relating to centre-state relationship in general and the State autonomy in particular.

The imposition of President’s rule in the State of Kerala in 1965 was challenged in Kerala High Court\textsuperscript{39}. Prior to the State Assembly elections held in March 1965, Kerala was under the President’s rule. In the elections, no party could secure the working majority. Communist Party (Marxist) emerged as single largest party. The Governor was expected to invite the leader of single largest party to form the Government. However, the Governor never summoned the Legislature with the result that no elected member could be sworn in. instead, on March 16, 1965, he held talks with leaders of various parties and came to a conclusion that no stable Government could be formed and sent in his recommendation to the President to impose President’s rule in the State\textsuperscript{40}. On March 24, 1965, the Vice-President, who was then discharging the functions of the President, as the latter was out of India, revoked the Proclamation of September 10, 1964, and issued a fresh Proclamation under Article 356 dissolving the newly constituted Legislative Assembly of the State.
and assuming to himself all the functions of the Government of Kerala. The petitioner argued:

1. How could Governor recommend imposition of President’s rule when the State was already under President’s rule?
2. How could the Assembly be dissolved when it was never assembled?
3. The action of the Governor was mala fide and unconstitutional because when the State was already under President’s rule, the Governor had no power to hold talks with political leaders and much less send a report to President to impose President’s rule under Article 356.

The Court dismissed the petition on the ground that it was beyond the purview of the Court to go into the constitutionality of the Presidential proclamation under Article 356. It observed:

“…It is not open to the Courts to question the validity of a Proclamation under Article 356....The only sanctions against a capricious act on the part of the President would be what the Constitution itself has provided: namely, an impeachment under Article 61 or the non-approval of his action under clause 3 of Article 356. However, the question need not be decided here.”

As already referred to in the preceding chapter, the President’s rule was imposed in the State of Orissa on January 11, 1971, following resignation of Swatantra Congress Ministry, and the Assembly was subsequently dissolved after ten days. As a result of the mid-term elections held on March 5, 1971, the United
Front Government under the leadership of Biswananth Das was formed on April 3, 1971 that claimed the support of 72 in the House of 135\textsuperscript{46}. The constituent parties comprised Utkal Congress, Swatantra Congress and some independent members. The Government however never looked stable and soon came in for a rude shock as between May 1972 and June 1972, about half of its supporting legislators crossed over to Congress (R). As a result, Das had to resign on June 9, 1972\textsuperscript{47}. On June 14, Nandini Sathpathy became the Chief Minister of Orissa\textsuperscript{48}. The Congress (R) had the support of Utkal Congress, led by Biju Patnaik, following an agreement between two parties that Utkal Congress would merge with Congress with latter promising to give an important portfolio to Biju Patnaik and admit all Utkal MLAs into Congress (R) fold. But the Congress backtracked on its promise and admitted only 28 MLAs from Utkal Congress. As such, the Utkal Congress MLAs started leaving Congress gradually and joining the Pragati Party of Biju Patnaik. On March 1, 1973, the strength of Pragati Party swelled to 70. The number was enough to make it a party with absolute majority in the House of 139\textsuperscript{49}, leading to the resignation of Nandini Sathpathy. Despite having clear majority with him, the Governor rejected the claim of Biju Patnaik to be invited to form the Government. On the contrary, he went ahead with proroguing the Assembly and recommending President’s rule in the State with the plea that there was a likelihood of a situation arising in future in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. He felt that political defection by Members of the Legislative Assembly in this State from time to time, either for consideration of office or for
personal gains, had become common, affecting the political life of the State adversely.

Biju Patnaik challenged the decision of the Governor in Orissa High Court. He argued that the action of the Governor and that of President, resulting in imposition of the President’s rule in the State, was mala fide and politically motivated. He claimed that Governor knew that Pragati party had absolute majority and there was no such situation in which the Government of the State could not be carried on in accordance with the provisions of the Constitution.

The petition was dismissed on the ground that the action of President was not justiciable. Yet what the Court remarked regarding the role of Governor remains important. The Court specifically mentioned that despite knowing that Biju Patnaik had majority with him, the Governor did not invite him to form the Government just because the Governor had felt that such a Government would not last. The Court found it an obvious violation of the Convention followed in English Constitution, on the basis of which the Constitution of India has been modelled.

“In arriving at this conclusion the Governor did not honour the convention prevalent in Great Britain in the matter of formation of the Ministry.”

The Court felt that if Governor had doubt about Patnaik’s claims, he could have satisfied himself by calling for the test of strength on the floor of the House.
“Even assuming that the Governor wanted to test the exact support, he should have called upon the leader of the Opposition to test his strength in the House itself which was in session."  

On the issue of defections taking place in the Assembly in view of which the Governor recommended President’s rule under an assumption that any new Ministry would not be in a position to give stable Government, the Court commented:

“The Governor is not concerned whether the ministry could be stable in future. If the ministry which would have been formed by the leader of the Opposition would have fallen afterwards, the Governor would have been justified to recommend for the President's Rule if at that time no other person was in a Position to form an alternative ministry by having majority support.”

By and large, the remarks of Orissa High Court in the above case are significant. The court felt that action of the Governor violated the spirit of the Constitution. Needless to say, the Court fell short of quashing the decision of the Governor and the proclamation under Article 356 because it held them to be non-justiciable.

That the Presidential proclamation under Article 356 is beyond the purview of Courts was reiterated by Andhra High Court. In 1974, when the Congress Chief Minister of Andhra Pradesh resigned following instructions from High Command, the President’s rule was imposed after the Governor recommended it in view of prevailing unstable political situation. The Presidential proclamation was challenged
on the ground that Governor sent in his recommendation without exploring the possibility of forming alternative Government in the State\textsuperscript{55}. Rejecting the petition, the Court specifically remarked that Article 356 cannot be subjected to judicial review:

“Article 356 is not susceptible to judicial review because the Presidential satisfaction under Article 356 is basically a political issue. The Constitution does not enumerate a situation where President’s Rule can be imposed and there are no satisfactory criteria for judicial determination of what is relevant consideration for invoking the power under Article 356. Consequently, the question is intrinsically political and beyond the reach of the courts\textsuperscript{56}.”

The Court was confronted with the question as to what if President started using his powers under Article 356 arbitrarily. It opined:

“….The only limitation on the exercise of power under Article 356 is political limitation, the considerations of which are relevant for action under Article 356 and weighing of these considerations appears to be clearly matters of political wisdom and not of judicial scrutiny… after everything is said and done, it is the people of the country that should resist despotic tendencies on the part of the President or the majority party in Parliament and it is scarcely a matter for the courts\textsuperscript{57}…”

In what was certainly a major departure from the earlier stand taken by the Judiciary in respect of ‘judicial hands off’ in the case of Presidential proclamation under Article 356, the Supreme Court in 1977 observed:
“..Court cannot “shrink from performing its duty under the Constitution if it raises an issue of constitutional determination….merely because a question has a political colour, the court cannot fold its hands in despair and declare ‘judicial hands off’… So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so.”

The judgement of the Supreme Court in the S.R. Bommai in 1994 case was definitely a landmark in the legal history of modern India. Tackling the use and misuse of Article 356 and related issues at length, the judgement had far-reaching implications for the centre-state relationship as well as State autonomy. It established two issues of crucial importance: one, Presidential proclamation could be justiciable and two, secularism was an important part of the basic structure of the Constitution.

S.R. Bommai, the leader of Janata Party, was the Chief Minister of Karnataka in 1988. In September 1988, Janata party merged with Lok Dal to form Janata Dal and 13 new members were added to the Ministry. A few days after an MLA from the Janata Dal, K.R. Molakery, defected from the party and presented a letter to the Governor along with 19 letters, allegedly signed by MLAs supporting the Ministry, withdrawing their support to the Ministry. Immediately, the Governor dispatched a report to the President stating that there were defections in the ruling party. He
further stated that in view of the withdrawal of the support by the said legislators, the Chief Minister, Bommai, no longer commands a majority in the Assembly. He, therefore, recommended the President rule's under Article 356. However, the very next day seven out of the nineteen legislators who had allegedly written the said letters to the Governor, sent letters to him complaining that their signatures were obtained on the earlier letters by misrepresentation and affirmed their support to the Ministry. The Chief Minister and his Law Minister met the Governor on the same day and informed him about the decision to summon the Assembly, for the floor test. They also sent a similar message to the President of India.

Yet the Governor chose to send another report to the President on April 20, 1989 stating his earlier stand that the Chief Minister had lost the confidence of the majority in the House, in view of which President's rule could be imposed. The same day the President issued the Proclamation under Article 356, taking over the administration of Karnataka State. Bommai challenged the validity of the said proclamation in the Karnataka High Court that, however, dismissed the petition. The matter thus reached the Supreme Court.

Meanwhile, the President's rule was imposed in Meghalaya and Nagaland, based on the Governors' reports of respective states that the constitutional machinery could not be carried on in accordance with the Constitutional provisions in these States due to unstable political conditions. Besides, Rajasthan, Himachal Pradesh and Madhya Pradesh had also come under President's rule in 1992,
following their failure to ban the organisations like RSS, VHP and Bajrang Dal\textsuperscript{63}. These States had also challenged the validity of proclamation under Article 356. Madhya Pradesh High Court had allowed the petition of the State Government. Appeals of Rajasthan and Himachal Pradesh were with the Supreme Court.

The Supreme Court heard all these petitions jointly along with the writ petition of Bommai. The Court upheld the imposition of President’s rule in the States of Rajasthan and Himachal Pradesh and ruled that secularism is an integral part of the basic structure of the Constitution. It held:

“Secularism is one of the basic features of the Constitution. While freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State Government which pursues un-secular policies or un-secular course of action, acts contrary to the constitutional mandate and renders itself amenable to action under Article 356\textsuperscript{64}.”

As regards the justiciability of Presidential proclamation under Article 356, the Court held that it was not immune from judicial review, even though the Court refrained from going into the accuracy of the material on the basis of which such proclamation was made.
“The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action. Even if part of the material is irrelevant, the court cannot interfere so long as there is some material which is relevant to the action taken."

Most importantly, the Court concluded that the imposition of the President’s rule in Karnataka and Meghalaya was unconstitutional, which it would not have hesitated to strike down and direct the revival of respective Assemblies, had not the fresh elections taken place in these States.

“The Proclamations dated April 21, 1989 in respect of Karnataka and in respect of Meghalaya are unconstitutional. But for the fact that fresh elections have since taken place in both the States and new Legislative Assemblies and Governments have come into existence, we would have formally struck down the Proclamations and directed the revival and restoration of the respective Governments and Legislative Assemblies.”

The judgement of the Supreme Court in Bommai case is notable for making Presidential proclamation under Article 356 justiciable. It set a landmark precedent
for the subsequent evaluation of the Judiciary that President does not have absolute power under Article 356 and that the Courts could review the constitutionality of any such proclamation and order restoration of the State Assembly dissolved by virtue of such a proclamation.

A huge impact of Bommai judgement was clearly evident on the judgement of Allahabad High Court in ‘Narendra Kumar Singh Gaur vs. Union of India, 1998’. The case related to the dismissal of Kalyan Singh Ministry in Uttar Pradesh, though it did not involve any issue of imposition of President’s rule.

The Governor of Uttar Pradesh dismissed the BJP Chief Minister Kalyan Singh after assessing that he had lost the majority support in the Assembly and installed Jagdambika Pal as the Chief Minister. This happened exactly on the eve of Lok Sabha elections scheduled to be held on February 22, 1998. In his statement to the Allahabad High Court where his decision was challenged, the Governor said he had reasonable grounds to believe that Kalyan Singh no longer enjoyed the support of the House. He clarified that leaders of major parties in Uttar Pradesh met him and gave the letters of support in favour of Jagdambika Pal. These included Mayawati (BSP), Raja Ram Pandey (Breakaway Janata Dal), Shoeb Hamid (BKKP), Ahmed Hasan (SP), Pramod Tiwari (Congress) and few others. It was apparent, according to Governor, that when Lok Tantrik Congress and Breakaway Janata Dal decided to withdraw their support to Kalyan Singh, the strength of his Government
would come down to 197, falling short of the magic number of 213 in the House of 424.

The Governor admitted that he did not allow the embattled Chief Minister a chance to seek a vote of confidence. His reasoning was if he had allowed it, it would have provided an open opportunity for horse-trading as additional strength could only be secured through defections or splits from the other parties. The Governor maintained that he took a cue from the decision of former Governor of Uttar Pradesh who denied Mulayam Singh an opportunity for floor test after he was reduced to minority following withdrawal of support by BSP in 1995. The then Governor did not heed Mulayam's request for the test of strength because Mayawati had been promised outside support by BJP of which the then Governor had proof. Subsequently, Mulayam Singh was dismissed and Mayawati was sworn in as Chief Minister.

The Governor contended that the situation was similar in Kalyan Singh case. He stressed that since it was not the case of recommendation to impose of President's rule, but that of deciding who commanded the majority support in the Assembly, the effect of Bommai judgement did not apply in this case. Therefore, what he had done was motivated by a desire for political stability in the State and prevention of dirty game of horse-trading. The Governor's statement did not impress the Court. Quoting extensively from the Bommai judgement, the Court came down heavily on the decision of the
Governor to evade floor test and base his decision to dismiss a duly elected Ministry on subjective considerations.

“...It was not for the Governor to take upon himself the task of deciding the question outside the floor even if there is scope of horse-trading... the Governor had thrown to the wind all canons of propriety with undue haste which itself smacked of mala fides. A duly constituted ministry was dismissed on the basis of material, which was neither tested nor allowed to be tested and was no more than the ipse dixit of the Governor. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more firmly, cautiously and circumspectly. Instead, is appears that the Governor was in a hurry to dismiss the ministry.”

The Court held that, especially after Bommai judgement, the only proper course to determine whether the Chief Minister enjoyed majority support was floor test.

“That (floor of the House) alone is the constitutionally ordained forum for seeking openly and objectively the claims and counter-claims...The assessment of the strength of the ministry is not a matter of private opinion of any individual, be he the Governor or the President, it is capable of being demonstrated and ascertained publicly in the House...any such private
assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides."

In its order of paramount significance, the Court stayed the decision of the Governor and allowed for the restoration of Kalyan Singh Ministry.

"For the reasons we have to assign today, the decision dated 21.2.1998 dismissing the Council of Ministers headed by Sri Kalyan Singh, shall remain stayed and status quo as existing immediately preceding the said decision shall continue during the pendency of the writ petition. However, it will be open to the Governor to summon the House if he so thinks fit to have the vote of confidence tested. In case, the vote of confidence it taken and goes against Sri Kalyan Singh then the Governor may take appropriate steps."

Needless to say, Kalyan Singh won the trust vote securing 225 votes as against 196 votes secured by Jagdambika Pal. The Governor’s decision, however, showed in a poor light even as the Supreme Court upheld the order of Allahabad High Court.

Bommai judgement and recommendations of Sarkaria commission were crucial in moulding the legal and constitutional perspective significantly on role of Governor in the changed socio-political context. As noted above, the decisions of the courts presented a bolder approach in examining and commenting on the role of constitutional functionaries be they Governors or the President.
In a majority of the cases where the Article 356 has been imposed, the Governor has had a central part in the process. Therefore, as The Supreme Court observed, “In the light of a volatile system prevailing today, it is pertinent to recognize the crucial role played by the Governors in the working of the democratic framework.” Subjecting the role of the Governor under Indian constitution to a detailed analysis, the Court quoted with dismay the observation from Sarkaria Commission Report that “Governors have failed to display the qualities of impartiality...mainly due to the fact that the Governor is appointed by, and holds office during the pleasure of the President, i.e., in effect, the Union Council of Ministers.” The observation of the Court came in context of the role played by the Bihar Governor, Buta Singh, in recommending the imposition of President’s rule in the State in 2005 after the electorate gave a fractured verdict. Interestingly, this was eighth time beginning from 1968 that the State of Bihar came under President’s rule.

In Bihar, in the House of 243, no party could reach the magic number of 122 needed for forming the Government, although NDA under the leadership of Nitish Kumar emerged as single largest bloc with 92 seats. The Governor came to the conclusion, after making appropriate assessment of the fluid political situation in the State, to keep the State Assembly under ‘suspended animation’, because no party looked likely to muster a working majority to form the Government. In his submission to the Court, the Governor said,
"I explored all possibilities and from the facts stated above, I am fully satisfied that no political party or coalition of parties or groups is able to substantiate a claim of majority in the Legislative Assembly, and having explored the alternatives with all the political parties and groups and Independents MLAs, a situation has emerged in which no political party or groups appears to be able to form a Government commanding a majority in the House. Thus, it is a case of complete inability of any political party to form a stable Government commanding the confidence of the majority members. This is a case of failure of constitutional machinery.

"I, as Governor of Bihar, am not able to form a popular Government in Bihar, because of the situation created by the election results mentioned above. I, therefore, recommend that the present newly constituted Assembly be kept in suspended animation for the present, and the President of India is requested to take such appropriate action/decision, as required."

Bihar came under President’s rule on March 7, 2005 when the President gave approval to the Governor’s recommendation. The then Home Minister, Shivarj Patil, told Rajya Sabha that the Centre was "not happy" about imposing President's Rule and had no intentions of continuing the arrangement for long. “The sooner it disappears the better it would be for Bihar, for democracy and for the system we follow. Elected representatives would have to take steps in this direction to ensure that a popular Government, even if it is a minority one, is put in place.” However,
nothing of that sort happened and the Bihar Assembly, which was under suspended animation so far, was finally dissolved on May 22, 2005\textsuperscript{79}.

The petitioners however felt that the Governor’s action was mala fide and partisan. The process of realignment of forces was already set in motion with several political parties and independent MLAs coming forward to support Nitish Kumar in forming a stable Government. On April 8, 2005, 17 independent MLAs declared their support. This was followed by the declaration of support by the Samajwadi Party (SP), the Bahujan Samaj Party (BSP) and the Nationalist Congress Party (NCP) and this was brought to the notice of Governor\textsuperscript{80}. The Governor, however, remained unconvinced as he assessed that support to Nitish Kumar was being cobbled on the assurance of various allurements like money, posts, positions and caste factor. He wrote to the President:

“I am given to understand that serious attempts are being made by JD-U and BJP to cobble a majority and lay claim to form the Government in the State. Contacts in JD-U and BJP have informed that 16-17 LJP MLAs have been won over by various means and attempt is being made to win over others. The JD-U is also targeting Congress for creating a split. It is felt in JD-U circle that in case LJP does not split then it can still form the Government with the support of Independent, NCP, BSP and SP MLAs and two-third of Congress MLAs after it splits from the main Congress party\textsuperscript{81}.”
The Governor expressed fear that in view of the prevailing circumstances the present situation was fast approaching a scenario wherein if the trend was not arrested immediately, the consequent political instability would further give rise to horse-trading being practised by various political parties and groups trying to allure elected MLAs. Consequently, it might not be possible to contain the situation without giving the people another opportunity to give their mandate through a fresh poll\textsuperscript{82}. 

The petitioner contended that allegation in the Governor's report indicating horse-trading was factually incorrect. In any case, under the Constitution of India, the decision regarding merger and disqualification on the grounds of defection or horse-trading is vested in Speaker and not the Governor. The Governor did place the Assembly under suspended animation, the purpose of which was to provide time and space to the political parties to explore the possibility of forming a stable Government. Within the given time, Nitish Kumar managed to secure the support of 135 MLAs, but the Governor failed to recognise it\textsuperscript{83}. 

The additional Solicitor General contended on behalf of Governor that in the given situation the Governor had in his possession enough cogent material to reach the conclusions he reached, and under Article 361 (1) of the Constitution Governor is not answerable to any court for the exercise and performance of the powers and duties of his office. 

The Court, while it agreed that the office of the Governor was granted immunity under the said Article, it stressed that the Article in question did not affect
the power of the Court to judicially scrutinise the attack made to the proclamation issued under Article 356(1) of the Constitution of India on the ground of mala fides or it being ultra vires.

In the order, the Court stated that the proclamation dissolving Bihar Legislative Assembly was unconstitutional. However, it didn’t restore the Assembly apparently as the electoral process was already underway to constitute the new Assembly, the notification of the Election Commission having already been issued in the regard. The 324-page judgement that finally dismissed the petition ends with the following lines:

“It has become imperative and necessary that right persons are chosen as Governors if the sanctity of the post as the Head of the Executive of a State is to be maintained.”

Bihar case was not the only one in which the Apex Court castigated the role played by the Governor. The Court had taken a similar view that about the role of Jharkhand Governor when he had invited the JMM leader, Shibu Soren, even when his majority in the Assembly was doubtful, to form the Government after 2005 Assembly elections in the State.

It may be mentioned, however, that in the process of dissolution of Assemblies, dismissal of Chief Ministers to the imposition of President’s rule in the States, Governor is just one of the players. His job is to report to the President his assessment of the situation in the State. Imposition of President’s rule is the decision
of the Union Cabinet implemented through the President of India. Governor’s report is not binding on the President. Although President cannot not refuse his assent to promulgating Article 356 if the Union Cabinet so recommends, he can express his reservations about it, if he finds it unconstitutional, by sending it back for reconsideration. Former President K.R. Narayanan had taken such a step in 1997 and thus became the first ever President to send back the proposal to promulgate Article 356 as reported by the Governor of the State and recommended by the Central Cabinet. This happened in October 1997, when, following tumultuous events in the Uttar Pradesh Assembly, the Governor, Romesh Bhandari, sent in his report, recommending dissolution of Assembly and imposition of President’s rule, the President sent back the proposal despite the Union Cabinet approving it. In a terse message to then Prime Minister, I.K. Gujral, the President said he felt, “that the Governor's report had not established that the constitutional machinery had broken down and that President's rule, including dissolution of the Assembly, was called for - in the light of Bommai\textsuperscript{86}.” The Gujral Government did not re-send the proposal to the President for his signature. The invocation of Article 356 was thus averted in Uttar Pradesh.

The major player that can wreak havoc be it dissolution of Assembly or imposition of President’s rule in the State is the Central Government. Therefore, when the role of Governor came in for criticism at the hands of Court, some felt that other players were allowed a convenient escape. The Court mildly said that “Council of Ministers should have verified facts stated in the report of the Governor before
hurriedly accepting it as a gospel truth. Clearly, the Governor has misled the Council of Ministers... "And we might add that the Council of Ministers misled the President. It would be a moot question whether more responsibility should be attached to those who misled or those who got misled."

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