CHAPTER - VI

INSTITUTION OF GOVERNOR, IT'S IMPORTANCE 
AND ROLE UNDER THE CONSTITUTION

A. IMPORTANCE

The Parliamentary system which the Constitution of India has adopted at the State level, is not absolutely identical with that of England. The Governor in our system does not function merely as Constitutional Head, for the whole gamut of his responsibilities. There is an important area, though limited and subject to Constitutional constraints, within which he acts in his discretion. There are many facet of his role. As a 'bridge' between the Union and the State, he can foster better understanding between them and remove such misapprehensions as may be souring their relations. He is sentinel of the Constitution. He is a live link or channel between the Union and the State. As such link, it is his duty to keep the Union informed of the affairs of the State administration, whenever he feels that matters are not going on in accordance with the Constitution, or there are developments endangering the security or integrity of the country. The Governor thus assists the Union in maintaining unity and integrity of the country and in discharging its responsibilities towards the States. 

which the Governor plays to help maintain the democratic form of Government and the smooth operation of the Constitution at the State level is of vital importance.\textsuperscript{2}

The Governor, whether acting with or without the advice of the Council of Ministers, plays a pivotal role in our Constitutional system and in its working. He is the linchpin of the Constitutional apparatus of the State.\textsuperscript{3} All executive actions of the State Government are expressed to be taken in his name.

It is interesting and worth mentioning that the tenure of the Governor, unlike that of the Council of Ministers does not depend on majority support in the legislative assembly. Chief Ministers change from time to time depending on their enjoyment of majority support in the Legislative Assembly. But the Governor continues irrespective of change of Ministries or even dissolution of the Legislative Assembly. The Governor continues even on the expiry of his five years term until his successor join the office. Thus, the institution of Governor assures continuity of the process of Government. He fills the political vacuum as and when there is a breakdown of the Constitutional machinery in the State. Even in the normal working of the system, there may be some situations under the Constitution where the advice of Council of Ministers is not available to him for a short period.

\textsuperscript{2} Ibid.

\textsuperscript{3} Ibid.
For example where a Ministry resigns and refuses to stay in office as caretaker till another Ministry is formed or till President's rule is imposed. During a short period of this nature, the Governor would be within his power to carry on the executive affairs of the State through his subordinates, as the Constitution does not intend that there should be a break or paralysis of the executive government in such situations.  

Therefore, the functions of the Governor are at once diverse and important. Functioning in normal times as the Constitutional Head of the State and as a vital link between the Union and the State, he becomes an agent of the Union in certain special circumstances. When a proclamation under Article 356 is in operation, the Governor is the key functionary of the system envisaged by the Constitution, exercising almost all the powers of the Executive and the Legislature.

The role of the Governor in the emerging strains in Centre-State relations is of vital concern in the Indian Constitutional system. In its working, problems of far-reaching importance relating to the office of the Governor have cropped up from time to time and lot of misunderstanding between the Centre and the States has arisen on account of the changing perspective of the role of the Governor.

The Governors can play an important role for the improvement of Centre-State relations if the feeling that the Governors are agents of Centre is removed. For this purpose healthy relations between the Governors and their Ministers have to be established. Since the commencement of Indian Constitution, efforts have been made to build those healthy conventions which strengthen and smoothen the Parliamentary set-up.

While inaugurating a two-day conference of the Governors, on 27th Dec. 1991, the then President of India Mr. R. Venkataraman said,

"the Governors are not the decorative roofing on a State's body-politic. It was widely and erroneously believed that the Gubernatorial office was but an ornamental institution, distanced from the hopes, trials and tribulations of the people of the State."

As a matter of fact, Constitutions are what the enforcement authorities make them. A Democratic Constitution may function undemocratically and monarchy may assume the representative character, in clear disregard to the written provisions. Sometimes the provisions of written statute are misinterpreted and misused by the politicians - Indian Constitution is no exception to it. Past experiences show that our institutions like that of President, Prime Minister, Governor etc., are not what they were in 50's and 60's. Institution of the Indian

Governor was not considered as important in the pre-1967 period as in the post-1967 period. The emergence of regional parties as majority parties after 1967 to a large extent changed the character of the office of the Governor.

With the coming into power of different parties both at the Centre and the States, the Governor's office has assumed great importance. The Governor who is the Head of State at the Provincial level is appointed by the President of India and through him the Union exercises supervision on the functioning of the State governments. The Governor plays a constructive role in the administration of the State as he is given discretion in certain situations to act without the advice of Council of Ministers. Generally, it is the Governor of a State on whose recommendations the President's Rule is imposed.

Today, office of the Governor has become controversial. The lack of understanding, ambiguous language of the Constitution, partisen character of most of the Governors in view of their previous affiliations with a particular party and the political considerations further aggravated the controversy. Therefore, it has become necessary to make critical analysis of the Constitutional provisions regarding the Institution of Governor and to make some suggestions in order to improve the working of the Institution of Governor.
B. APPOINTMENT OF THE GOVERNOR

Article 153 of the Constitution of India says that there shall be a Governor for each State. According to Article 155, "the Governor of a State shall be appointed by the President by warrant under his hand and seal." However, in reality and in actual practice he is appointed by the Central Government.

For a better understanding of the Constitutional position about the appointment of the Governor, it becomes essential to examine the intentions of the Framers of the Constitution of India, relating to his appointment.

DEBATE IN THE CONSTITUENT ASSEMBLY

When article 131 of the Draft Constitution was placed before the Constituent Assembly for discussion, it had before it three different proposals for the appointment of the Governor:

i) He should be directly elected by the people on the basis of adult franchise.

ii) He should be appointed by the President out of a panel of four candidates elected by the State legislature in

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6 By the 7th Constitutional Amendment Act of 1956, it has been provided that the same person can be appointed for more than one State.

7 Central Government here means the party in power at the Centre.

8 See also Chapter V.
accordance with the system of proportional representation by means of a single transferable vote.

iii) He should be directly appointed by the President by warrant under his hand and seal.

The method of direct election met with strong criticism and, hence, the Constituent Assembly made a few modifications in the principles of model Provincial Constitution. It was felt that an elected Governor might get into clash with the Chief Minister and the Cabinet responsible to the Legislature. But unfortunately it happens sometimes in the case of an appointed Governor also.

Another factor that led the Framers of the Constitution to drop the election system were the powers of the Governor. They did not intend to give any substantial power to him, in view of the system of Parliamentary form of government. As such they did not think desirable to have an elected Governor.

Thus, the Constituent Assembly finally adopted the Provincial Constitution in May/June 1949 with some significant


10. Under the first United Front Government in West Bengal in 1967 and second in 1969, the conflict arose between the Governor of the State, Dharamvira and the Chief Minister, Ajoy Kumar Mukherjee. Both the Deputy Chief Minister, Jyoti Basu, and the Chief Minister time and again demanded the recall of Dharamvira. Hence, the Central Government had to shift Dharamvira from West Bengal to Mysore. (The Statesman, New Delhi, March 8, 1969).
changes. Such changes were inevitable in the wake of some developments in the country—viz., Communal riots and refugee influx following the partition of India. The Founding Fathers, therefore, decided to set up a strong Central Government instead of a weak Federation. With this major change in the attitude of the members of the Constituent Assembly, provisions relating to the Governor were also bound to undergo a significant change.

However, some members of the Constituent Assembly suggested that the Governor should be appointed by the President under his hand and seal from a panel of four candidates elected by the members of the legislative Assembly of the State or where there is Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.

But the panel system suggested by the Drafting Committee was not adopted due to certain factors. Brajeshwar Prasad said that the nomination by the President from a panel of names in reality meant restricting the choice of the President. "It gives power in the hands of the Legislature. It is necessary that the President should be free from the influence of the Legislature."11

As another appropriate alternative to the direct election and panel system, Brajeshwar Prasad moved an amendment that the Governor should be appointed by the President "by warrant under his hand and seal." He was of the opinion that in the interest of All India Unity it was necessary that the authority of the Government of India over the Provinces should be maintained.12 Speaking in favour of an appointed Governor, K.M. Munshi said that an elected Governor could not keep away from party politics. Thus, when there is rivalry for Premiership," a person who is completely detached from party politics of the Province would be much better than a person who is wedded to the party."13

Pandit Jawaharlal Nehru was of the view, "minority groups will have better chance in the process of nomination than in election."14 He further said that nomination, "is really a more democratic procedure than the other procedure (i.e. election) in the sense that the latter would not make the democratic machine work smoothly."15

T. T. Krishnamachari observed:

"Either you make the legislature supreme or you make the

15. Ibid.
Governor supreme. If you adopt the Presidential system the Governor is supreme, under the Parliamentary system the legislature and the leader of the majority party in the legislature will be Supreme. The choice is obvious and that choice is logical. This is why we have come to this choice of a nominated Governor.  

The opinion of Raghavachariar in this connection deserve mention:  

"In the Governments of such a vast country as India, it is but proper that the Head of each State should be nominee of the Central Executive, so that the main lines of policy which the Centre may conceive as conducive to the coherence and solidarity of the country as a whole may be better instilled into the Government of each Province through the Centre's representative."  

After having rejected all the proposals, the Framers accepted Brajeshwar Prasad's amendment for the appointment of the Governor by the President "by warrant under his hand and seal" thinking it the "lesser-most evil," an instrument of maintaining "common links" between the Centre and the States and a cogent factor for establishing "harmony, good working and 


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sounder relations between the Provincial Cabinet and the Governor." During the discussion in the Constituent Assembly it was also expected that the man to be appointed would be an outsider and the convention that the Government of India would consult the Provincial government would develop.

(i) THE CONSTITUTIONAL PROVISION

According to Article 153, there shall be a Governor for each State. The Governor of a State shall be appointed by the President by warrant under his hand and seal. The same person can be appointed as Governor for two or more States.

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of

22. Article 155 - Constitution of India.
23. Vide article 153 as amended by the Constitution (7th amendment) Act 1956, S.6. By Clause 3(A), if the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor. The Governor shall not hold any other office of profit. The Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior-most Judge of that Court available, an oath or affirmation in the form prescribed under Article 159.

(ii) APPOINTMENT OF GOVERNOR—PRACTICE

Since the President is only a Constitutional Head, so in the appointment of Governors of the States also, he acted on the advice of the Council of Ministers. The Ministry (Home Ministry) however, before recommending any name to the President used to

25. Article 158(1) Ibid.
26. Article 158(2) Ibid.
27. Article 159 Ibid.
consult the State Chief Minister before 1967, however, no significant was attached to this consultation.

But after 1967, it gained significance when the coalition Governments came into existence in the States. Conflicts arose between the congress-ruled Centre and non-congress governments in various States. In Haryana, when Rao Birender Singh was the Chief Minister, he had confrontation with the Central Government on the issue of Governor's appointment. Centre refused to accept the principle that the panel of names should be discussed with him or that he be taken into confidence. The Centre suggested only one name and not a panel of names. In 1967 in Punjab, Gurnam Singh had disapproved of the two persons who were proposed Governors by the Central Government. He suggested instead a few other names but none of these was appointed.

There are instances when the Chief Ministers were not consulted at all. In 1967, in Uttar Pradesh, the appointment of B. Gopala Reddy was announced before the formation of the new Government headed by Charan Singh. In Lok Sabha, S. M. Banerjee wanted to know whether Charan Singh would be consulted and this appointment would be reconsidered. Y.B. Chavan, the then Home Minister, said that there would be no consultation.

appointment of Sri Prakasa (Madras) and Kumaraswami Raja (Orissa), the respective Chief Ministers had gone on record that they were not consulted.\(^{31}\)

In Bihar the controversy arose over the appointment of Nityanand Kanungo. The then Chief Minister of Bihar, Mahamaya Prasad Sinha, publicly protested against the appointment of Kanungo. He regretted that the Centre had gone ahead with the appointment despite "clear rejection" of Kanungo by the State Cabinet. He called it a violation of the convention that the Governor be appointed in consultation with the State Government. The Chief Minister declared that Kanungo would not be welcomed to the State.\(^{32}\) Y.B. Chavan, the then Union Home Minister however declared that the State Chief Minister has no power to veto the appointment of the Governor.

The case of H.C. Mukherjee is very interesting. It was reported that when Nehru wanted to appoint a non Bengali, the then Chief Minister of West Bengal, B.C. Roy, strongly objected saying that West Bengal would not tolerate a non-Bengali Governor, and B.C. Roy was not a man to be trifled with. Then the Central Government began to "rack" their brains and discovered somebody who would satisfy both conditions, for Nehru

an outsider and for Roy a Bengali, and it was easy to hit upon H.C. Mukherjee because it was found that Mukherjee was a Behari by domicile. Similarly, after Mukherjee's death when the same problem arose, Miss Padmaja Naidu whose mother was a Bengali, married to a person from Andhra, was discovered to the satisfaction of both B.C. Roy and Nehru. It was only after the death of B.C. Roy and the loss of solidarity in the Bengal Congress that a non-Bengali could be sent to Raj Bhawan. It seems that in these cases the intention of the Framers of the Constitution and recommendation of the States Re-organization Commission had not been followed.

In reality, there is no fixed criteria for the appointment of the Governors. In most of the cases, tools of the Central Government, and the Men from the ruling party or its favourites are appointed Governors. The Setalvad Study Team appointed by the Administrative Reforms Commission has said in its report that there have been instances of persons appointed as Governors continuing their connection with active politics and in some cases returning to active politics after ceasing to be


In some of the cases, the defeated candidates of the ruling party are appointed Governors. N.V. Gadgil, H.V. Pataskar and V. V. Giri, defeated candidates of the Congress party, were appointed Governors. Even Mr V.P. Singh, Prime Minister of India, who wanted to adhere to that no defeated candidate of the Lok-Sabha elections would be nominated as Governors had to sacrifice the principle in the process of striking a balance and got nominated Mr Yagya Datt Sharma as Governor of Orissa. Mr Sharma was a defeated candidate of the 1989 Lok Sabha Poll in Punjab.

There is nothing wrong to say that mostly the Governorship is reserved for the party men. Recently most of the newly appointed Governors were men of those parties who supported in the formation of National Front Government. Nath Pai rightly maintained that the office of the Governor was degraded by the Centre by making it a patronage and largesse.

38. Karnataka Janata Dal leader B. Rachaiah was appointed Governor of Himachal Pradesh, Rajya Sabha Telugu Desam member, B. Satyanarayana Reddy was appointed Governor of U.P. & Janata Dal leader Krishan Kant was appointed Governor of Andhra Pradesh, A. former Lok Dal leader from Haryana, Mrs Chandravati, was made Lt Governor of Pondicherry.
Here it becomes necessary to mention that in certain Commonwealth countries, such as Australia and Canada, the Provincial Constitutional heads are appointed by the Governor-General in consultation with the local government. In both countries, the Governor-General is aided and advised by the Council of Ministers in regard to governor's appointment. It seems that the Founders of the Indian Constitution wanted to follow the practice prevailing there, and when this problem was being hotly debated, the system of appointment of Governor in these countries was cited by the defenders of the present mode of appointment in India. However, it can be suggested that they did not care for the fact that in Commonwealth countries the powers given in theory have not been denied in practice.

It is submitted that there is a great difference between the theory and practice of the system, and the intention of the Framers of the Indian Constitution has not been complied within the actual functioning of the Constitution. Hence the problem is: "What is the remedy? The Setalvad Study Team was of the view that the Chief Minister should be consulted. Undoubtedly, this was also the intention of the Framers but this has not worked satisfactorily. It is suggested that if the consent of the Chief Minister is necessary then the Governor will not be Head of the

State. Rather he will be called as Agent of the Chief Minister. But consultation should be there.

Bharatiya Janta Party in its memorandum\(^{42}\) submitted to the Sarkaria Commission has demanded that the Governor should be appointed by the President from a panel prepared by the Inter-State Council. He should be appointed in consultation with the concerned State.

Communist Party of India (Marxist) Central Committee and Communist Party of India - State unit Karnataka in their memorandum\(^{43}\) submitted to the Sarkaria Commission demanded that the Governor should be appointed by the President on the basis of a panel approved in this behalf by the concerned State Legislature. There should be provision in the Constitution for the impeachment of the Governor by the concerned State Legislature.

It is submitted that if this view is accepted then the office of the Governor shall be meaningless. Governor shall be known as an employee of the State legislature. Moreover, like mid-term poll, there will be mid-term Governor.

Janata Party - State Unit - Kerala in its memorandum was of the opinion that it would be ideal, if the office of the Governor


\(^{43}\) Ibid, pp. 626 and 641.
is done away with. But, in case it is retained the Governor should be appointed with the concurrence of the State Government concerned.44

In response to the demand by various opposition leaders, the Centre appointed the Sarkaria Commission, to examine Centre-State Relations, in 1983.45 The Commission has stipulated that a person to be appointed as Governor should satisfy the following criteria 46:

1. He should be eminent in some walk of life.
2. He should be a person from outside the State.
3. He should not be too intimately connected with the local politics of the State and
4. He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

The Commission has suggested that Article 155 of the Constitution should be suitably amended to prescribe consultations with the State Chief Ministers on the appointment of the Governor. The Commission suggests that the Prime Minister may consult the Vice-President and the Speaker of the Lok-Sabha

44. Ibid, p.700.
45. The Commission submitted it's report in October, 1987, wherein it gave comprehensive guidelines for the appointment of Governors.

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in selecting Governors, and shall consult the concerned Chief Minister in terms to be prescribed by a suitable amendment to Article 155.47

But Mr B.G. Verghese opines that "the Speaker, a legislative head, should in no way be involved even informally in the executive process of selecting the executive head of a State Government. Consultation with the Vice-President may not be undesirable as he is a part of the Union executive and is the Chairman of the Council of States (Rajya Sabha)."48

However, it is strange to note that even after the submission of the report of the Sarkaria Commission, the appointments of six new Governors of the States in Feb. 1988, were made by the then Prime Minister Rajiv Gandhi without

47. In this connection, it is important to note that Sarvodaya Worker, Mr Raghukul Tilak, who was the Governor of Rajasthan from 1977 to 1981, was appointed by the Janata Party Government and dismissed soon after the congress (I) was returned to power. He suggested that the Governor should be appointed by a consensus among the Prime Minister, the leader of the opposition and the Chief Minister of the State concerned. He further said that all those whose interests are affected must have a voice in the appointment of a Governor. The Prime Minister is obviously the most interested party. Then since a Governor is expected to hold the scales evenly between different political parties, the leader of the opposition in the Lok Sabha also comes into the picture. Lastly, the Chief Minister of the State concerned should also be included in order to prevent any future clashes between Governor and the Chief Minister. (Cited by Sudhansu Mohanty, Express Magazine, October 7, 1987, p.3).

prior consultation with the Chief Ministers. Criticising this, the then Chief Minister of Karnataka, Rama Krishna Hegde said that it was improper on the part of Prime Minister Rajiv Gandhi to have named the Governors of States without consulting the Chief Ministers. Mr Hegde expected Mr Rajiv Gandhi to follow his grand father jawaharlal Nehru who was in the habit of consulting Chief Ministers before appointing Governor.

Apart from this, it is also true that the Chief Minister of non-congress States were at best informed but certainly not consulted in the choice of Governors for their States. EMS Namboodiripad, CPM General Secretary, also pointed out that the appointment of Mrs Ram Dulari Sinha as Kerala Governor was not done in consultation with the State Chief Minister as reportedly claimed by Home Minister, Buta Singh. He added, "as far as I know, the Chief Minister came to know of the appointment." Even Mr Devilal, the then Chief Minister of Haryana refuted Mr Buta Singh's claim that he was consulted.

The Sarkaria Commission also suggests that a politician from the ruling party at the Centre should not be appointed as the

Governor of a State which is being run by some other party or a combination of other parties. But it is quite obvious from our past experience that the Union Government has more often been flouting this criteria than adhering to it. Leave aside the distant past, even during the tenure of Prime Minister, late Rajiv Gandhi, the Governors of Andhra Pradesh, West Bengal and Punjab were chosen from among the congress party members. Moreover, the choice of new Governors in six States announced in Feb. 14, 1988, was violative of the recommendations of Sarkaria Commission.

On account of all these reasons, these appointments raised many eyebrows in political circles. CPM General secretary, EMS Namboodripad told a news conference in Cochin on Feb. 19, 1988, that the latest round of appointment of State Governors showed that the Prime Minister has refused to reconsider the practice of


54. These six Governors were, a senior member of the congress party from Andhra Pradesh Mr M.K. Brahmananda Reddy (who was made the Governor of Maharashtra). Mr Govind Narayan Singh, Congress(I) member from M.P., replaced Mr P. Vankatsubbiah as Governor of Bihar. A senior member of the congress party from U.P., Mr Sukh Dev Prasad who was member of the Rajya Sabha was made the Governor of Rajasthan. Mrs Ram Dulari Sinha was a Minister of State at the Centre and was actively involved in Cong.(I) politics in her home State of Bihar. Hence her choice for the State of Kerala ruled by a coalition opposed to Congress(I) was frowned upon. MR H.N. Barari was made Governor of Haryana. Mr Devilal the then Chief Minister strongly opposed his appointment. A former Minister at the Centre Mr P. Venkatsubbiah from Bihar was made Governor of Karnataka. (Indian Express, Feb. 15, 1988).
appointing ruling party politicians as Governors in the States despite the Sarkaria Commission's recommendation opposing the practice. The Kerala State Committee of the Left Democratic Front in a resolution adopted at the end of its three-day meeting held in Kerala in Feb. 1988 declared that the appointment of Mrs Ram Dulari Sinha, who was a prominent Congress (I) leader and a Central Minister till the other day, was grossly undemocratic. Such actions of the Centre would not be helpful for healthy Centre-State relations or the smooth functioning of the democratic set-up, the Committee warned.

Here it is submitted that one of the factors that have been vitiating Centre-State relations over the years is the mode of appointment of Governors. It is a great implication that Governors of States ruled by parties other than the Central ruling party, are appointed specifically to topple, or at least embarrass, the State Governments." The charge is not totally baseless, considering how Mr Ram Lal, be that on his own or under instructions from high command, dismissed the Government of Mr N.T. Rama Rao and unwittingly made a political hero out of a

56. 'B.J.P. to demand Governor's recall,' Indian Express, Feb.20, 1988. Mr Vajpayee also said that the Union Government had ignored the recommendation of the Sarkaria Commission in the appointment of Governors to some States recently (Indian Express, Feb. 20, 1988).
Therefore, it is suggested that it might at least remove an irritant in Centre-State relations if the Constitution provided for consultation with Chief Ministers prior to the appointment of the Governor.

There is nothing wrong to say that there are good Governors and bad Governors, but most of the latter kind belong to the category of political appointees who are given the job either to get them out of harm's way or as a reward for services, rendered, which in real terms amounts to a pension. Few among them live up to the minimum standards of fairness or ability required of them. Governor of Tamil Nadu, S. S. Barnala refused to recommend dismissal of State Government. C. Subramaniam resigned as Governor of Maharashtra when it was alleged that he criticised the Prime Minister though he refuted it. Infact the majority of such appointees learn to take life so easy as to become practically faceless. The remainder choose to continue playing politics because they think that their political careers are not over yet. "In an earlier era, not quite long ago, Prime Ministers came in for criticism for using the gubernatorial office as either a parking place for retired or disgraced politicians or as a medium to play regional politics through the appointment of powerful pro-Centre personalities. The practice

to a great extent deposed the institution of Governor and made RajBhavan a venue of political mechanisations and intrigue.”

A former Supreme Court Judge, Mr V.R.Krishna Iyer, has decried the practice of changing Governors with the change of government at the Centre and described it as experiments in political pollution and trafficking in Governorships. He cautioned the National Front Government, saying that "If Raja V. P. Singh continues the strategem in the choice and change of Governors, none will respect and accept the office. And only those who hanker for transient pomp, political espionage and eventual humiliation will be willing to become protem tenants of Raj Bhavan.”

Undoubtedly, late Smt Indira Gandhi and late Rajiv Gandhi regime touched the limits of perversity in appointing politicians as Governors on what were then called non-Congress(I) - ruled States. National Front Government also followed the same old congress line in making appointments of Governors. National Front Government appointed many Governors. Majority of them has had an impeccable political record. Political allegiances of Mrs Chandravati, Mr Yagya Dutt Sharma, Mr Krishan Kant, Mr B.Rachaiah, Dr Sarup Singh, Prof. D. P. Chattopadhyay and Mr Yunus Saleem, are clearly identifiable. Even there may have been

political compulsions in assigning Dr Sarup Singh to Kerala, Mr Rachaiah to Himachal Pradesh and Mr Virinder Verma to Punjab.

If the Sins of Commission are few, the sins of omission are quite glaring. People of Haryana and Himachal Pradesh have reason to be upset and angry about the removal of two Governors who conducted themselves with dignity and grace. Mr H. A. Barari (Haryana), despite the fact that he came to Raj Bhavan from the Intelligence Bureau, showed himself to be a person of high stature and dignity. Neither Mr Devilal nor his son—successor, Mr Om Parkash Chautala, had any complaint against him. On the other hand, the former had a lot to thank Mr Barari for. Similarly, Vice-Admiral R. K. S. Gandhi, besides being a non-political Governor, was a stickler for rectitude and procedure. In all their years in Haryana and Himachal Pradesh, respectively, Mr Barari and Vice-Admiral Gandhi had never dragged themselves into any controversy and, given the choice, all the parties would not like them to leave. In fact, the National Front Government's exercise on Governors may have done a lot of damage in bundling all the Rajiv regime appointments into one whole instead of separating the grain from the chaff. Few tears need to be shed for the exit of such willing accomplices of the previous regime as Mrs Kumudben Joshi, Mrs Ram Dularai Sinha, Mr T.V. Rajeshwar, Mr S.K. Bhatnagar and Mrs Sarla Grewal. The National Front Government must be extremely myopic in not
visualising the consequences of its action. By the whole sale removal of Governors, it has set a totally indefensible and unsavoury precedent. A future Government is bound to do to its appointees what it has done to its predecessor's appointees. The tragedy is all the more when a Government seeks to appoint worthy persons as Governors and subject eminent personalities to the indignity of political victimisation.

There are different views regarding the appointment of politicians as Governors and their return to politics after they quit their offices. Some are of the view that Governors should not be removed arbitrarily and that any change in the Government at the Centre cannot justify this action as it is against the basic structure of the Constitution. Some are of the view that Governors are a vital link between the Centre and the States and they should be removed only if there were "compelling reasons" to do so. Mr Justice R.S. Sarkaria, who headed the Commission on Centre-State relations, says changing of Governors even if the party at the Centre was voted out of power was basically against the spirit of the Constitution. Otherwise, the five year term specified under the Constitution for a Governor will become a mere formality if the Governors are asked to resign en masse if there is a change of Government at the Centre. Commenting on the removal of Governors, Mr Justice Sarkaria said, "This is a signal

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to all Governors to act on the request of the Centre."60

A sub-committee of the inter-State Council to discuss the Sarkaria Commission report on Centre-State relations was constituted.61 This sub-committee was consisted of Chief Ministers of Assam, Gujarat, Maharashtra, Orissa, Tamilnadu, Rajasthan, U.P. and West Bengal. The Finance Minister, Dr Manmohan Singh, the Human Resources Development Minister Mr Arjun Singh and the Welfare Minister, Mr Sitaram Kesri were members of the Committee.

In a far-reaching decision, this sub-committee accepted the recommendation of the Sarkaria Commission, that the Governor should not be eligible to hold any office of profit under Union or State government after retirement and neither should he return to active politics, as a matter of convention. It was unanimous about the criteria that should govern the appointment of the Governor. While it was one with the Sarkaria Commission report, that prior consultation with the Chief Minister by the Union Government should precede the appointment of the Governor, consensus could not emerge about the manner in which it could be ensured.62

Mr L.M. Singhvi, a noted Constitutional expert, was of the

view that the action asking all Governors to tender their resignations was "as misconceived as it was constitutionally mischievous." He said the letter of the President asking the Governors to resign was "an act of humiliation and indignity inflicted upon a high and important Constitutional office and that should never happen again. It only means that the Constitutional provisions have been dealt with upside down. Each time there is a change of government at the Centre, heads of the State must roll inevitably.63

The Attorney-General, Mr Soli J. Sarabji, emphatically said a Governor should not accept any office except those of the President and the Vice-President after quitting. The dignity of Governor would be brought down if a Governor joined politics or accepted any inferior office later. Though the Constitution does not provide for security of tenure for Governors, a Governor should not be removed before completion of the term unless there were compelling reasons. Stating that their tenure should be on the pattern of the President and the judges, he said the role of a Governor was that of a friend, philosopher and guide and "very delicate" to ensure smooth relations between the Centre and the States. He was also of the opinion that the Chief Minister of a particular State should be consulted on the appointment of his

63. Supra note 60.
State's Governor so that they were not at loggerheads.\textsuperscript{64}

The A.I.C.C.(I) General Secretary, Mr V.N. Gadgil differed with the Constitutional experts saying there was no harm in appointing political leaders as Governors and their return to politics after they quit office. There may be political compulsions for the ruling party to appoint a particular leader as a Governor and when his job was over, he could come back to politics.\textsuperscript{65}

The Janata Dal General Secretary, Mr S. Jaipal Reddy, too is not opposed to the appointment of political leaders as Governors. No particular category of society can be excluded for appointment of Governors. He, however, expressed the view that security of the Governor's tenure should depend on the mode of appointment.\textsuperscript{66}

Dr Y.S. Chitley, a Constitutional expert, said that President's pleasure regarding removal of Governors must be interpreted in the light of the basic structure of the Constitution and could not be relegated to "whims or political parties decisions.\textsuperscript{67}

Hence, it is submitted that the office of the Governor has been lowered in the popular esteem because of failure to preserve

\textsuperscript{64} Ibid.

\textsuperscript{65} Ibid.

\textsuperscript{66} Ibid.

\textsuperscript{67} Ibid.
the proper standards in the selection of Governors. Study reveals that the Central government has followed no particular principles and there is no fixed criterion for the appointment of Governors. Governors are appointed on party considerations and most of the Governors are politicians having affiliation with the ruling party at the Centre.

It is suggested that the need of the hour is that right kind of persons must be appointed as Governors. Persons of distinctions, non-controversial and non-politicians must be given preference. In this way, the Governors will not act as mere tools of the Central government but will function independently. These persons can restore the dignity of the office of Governor.

The Governor shall hold office during the pleasure of the President. The Governor may, by writing under his hand addressed to the President, resign his office. The Governor shall hold office for a term of five years from the date on which he enters upon his office. Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. However, he can be removed at any time by the President. The President acts on the advice of the Union Cabinet. Thus it lies within the power of the President to terminate in his discretion the term of the office

68. Article 156(2), Constitution of India.
69. Article 156(3) and Proviso to Art. 156, Ibid.
of the Governor at his pleasure. The Presidential pleasure is non-justiciable. It is not regulated or controlled by the procedure laid down in Art. 311. The Governor has no security of tenure and no fixed term of office. He may be removed by an expression of Presidential displeasure.  

Bharatiya Janta Party in its Memorandum submitted to the Sarkaria Commission has demanded that the Governor should be removed only by impeachment in Parliament by a procedure analogous to that provided in the case of a judge of the Supreme Court and High Court. He is not to be transferred from one State to another and he should not hold any office of profit under the State or the Central Government after the expiry of his term.  

Mr B.K. Nehru has rightly observed that it is sure that the Governor is appointed by the President and holds office for five years subject to the pleasure of the President. But the question is what, in the spirit of the Constitution and of federalism and in law, "the pleasure of the President" means. This phrase was introduced into this Article because, unlike the President of India who can be removed by impeachment, there is no other provision in the Constitution by which a Governor who behaves in an outrageous manner can be removed. Obviously it was assumed that the reasons for which the pleasure of the President could be removed.

71. Supra note 42.
withdrawn would be similar to those which would justify a Presidential impeachment.72

When the office of the Governor has been abused by the appointment to it of active serving politicians, it would have been a fit case for the President to have withdrawn his pleasure. But to ask for the resignation of all the Governors of all the States is to reduce that office to that of a party hack.

C. POWERS AS AGENT OF CENTRE

The initial fifteen years after the Constitution came into force saw hardly any controversy about the status, role and functions of the Governors. It was only since the Fourth General elections in 1967 that the role of Governor became a matter of public debate and the institution of Governor has been subjected to increasing stresses and strains not anticipated at the time of the framing of the Constitution.

Our Constitution makers felt that the Governor should be a bridge between the Centre and the States (but not at the cost of the representative Government in the State) a task which is enjoined upon his office as much from the discussion in the Constituent Assembly as by the written provisions which are found in Articles 355/356 which expect him to "ensure that the Government of every State is carried on in accordance with the

72. 'The Tribune,' Chandigarh, Feb. 6, 1990.
provisions of this Constitution."

The office of the Governor in the recent past has become an area of controversy. With different political parties coming into power in the States having different ideologies, frictions have developed between the Union and the States with regard to sharing of the power under the Constitution.

Dismissal of Sri Farooq Abdullah's Ministry and appointment of Sh. G.M. Shah as the Chief Minister by the Governor of Jammu & Kashmir and dismissal of N.T. Rama Rao's Ministry on August 16, 1984 and installation of Sri N. Bhaskhara Rao as the Chief Minister, by Sri Ram Lal, the Governor of Andhra Pradesh have led the State Governments to look down the office of the Governor as an agent of the Union waiting for an opportunity to de-stabilise them from power.

It is true that the office of the Governor has been devalued and used for promoting the interests of the party in power at the Centre. The Framers of the Constitution had envisaged a more dignified role for Governors who were expected to act as impartial guides, friends and philosophers of the party in power in the States under their charge. During the Nehru era the arrangement worked well and that was the period when people of the stature of Sarojini Naidu, V.V. Giri and K.M. Munshi lent glory and respectability to the Constitutional office. The down slide began with Indira Gandhi and the Raj Bhavans became centres
of intrigue against non-congress Governments in the States.\textsuperscript{73}

When Governors act as agents of the Centre rather than as heads of the State, they do injury to their own high office in addition to offending the basic federal concept on which our country is based. But when a Governor seems to act like an agent of the party in power in Delhi, he or she does a lot more damage by straining political morality and Constitutional propriety.

The former Home Minister of India Mr Mufti Mohammad has said that the Governors "represent" the Government of India, and, therefore, must be "in tune" with whatever party happens to be in power at the Centre. This view of the role of the Governors has no Constitutional basis; all Constitutional authorities are agreed (and the matter has been repeatedly dealt with by the Supreme Court, the last occasion being in Raghukul Tilak's case) in holding that the Governor is in no sense either a representative of, or an agent of, or a subordinate of, the Government (or President) of India. The only occasion when the Governor becomes subordinate to the President is when the powers of the State Government "and Governor" are taken over by the President under Article 356. These are then given to the Governor to be exercised by him on behalf of the President as his agent.\textsuperscript{74}

\textsuperscript{73} Governor's Role, The Tribune, Chandigarh, January 10, 1990.
\textsuperscript{74} Cited in Nehru, B.K. "No pleasure of the President," The Tribune, Chandigarh, Feb 6, 1990.
Since the Governors hold office at the pleasure of the President, the Governor becomes an agent of the Central Government. His function becomes, contrary to his oath of office. He becomes in effect, an opponent of State autonomy.\textsuperscript{75}

When Article 356 is imposed on a State, all powers of governance, get vested in the President but the latter delegates the executive authority to the Governor and therefore what is Constitutionally called President’s rule gets vested in its day-to-day functioning into the hands of the Governor. This confronts him with a situation of potential role/conflict. President's rule being Centre's rule, the Governor may be - and indeed, is being increasingly looked upon as Centre's Agent and mouthpiece. He starts attending conferences such as the National Development Council and the Chief Ministers's Conference. The official papers begin coming to him for his decisions and he directly issues instructions to the personnel in the administrative hierarchy on the manner of transacting the business of Government. The reality of this change over is eloquently proved by his attending the office regularly in the secretariat - something which in normal times he never does.

The Governor has even in normal times some powers which he can exercise in his discretion or in his individual judgement. When no single party commands absolute majority in the Assembly,\textsuperscript{75} Ibid.
in that case he exercises his individual judgement to decide which leader of which party will be able to get majority support in the Assembly so that he may be appointed as Chief Minister. In such a situation he is bound to be charged with furthering and safeguarding prospects of the particular party to which he owes allegiance, or sympathise with, or to bring down fall of the opposition government.

The power of the Governor to reserve a Bill, passed by the State legislature, for the President's assent is also a controversial issue. This is especially so if the Governor reserves a bill against the advice of the State Ministry but under the direction of Central Government. If the Centre is ruled by a party other than the one in the State then there is much room for suspicion between the Centre and the States.

The Constitutional position is very obvious. According to Article 200 of the Indian Constitution "when a Bill has been passed by the Legislative Assembly of a State, or in the case of 76. For example, Maharashtra Bill providing for compulsory sterilisation was not approved because; it was decided that there could be no question of any compulsion in the matter of family planning." A Haryana measure offering medical facilities to those who have been Ministers, Speakers, Deputy Speakers for a period of two years and more and also to their family members for their life was considered to be too drastic. The centre felt that the "Bill would have repercussions in other States and Create a large number of privileged persons entitled to free medical aid at the expense of the Government," (cited in, "Gani, H.A., "Governor in the Indian Constitution.' 1990, p.80).
a State having a Legislative Council, has been passed by 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 a Bill for the consideration of the President.

Provided further that the Governor shall not assent to but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which the Court is by this Constitution designed to fill. Under Article 201, the President can either accord or refuse assent or return it for reconsideration.

The opposition ruled States have from time to time raised a hue and cry against the misuse of Article 200 and 201. The West Bengal Government in its reply to the Sarkaria Commission's questionnaire on the Centre-State relations, felt that Articles 200 and 201 had to be deleted. If the deletion was not feasible the State suggested that a Constitutional amendment should clarify that the Governor would not act in his discretion but only on the advice of State Council of Ministers. Also there had to be month's time limit for the Governor "to make up his mind

77. Articles 30, 31-A and 288 fall under this category.

77a. The question of reservation for, and assent by the President is not justiciable. (Horechst Pharmaceuticals Vs. State of Bihar, A.I.R. 1983 SC, 1019).
under Article 200", and six months for the President" to make up his mind under Article 201," with the further provision that if a bill was not passed again the same on its return from the President" shall automatically became law under Article 201."^78

While addressing the opposition conclave held at Srinagar in October 1983, Mr H.N. Bahuguna said that if the Centre declined to give assent to any State Bill within six months of its passage it should be deemed to have been approved. 79

Sarkaria Commission^80 recommended that in dealing with a State Bill, presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill. Needless reservation of Bills for President's consideration should be avoided. 81

It is important that for unity and integrity, the States should function in the interests of the country as a whole. If any Chief Minister and Council of Ministers go out of steps and act in any way prejudicial to the national interests, the Governor can invoke, his discretionary power and deal with the situation as he deems fit. Moreover, in such circumstances he

78. "Indian Express" (New Delhi) August 8, 1984.
79. Supra note 75. p.84.
81. Ibid Para 5.19.03.
may receive instructions from the Union Government which he has to comply with. Vesting the Governor with discretionary powers was justified in the Constituent Assembly on the ground that the Provincial governments were required to work in subordination to Central Government. The Governor will reserve certain things in order to give the President opportunity to see that the rules under which the Provincial governments are supposed to act according to the Constitution or in subordination to the Central Government, are observed. 82

The Administrative Reforms Commission set up to review the Centre-State relationship in 1960 had felt that the Governor should not only be a Constitutional Head but also a bridge between the Centre and the States. The Commission suggested:

"The Governor functions for most purpose, as a part of the State apparatus, but he is meant, at the same time, to be a link with the Centre. This link and his responsibility to the Centre flows out of the Constitution mainly because of the provisions that he is appointed and dismissed, by the President.... The Constitution thus specifically provides for a departure from the strict federal principle and it is relevant to observe that this departure is not fortuitous or casual.... it is clear, therefore, that the Constitution-makers did not intend the Governor to be only a component in

the apparatus of Governance at the State level. They meant him also to be an important link with the Centre. However, in recent years, many times the Governor has been reduced from an independent unbiased identity to a mere government stooge and contrary to the intention of the Founding Fathers and the spirit of the Constitution.

The experience of last forty three years amply demonstrates that the Governors can not play an independent and impartial role in the Centre-State relations so long as they hold office, as they do now, entirely "during the pleasure of the President." The Administrative Reforms Commission recommended that" a person should not be appointed as Governor for more than one term. Such restriction is necessary in order to safeguard his independence and impartiality against being jeopardised by expectations of patronage." But it is worth mentioning here that the practice

84. See for example, Mr Prabhudas Patwari the first Governor in the history of Indian democracy to lose the"pleasure of the President" under Art.156 of the Constitution. A special emissary was rushed from Delhi to the Raj Bhavan in Madras on the night of Oct.26, 1980 to deliver Mr Patwari an order sacking him. Similarly, Mr Raghukul Tilak who was Governor of Rajasthan was dismissed in August, 1981 when he was unexpectedly relieved of his duties by a Presidential directive. Recently, in 1990 when the National Front Govt. was formed, the President Mr Vankataraman asked the Governors of all the States to submit their resignations.
85. Supra note 83, p.284.
has been found to be different. For example, Sri Prakasa held office for 12 years, as Governor of Assam, Madras and Bombay. Similarly, B.N. Chakravarti held office for 8 years and died while holding office of Governor of Haryana.

The Karnataka Chief Minister, Mr Rama Krishna Hegde presented a white paper in the Assembly in the third week of January, 1983 on the role of the Governors and seriously alleged that the Governors have always acted at the "instigation" of the ruling party at the Centre, "dabbling" in politics and thus becoming victims of "political perversion." 86

Practically, it is seen that Governor exercises some of his discretionary power not as a Constitutional Head of the State but as an Agent 87 of the Centre. These situations are:

1. Regarding the appointment of the Chief Minister.
2. Regarding the dissolving of the State Legislative Assembly.

86. See the editorial on, "Role of Governors," The Tribune, Chandigarh, January 28, 1983, p.4.

87. All impartial persons will agree that Governor of Andhra Pradesh Miss Kumudben Joshi's speech on Jan.26, 1988, made her out to be an apologist of the Centre rather than the titular Head of the State. In her speech, she pointed out that the credit for much of the development work and funding must go to Delhi rather than to her own Government in Hyderabad. A number of Governors in past have descended to the level of being puppets on strings controlled by the powers that be in Delhi and most, including Mr G.D. Tapase and Mr Jagmohan, got away with it. There were a few - Mr B.K.Nehru in J & K and Dr S.D. Sharma in A.P. in 1984 - who stood their ground and did what seemed proper to all concerned. A few like Mr Ram Lal did not get away with it. (See the editorial, "Centre's Agent Again," The Tribune, Chandigarh, Feb.6, 1988).
3. Regarding the dismissing of a Ministry.

4. Regarding the reservation of a Bill for the consideration of the President and

5. Regarding the Governor's report for President's Rule in the States.

To take stock of the performance of functions of the office of Governor and to acquaint with the latest development and thinking of Central Government on various issues, every year a meeting of all the Governors and Lieutenant-Governors is held at Delhi. The conference takes up the agenda including Governors' review of the law and order and economic position of their States; the position of Governors; and the Prime Minister's review of the international situation; review of the situation in the country and the world at large; the Home, Finance and Planning Minister's account of the working of their departments to help Governors to know the situation in the country as whole in the matter of law and order, social and economic progress.

An announcement was made in the Governor's conference held in November 1973, for the establishment of special wing in the President's Secretariat. It would ascertain all the facts and circumstances requiring action by a Governor in his discretion and also reasons for the action taken by him. The facts as ascertained could then be confidentially communicated to all the

other Governors with the permission of the President. The wing would therefore, be helpful in collecting and diffusing authoritative information about an action by a Governor in particular circumstances.

D. POWERS AS HEAD OF STATE

The Governor is a ceremonial device and Constitutional Head of the State. It is a solemn office, although it involves not much serious business save on one or two critical occasions. He deals with the Union, not in secrecy or as a Central spy to play politics, but as the authentic Head of his State openly representing his Government and conveying to the Centre their (not his) views and such other information as the President or Prime Minister may seek. He must be strictly neutral in State politicking from within. He must possess the personality and Statemanship to transcend his individual failings and leanings and resist pressures and temptations, even if they come from the Union Government, contrary to the integrity and ethics of his high office. Enormous tact is needed in an atmosphere of political polemics to keep up a posture of neutrality and self-effacement. At the same time, not only restraint but activism is expected from the Governor. 89

The Governor represents not the Government of India but the State of which he is the Head. His oath of office requires him not to look after the welfare of the people of India but "to devote himself to the service and well being of the people of (his) State." The true function of the Governor is to represent not the Centre but the people of his State and to fight their battles with the Centre; not vice versa. He has to be "in tune" not with the party in power at the Centre for the time being but with his own people as represented by their elected representatives. He must necessarily, in giving advice to his Chief Minister and Cabinet, which is really his most important role, bear in mind the national interest which is not always coincidental with the interests of the party in power whether at the Centre or in the State. It is for this reason that it has been stressed repeatedly (and the latest authority is the Sarkaria Commission) that Governors should never be active politicians but men of eminence who can distance themselves from the eternal battle of party politics.90

Here it is worth mentioning, that the role of Governor in the field of Centre-State relations is to take up with the Central Government, issues involving interest of the State, which are affected by Central policies or by Central decisions. This

90. Nehru, B.K., "No pleasure of the President" published in 'The Tribune, Chandigarh, Feb 6, 1990.
function is more important in regard to States which are far away from Centre and are economically backward. One of the prime functions of the Governor in such States is to ensure that he can get those in authority to devote their time and take interest in the problems of the State which he represents. This is not easy in a country like ours, because there is much competition for the attention of those who wield power. In this regard the personality of a Governor, his access to the Ministers of the Centre and his capacity to plead his State's case before the Centre are all very relevant.

In Hargovind Pant Vs. Dr Raghukul Tilak91 the Supreme Court held that:

"It is not material that the Governor hold office during the pleasure of the President. It is a Constitutional provision for determination of the term of office of the Governor and it does make the Government of India an employer of the Governor.... this office is not subordinate or subservient to the Government of India. He is not amenable to the direction of the Government of India nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent Constitutional office which is not subject to the control of the Government of India. He is Constitutionally the Head of the State..."

GOVERNOR AS EXECUTIVE HEAD

The executive power of the State is vested in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution of India. Under Art. 166(3) the Governor is authorised to make rules for the more convenient transactions of the business of the Government of the State and for its allocation among Ministers.

The Ministers are also officers subordinate to the Governor. However, in accordance with the rules framed by the Governor for the conduct of the business, almost all the executive powers of the State are delegated to the Ministers, who exercise such powers in the name of the Governor. However, the powers of the Governor as such cannot be delegated to any person, e.g. power to appoint and dismiss the Ministry, to dissolve Assembly, to summon and prorogue the State Legislature, power to assent or refuse assent to Bills etc. have to be exercised by the Governor himself.

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to

92. See Article 154, Constitution of India.
suspend, remit or commute the sentence of any person convicted of
any offence against any law relating to matters to which the
executive power of the State extends.95

A similar power is conferred by Art. 72 on the President of
India. But there is a difference between the pardoning power of
the President under Article 72 and the pardoning power of the
Governor of a State under Art. 161. Under Article 72 the
President has exclusive power to grant pardon in cases where the
sentence is a sentence of death while the Governor cannot grant
pardon in case of a death sentence. Secondly, the President can
pardon punishments or sentences inflicted by Court Martial.
However, the Governors have not such power. Both the President
and the Governors have concurrent power in respect of suspension,
remission and commutation of sentence of death.

In the case of Maru Ram Vs. Union of India96 it has been
held that in exercising the pardoning power the object and the
spirit of section 433-A of Cr.P.C. must be kept in view. In the
case of Kuljeet Singh Vs. Lt. Governor of Delhi97 by ruling that

95. Article 161 Constitution of India. According to article 162
the executive power of the State extends to matters with
respect to which the Legislature of the State has power to
make laws.

97. A.I.R. 1982 SC 774, see also re Maddela Yerra Channugudu and
others. A.I.R. 1954 Madras 911 (915), Tara Singh Vs.
Director Consolidation of Holdings, Punjab, A.I.R. 1958
Punj. 302 (304), Godse Vs. State of Maharashtra A.I.R. 1961

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the exercise of the President's power under Art.72 will be examined on the facts and circumstances of each case the Supreme Court has retained the power of Judicial review even on a matter which has been vested by the Constitution solely in the Executive.

In the case of Kehar Singh Vs. Union of India⁹⁸, the Supreme Court held that while exercising his pardoning power it was open to the President to scrutinise the evidence on the record and come to a different conclusion both on the guilt of Kehar Singh and the sentence imposed upon him. The manner of consideration of the petition lies entirely within the discretion of the President. The Court need not spell out specific guidelines for the exercise of power under Art.72, this is so because the power under Art.72 is of the widest amplitude, and can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case. The President can not be asked to give reasons for his order. The power of pardon is a part of the Constitutional scheme. The order of the President can not be subjected to judicial review on its merits.

In re Chanugudu⁹⁹ Madras High Court has held that the Executive can exercise the pardoning power at any time after

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⁹⁹ A.I.R. 1954 Mad 911 (917).
commission of an offence, either before legal proceedings are
taken or during their pendency or either before or after
conviction. In K.M. Nanavati Vs. State of Bombay\textsuperscript{100} the Supreme
Court has held that the Governor's power to suspend sentence
under Art.161 is subject to the rules made by the Supreme Court
under Art.145 for disposal of pending appeals before it. Once
the appeal is filed in the Court the Governor cannot exercise his
power of suspension of sentence under Art.161, and if he does so
his order would be invalid being in conflict with the Supreme
Court Rules under Art.145.

This means that the Governor has to act in a dual capacity,
as a Constitutional Head of the State as well as a representative
of the Centre. This duality of role is an important and unusual
feature of the Constitution which makes the role of the Governor
really a very difficult one. The Administrative Reforms
Committee commenting on the dual role said, "The holder of this
office is not required to be an inert cypher and that his
character, calibre and experience must be of an order that
enables him to discharge with skill and detachment his dual
responsibility towards the Centre and towards the State executive
of which he is the Constitutional Head.... it would be wrong to
emphasise one aspect of the character of his role at the expense
of the other and successful discharge of his role depends on
\textsuperscript{100} A.I.R. 1961 S.C. 112.
correctly interpreting the scope and limits of both.\textsuperscript{101}

The Governor has been mentioned as an independent heading in chapter II of part VI of the Constitution. The appointment, powers and functions of the Governor have been enumerated and contained in Articles 153, 155, 156, 157, 158, 159, 160, 161, 163, 164, 165, 166, 167, 168, 174, 175, 176, 213 and 361.

Governor as a Head of State has power to appoint Chief Minister and other Ministers on his advice. He also has the power to dismiss the ministry.\textsuperscript{102} It may, however, be asked as to how far has the Governor discretion in the appointment of the Chief Minister? So long as one of the political parties has a clear majority in the Legislative Assembly and a recognized leader the Governor has the task of only formalising the appointment.

Governor has power to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor by or under this Constitution required to act in his discretion.\textsuperscript{103} Article 166 lays down that all executive actions of the Government of a State is to be expressed to be taken in the name

\textsuperscript{101} Supra note 83.

\textsuperscript{102} Article 164 Constitution of India.

\textsuperscript{103} Article 166 Ibid.
of the Governor. Under Article 174, the Governor can summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit. He can from time to time -

a) prorogue the House or either House;
b) dissolve the Legislative Assembly.

He has power to demand laying before the House or Houses of the legislature of the State a Statement of the estimated receipts and expenditure of the State for that year, in this part referred to as the 'Annual Financial Statement'.

If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

The Ordinance-making power of the Governor under Art.213 is similar to that of the President under Art.123. An Ordinance shall have the same force and effect as an Act of the Legislature. It can override the judgement of the High Court under Article 226.

104. Article 202, Ibid.
105. Article 213, Ibid.
The Ordinance shall be laid before the Legislative Assembly of the State or where there is a Legislative Council in the state, before both Houses and, shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, unless it is approved earlier by the Legislature. The Ordinance can be withdrawn at any time by the Governor. He can only issue Ordinance on the subjects on which the State Legislature is empowered to make laws e.g., State list and Concurrent list. According to Art.213(3), "an Ordinance will be invalid to the extent, it makes any provision which would be invalid if enacted by the State legislature. But such an Ordinance will not be invalid if it has been issued by the Governor in pursuance of instructions from the President.

In the case of D.C. Wadhava Vs. State of Bihar\textsuperscript{107}, the Supreme Court held that, "the power to promulgate an ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends."

In Satya Pal Dang Vs. State of Punjab\textsuperscript{108} the Supreme Court held that the Governor's Ordinance regulating the proceedings of the House were Constitutionally valid. The power of the Governor

\textsuperscript{107} (1987) 1 S.C.C. 378.

\textsuperscript{108} A.I.R. 1969 S.C. 903.
to prorogue the House under Art.174 of the Constitution was absolute. This power was invoked by the Governor in order to overcome the Speaker's ruling adjourning the House which was aimed at filibustering, or otherwise to delay the business of the House. If there was an occasion for the regulation of Financial business by law under Art.209 of the Constitution it was this.

M.P. High Court in Upendra Lal Vs. Narayani Devi\textsuperscript{108a} held that "the Court can not question the validity of the ordinance on the ground that there was no necessity or sufficient ground for issuing the ordinance by the Governor. The existence of such necessity is not justiciable issue.

Under Article 356 which forms part of the emergency provisions of the Constitution, the Governor is required to send a report to the President about the failure of Constitutional machinery in the State. On the report of the Governor the President may assume to himself all or any of the functions of the Governor of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the legislature of the State.\textsuperscript{109}

Hence there is nothing wrong to say that although Governor is equipped with many powers as Head of State, yet he exercises these powers in accordance with the wishes of the Council of
\textsuperscript{108a}A.I.R. 1968 M.P.90.

\textsuperscript{109}For details see chapter VII.
Ministers of the State. Because the Governor is assisted by a Council of Ministers with the Chief Minister as its Head to aid and advise him. In accordance with the well known convention of the Parliamentary democracy, however, the Governor is ordinarily a Constitutional Head acting on the advice of the Council of Ministers.

E. STATUTORY POWERS

There are various Associations, Boards, Commissions and Universities in the State in which the Governor holds a position ex-officio. He is given some powers by the Statutes passed by the State legislature. However, whatever the Governor wants to do, he can do only with the advice and consent of his Chief Minister. The Allahabad High Court in the case of Joyti Prasad Vs. Kalka Prasad has held that the Governor is identified with State Government only in case he exercises the executive power and not when he exercises statutory functions. While commenting on the decision, D.D. Basu said:

"If it could be said that the legislature has conferred these powers upon the Governor because of the confidence it has in his personal capacity, just as a settler would have

110. For details see under the Head "Relationship with Council of Ministers.


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done when he appointed the Governor a trustee in his personal capacity it could be safely predicted that such a statutory business is not a business of the 'Government of the State' within the meaning of Art.166(3)."\textsuperscript{112}

But such a view, can not be taken because the appointment of the Governor under a statute relating to a University or other statutory corporation is not made in his personal capacity but ex-officio; it continues only so long as he holds the office of the Governor. It would follow, therefore, that the Governor is appointed to such a statutory office by the legislature only because he is the Head of the State Government and only because such appointment cannot possibly be made in favour of the 'State Government' because the State government cannot in the nature of things, be appointed to hold an 'office'. If this be correct, the statutory functions of the Governor must be regarded as included within the business of the Government of the State under Article 166(3) and within the meaning of 'functions' in Art.163(1).\textsuperscript{113}

The serious difficulties are experienced particularly in the matter of Universities. Universities are established under special Acts of the Legislatures. The Governor is designated

\begin{itemize}
  \item \textsuperscript{113} Ibid.
\end{itemize}
therein as Chancellor of such Universities. The work of the Universities is carried on according to the relevant Acts and not according to the articles of the Constitution of the country. Governors on the one hand, and their Chief Ministers and Education Ministers, on the other hand, have often come in conflict with each other over University matters.

Even though according to a University Act, the Governor is the Chancellor, he is thereby put in the same position as anyone else would be who had been designated the Chancellor according to the Act. In other words, the Chancellor being the Governor, does not entail on himself the limitations imposed on him by the Constitution qua Governor.\textsuperscript{114}

Mr M.S. Dahiya is of the opinion that even in regard to statutory functions the Governor cannot disregard the advice of the Council of Ministers.\textsuperscript{115}

However, it is submitted that the Governor-Chancellor should consult his Vice-Chancellor when nominating members to the various University bodies. This is essential because when these bodies are largely filled by election from various constituencies, the Vice-Chancellor is likely to be hampered in his work. In these circumstances, if the nominations made by the Governor are on the recommendations of the Vice-Chancellor, then

\textsuperscript{114} Parkasa Sri, "State Governors in India," page 24.
\textsuperscript{115} Dahiya, M.S., "Office of the Governor in India," page 103.
the Vice-Chancellor would be facilitated in his work for such persons would, generally speaking, support the Vice-Chancellor.

A piquant situation arises for the Governor, if he supports the University, he incurs the displeasure of his Ministry who would take other steps to get its views accepted. If he acts according to the wishes of the Ministry, he is subjected to the criticism of interfering with the autonomy of the University, and may appoint a Vice-Chancellor who receives no co-operation from his colleagues. An important question to be answered is: when there is a conflict in the advice given on a University matter, by the Vice-Chancellor on the one hand, and by the Chief Minister on the other, what is the Governor-Chancellor to do when as a Head of the State he is a Constitutional Governor and as a Head of University he is a Statutory Chancellor. His position becomes very complicated indeed.

It is submitted that Governor is made ex-officio Chancellor of the State Universities by an Act of the legislature of the State. In this capacity he acts as an officer of the University under the Statute, and not of the State under the Constitution. Therefore, he can act independent of, and without the advice of the Council of Ministers. Obviously there is a difference between the two positions - the Chancellor and the Governor. As Chancellor, he is not immune from the jurisdiction of the courts. As Governor, he is immune from the jurisdiction of the
courts. Punjab and Haryana High court in the case of Hardwari Lal Vs. G.D. Tapase held that, "no absolute immunity under clause (1) of Art.361 of the Constitution is available to the Governor for the acts done in exercise of the power or in performance of the duties as Chancellor of the University."

Madhya Pradesh High Court also held that "the Governor cannot claim any qualified immunity enjoyed by him, under clause (4) in respect of the Acts done by him as Chancellor of the Jabalpur University." Hence the Chancellor must weigh the advice most carefully. The ultimate decisions should, in such cases rest with the Chancellor. It should be the decision of an officer of the University and not of any authority outside it.

F. RELATIONSHIP WITH COUNCIL OF MINISTERS

In general, the relationship between the Governor and his

116. The Committee of the Governors also suggested that the Chancellor can be called into question in any court of the land. The Chancellor does not enjoy the immunity in the University affairs, which he enjoys under Article 361 of the Indian Constitution. (The Report of the Committee of the Governors, (New Delhi) President’s Secretariat, 1970, pp.69-70.


Ministers is the same as that between the President and his Ministers, with the difference that while the Constitution does not empower the President to exercise any function 'in his discretion', it authorises the Governor to exercise some functions' in his discretion."

Article 163 says that there shall be a Council of Ministers with the Chief Minister as the Head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. Mukherjee Judge observed in Ram Jawaya Kapur Vs. State of Punjab\(^\text{119}\) that the executive has the primary responsibility for the formulation of Governmental policy and its transmission into law. The condition precedent to the exercise of this responsibility is that the executive retains the confidence of the legislative branch of the State. The Governor occupies the position of the Head of the Executive in the State, but it is virtually the Council of Ministers in each State that carried on the executive government.

Ray C.J. has held in Shamsher Singh Vs. State of Punjab\(^\text{120}\) that Article 163 makes the Governor the sole and final judge whether any function is to be exercised in his discretion or on the advice of the Council of Ministers.


\(^{120}\) A.I.R. 1974, S.c. 2192 at p.2199.
However, it is submitted that the Framers of the Constitution did not intend the Governor to override the wishes of his Council of Ministers at his discretion. The Governors can not dispense with the necessity of keeping Council of Ministers except during President's Rule under Art.356.

a) APPOINTMENT OF THE CHIEF MINISTER

Article 164(1) provides that "the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister...." As a matter of well established convention the leader of the majority party in the lower House should be appointed as the Chief Minister. In normal circumstances the Governor has to appoint the Chief Minister who is the leader of the majority party in the lower House. But circumstances may arise when it may be doubtful as to who is the proper person, i.e., leader of the majority party in the House. In such circumstances the Governor may have to exercise his discretion in selecting the Chief Minister.

121. See opinions of H.V. Kamath, H.N. Kunjru, R.K. Chaudhari at pages 489, 492 and 498 respectively, T.T. Krishnamachari and Dr Ambedkar at pages 490-91 and 501 respectively: C.A.D. Vol. VIII.

121a.In the case of H.S. Verma Vs. T.N. Singh (A.I.R. 1971 S.C.1331) Supreme Court held that "appointment of a Chief Minister cannot be challenged on the ground that he is not a member of either House of Legislature at the time of appointment."
It is recognised that the Governor's discretion in appointing the Chief Minister should be guided on the following principles:

i) Firstly, in the normal circumstances he should invite the leader of majority party;

ii) Secondly, he should invite the leader of the Alliance or coalition of Front if it was formed before the election and returned with majority;

iii) Thirdly, he should invite the leader of the single largest party;

iv) Fourthly, he should invite the leader of the Front formed after election.

Undoubtedly, after the fourth General election in 1967 the exercise of the Governor's discretion to appoint a Chief Minister become a matter of great controversy.

Whether it is possible under the Constitutional provisions to appoint a person as Chief Minister without being a member of either House of the State Legislature. There is no doubt that under Article 164(4), a Minister can remain in office for a period of six months without being the member of the legislature. Here it should be noted that the term "by Ministers" in Article 163(3), "the Ministers" in Article 164(1), "of Ministers" in clause(5) of Article 164, "among Ministers" in Article 166(3) include the Chief Minister also. If it is not so, it would lead
to the conclusion that the Chief Minister is not responsible to the legislative Assembly. Therefore, it is clear that under Article 164(1), the Chief Minister can be appointed from outside. The Allahabad High Court in Harsharan Vs Chandra Bhan upheld the constitutionality of such appointment\textsuperscript{121b}, but he must be in a position to command the support of the majority of the members of the Legislature. However, the Committee of Governors appointed by the President of India on Nov. 26, 1970 stated in its report that the appointment of the Chief Minister from outside should be avoided in view of the fact that the Chief Minister" occupies a more conspicuous and important position...." It further felt that the nomination of a person to the Council to appoint him Chief Minister" is contrary to the basic concept of Parliamentary government."\textsuperscript{122}

Now it is to be examined as to what the Governor should do if none of the political parties gains absolute majority, in case the government is defeated at the floor of the Assembly due to the defection. In these circumstances, if the opposition secures a majority and it has a recognized leader, the Governor is bound to invite him to form the government. In case none of the parties happens to be in an absolute majority, the best course

\textsuperscript{121b}A.I.R. 1962, All. 201.

\textsuperscript{122} 'The Role of the Governor: Report of the Committee on Governors (New Delhi, 1971), pp.34-36.
for the Governor seems to let the forces bargain freely so that the situation may get crystallized and a popular government may be installed in the office.123

However the Governors in various States took different stands in the above circumstances. For example, after a vote of no-confidence was passed against the Congress Government in Andhra Pradesh on Nov. 6, 1954, the opposition groups approached the Governor for a mandate to form a new Ministry. But they were denied the right to form an alternative Ministry on the ground that it was not possible for "disparate elements to join together in the formation of a new Ministry."124 In 1958, in Orissa, the Governor did not accept the resignation of the Chief Minister after his defeat and his further advice to dissolve the legislative Assembly but requested the Chief Minister to withdraw his resignation.125

In Punjab, Gurnam Singh, the Chief Minister, tendered his resignation on Nov. 22, 1967, following the defection under the leadership of Lachhman Singh Gill.126 Gian Singh Rarewala pledged support to a government if formed by Gill.127

123. Supra note 115.
127. Ibid., Nov. 24, 1967.
24, 1967, Gurnam Singh declared that he was prepared to form a government in response to an invitation from the Governor.\textsuperscript{128} Gurnam Singh was given two days time and he was allowed to form the government by Nov. 25, 1967.\textsuperscript{129} The Governor, Dr Pavte Stated:

"It appeared there were three major parties in the legislature. Mr Gurnam Singh was the Chief Minister for a long time. it was not desirable that the ruling party should not be given a chance to form the government. It was open to Mr Gurnam Singh to reconstitute his government in such a way that it would be in a position to enjoy the confidence of the legislature. All the three parties are now similarly circumstanced in the sense that not a single party could form the government by itself. There is no point in not giving a chance to the ruling party. I have given it two days. This has been made known to other parties."\textsuperscript{130}

Gurnam Singh wrote a letter to the Governor that he would see him on Nov. 26, 1967.\textsuperscript{131} But the Governor, D.C. Pavte, invited Lachhman Singh Gill and appointed him Chief Minister on

\textsuperscript{128} Ibid., Nov. 25, 1967.
\textsuperscript{129} Ibid., Nov. 25, 1967.
\textsuperscript{130} Ibid. Nov. 26, 1967.
\textsuperscript{131} Ibid.
Nov. 25, 1967. In this case, the Governor gave two days to the out-going Chief Minister to reconstitute his cabinet but the surprising thing is that when the Ministry of Gurnam Singh was defeated on March 25, 1970 on the Appropriation Bill, the same Governor did not give him a chance to reconstitute his Ministry and a three-member Akali-Jan Sang Ministry, headed by Prakash Singh Badal, was sworn in on March 27, 1970.

Again in 1971 in Punjab when Chief Minister Parkash Singh Badal was reduced to minority following defections in June 1971, the Governor, instead of inviting the leader of the opposition to form the government, dissolved the Assembly in the interest of stopping "political horse trading" for "cleaner administration." Here it is mentioned that he was the same Governor, who installed a government in office in 1968 wherein hundred percent Ministers were defectors.

The Rajmunnar Committee has made the following suggestions for the appointment of a Chief Minister:

1. The Governor should appoint as Chief Minister, the leader of

133. Ibid, March 26, 1970.
135. Ibid., June 17, 1971.
the party commanding an absolute majority in the legislative assembly.

2. Where the Governor is not satisfied that any one party has an absolute majority in Assembly, he should of his own motion summon the Assembly for electing a person to be the Chief Minister and the person so elected should be appointed by the Governor as the Chief Minister.

Sarkaria Commission has recommended\(^\text{137}\) that in choosing a Chief Minister, the Governor should be guided by the following principles:

i) The party or combination of parties which commands the widest support in the legislative Assembly should be called upon to form the government.

ii) The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which he approves.

iii) If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

iv) If there is no single party having an absolute majority in the Assembly, the Governor should select a Chief Minister from among the following parties or groups of parties by

sounding them, in turn, in the order of preference indicated below:

a) An alliance of parties that was formed prior to the election.

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

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

d) 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.

v) 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 be religiously adhered to with the sanctity of a rule of law.

b) APPOINTMENT OF OTHER MINISTERS:

According to Article 164(1), "the other Ministers shall be
appointed by the Governor on the advice of the Chief Minister...."

Therefore, the choice of the other members of the Council of Ministers is solely at the discretion of the Chief Minister and the Governor cannot substitute his discretion in this matter. It is not necessary that the Ministers must be the members of either House of the State legislature at the time of their appointment. But a Minister so appointed must get a seat in either House within six months, otherwise he would cease to be so after 6 months.

Here it is submitted that if there is a weak Chief Minister, the Governor can influence the choice of Ministers, but if a strong man happens to be the Chief Minister the Governor is helpless.

It is submitted that in the wake of collective responsibility, it becomes necessary for the Chief Minister to have effective control of the Cabinet and effective unity of the Cabinet. Because if the Cabinet is defeated in the legislature on a major issue or on a vote of confidence, the Chief Minister would have no choice but to resign or ask for a dissolution. Therefore, Governor should not poke his nose in the selection of the Ministers as it is detrimental to the concept of collective responsibility which is the foundation of Responsible Government.

From a careful study of Article 164(1), it becomes clear that in the appointment of the Chief Minister, the Governor is
free and he is not required to act on the advice of any body. But in the appointment of other Ministers the phrase "on the advice of the Chief Minister" is significant. It means that the Governor is not free in the appointment of other Ministers and that the advice of the Chief Minister is essential.

c) DISMISSAL OF CHIEF MINISTER:

Article 164(1) of the Indian Constitution provides that "the Ministers shall hold office during the pleasure of the Governor." In normal circumstances, the Ministry remains in office as long as it enjoys the confidence of the majority in the legislative Assembly.

Thus the question arises, does Article 164(1) confers upon the Governor discretionary power to dismiss the Ministers arbitrarily on subjective considerations. In answer to this question it may be said that in dismissing a Chief Minister, the Governor cannot withdraw his pleasure with unfettered discretion.

It may, however, be noted here that "the Governor cannot dismiss a Ministry which enjoys the confidence of lower House, although he can get it dismissed by the President for violating


the Constitution under Article 356." Article 164(2) and Article 73(3) require that the Council of Ministers shall be collectively responsible to the lower House which are the backbone of Parliamentary form of government. This obviously means that though Council of Ministers is appointed by the President or the Governor as the case may be and holds office during their pleasure yet this pleasure is actually vested in the lower House of the Parliament or the State legislature. This is so because if the Governor is permitted to dismiss the popular government on his subjective satisfaction it would "cut at the root of Parliamentary government to which our country is fortunately committed."

Another question arises that 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

139. When the Union Home Ministry asked the Governor of Tamil Nadu, Sh. S.S. Barnala to report for the dismissal of the D.M.K. government and have a spell of Central Rule there, Sh. S.S. Barnala conveyed to Centre that "the law and order situation in Tamil Nadu was not as bad as made out by leaders of the State's Congress(I) and A-IADMK. As such he was opposed to the imposition of President's Rule in Tamil Nadu. He was not thus recommending the dismissal of a duly elected government enjoying majority support in the State legislature." (Reported in "The Tribune," (Chandigarh), Dec.26, 1990).


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: "that 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."

This six month's time is given by the specific provision of the Constitution and not by any other authority. So, it can be increased or decreased only by an amendment to the Constitution and not by the Governor. According to Atal Bihari Vajpayee there is an interval of six months and nothing can be imposed on the Chief Minister during this period.142

The Committee of Governors appointed by the President of India on Nov.26, 1970, recommended that the Governor should compel the Chief Minister to face the legislature, if he is reduced to minority through defections. If the Chief Minister refuses, the Governor should form an alternative government.143

There is no doubt that in case of a rift among the members of Cabinet, the Chief Minister's resignation is more desirable than those of other Ministers. But if the Chief Minister is

prepared to face the legislature within the shortest possible period, there is no need of his resignation. In Haryana, sixteen legislators withdrew support to the government and demanded the summoning of the Assembly. They also demanded that if the Chief Minister did not resign, the Governor should dismiss him. But the Governor did not agree to either course and said that there was no need to summon the session.

Governor is within his Constitutional right when he dismisses a Chief Minister on the ground that his administration is corrupt. But there are examples where the Governors did not dismiss the Chief Ministers on this ground. In Punjab Mr Pratap Singh Kairon resigned on the advice of the then Prime Minister, but the Governor kept silent and did not even ask the respective Chief Minister to resign. Similarly, in Rajasthan the Governor did not ask the Chief Minister Sukhadia to resign, though the High Court had passed strictures against him in a writ petition filed by the defeated candidate.

Hence, it is submitted that the Governor can dismiss a

Ministry when either it is defeated on the floor of the Assembly or it is inclined to practise some corrupt methods in the administration. Governor of Bihar Mr Ayyangar has rightly said on Nov. 28, 1967 that the Governor should install the Ministry but should not fall it by dragging its legs; it would not be in consonance with the Constitution.  

**d) DISMISSAL OF OTHER MINISTERS:**

As the other Ministers are appointed by the Governor on the advice of the Chief Minister, naturally they shall remain in office so long as the Chief Minister desires. Although according to Article 164(1), the Ministers remain in the office during the pleasure of the Governor yet as a matter of fact, this is the pleasure of the Chief Minister. Therefore, the pleasure of the Governor to dismiss an individual Minister means the pleasure of the Chief Minister because when the Chief Minister asks a particular Minister to resign and if he does not resign, then he can advise the Governor to dismiss him. In Punjab, on the advice of Chief Minister Sardar Pratap Singh Kairon, the Governor dismissed Rao Birender Singh in 1961.  

149. 'The Tribune', (Ambala), August 18, 1961.
e) **RIGHT TO INFORMATION:**

It is the duty of the Chief Minister of each State:

(i) To communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposal for legislation;

(ii) To furnish such information relating to the administration of the affairs of the State and proposals for legislation; and

(iii) If the Governor so requires to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

**IS ADVICE OF THE COUNCIL OF MINISTERS BINDING ON THE GOVERNOR?**

In general the relation between the Governor and his Ministers is the same as that between the President and his Ministers, with one important difference that while the Constitution does not empower the President to exercise any function 'in his discretion' it authorises the Governor to exercise some function 'in his discretion.'

Article 163 says that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the

150. Article 167 of the Constitution of India which is identical to Art. 78 which gives same right to the President.
Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

In exercise of his discretionary powers the Governor is not required to act on the advice of his Ministers or even to seek such advice. This is made clear from clause(2) of Article 163.  

For the first time in 1950 in Sunil Kumar Bose Vs Chief Secretary to the Government of West Bengal, the Calcutta High Court held:

"The Governor under the present Constitution cannot act except in accordance with the advice of his Ministers. Under the Government of India Act, 1935, the position was different. The Governor could do certain acts in his individual capacity, that is, only after consulting Ministers but he was not bound when acting in his individual capacity to follow the advice of the Ministers. Under the present Constitution, the power to act in his discretion or in his individual capacity has been taken away and the

151. Article 163(2) says that if any question arises whether any matter is or is not a matter as regards which the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called into question on the ground that he ought or ought not to have acted in his discretion.

152. A.I.R. 1950, Calcutta 274.
Governor, therefore, must act on the advice of his Ministers."

In Varadaraja Vs. State of Travancore-Cochine the High Court held that except the Governor of Assam under paras 9 and 18 of the sixth schedule, and the function of a Governor appointed to be administrator of a Union Territory, under Article 239(2), there was no other matter in respect of which a Governor might act in his discretion.

In Gursewak Singh Harnam Singh Vs. The State, it was held that it was the essence of all democratic Constitutions of the kind we have in India that even in matters which under rules of business must be submitted to the Head of the State for his approval the latter is bound to follow the Ministers advice.

In Azad Vs. State of Assam, it was held that unless a particular provision of the Constitution expressly provides, an obligation of the Governor to act in his discretion cannot be inferred by implication. Article 163 makes it quite clear that except in cases where the Governor is required to act in his discretion, he is to act on the advice of Ministers.

However, our Supreme Court made the position quite clear in 1955, when it decided in Rai Sahib Ram Jamaya Kapoor Vs. State of

Punjab\textsuperscript{156} that the Cabinet Government in India had reduced the Governor to a Constitutional Head like that of Great Britain. And in Britain, it is a settled question that the king cannot disregard the advice of the Council of Ministers.

The significance of the word "shall" in Article 163 remains in the fact that the Governor must keep the Council of Ministers in the office except in case of the President's Rule in the State. In \textit{U.N. Rao Vs. Indira Gandhi}\textsuperscript{157} and in \textit{M. Karunanidhi Vs Union of India}\textsuperscript{157a} the Supreme Court has confirmed this position.

In view of this position the Orissa High court in \textit{Golakh Behari Vs. State of Orissa}\textsuperscript{158} declared that the proceedings of the administration, from January 9, 1971 to January 11, 1971, done by the Governor without the aid and advice of the Council of Ministers were unConstitutional. In this connection it is important to note that during this period there was no Ministry and President's Rule in the State. S.S. Ansari, Governor of the State, accepted the resignation of Singh Deo Ministry on January 9 and the President's Rule was imposed on January 11, 1971.

In spite of the fact that judicial decisions support the view that the Governor can exercise his discretion where he is

\textsuperscript{156} A.I.R. 1955, S.C. 549, at page 556.
\textsuperscript{157} A.I.R. 1971 SC 1002, A.I.R.
\textsuperscript{157a} A.I.R. 1979 SC 899.
\textsuperscript{158} A.I.R. 1972 Orissa I.
specifically required, some of the legal luminaries have expressed divergent views. For instance, the late P. Govinda Menon, former Union Law Minister, was of the view that the Governor had the power to exercise his discretion in relation to three matters - namely, appointment of the Chief Minister, Dismissal of the Ministry and Reservation of Bills for the consideration of the President. According to Y.B. Chavan, the Governor can act in his discretion only under articles 200, 239(2) and 356. The Setalvad Study Team, appointed by the Administrative Reforms Commission, recommended the following area for the Governor's discretion:

a) Appointment of the Chief Ministers
b) Dismissal of the Ministry
c) Dissolution of the Assembly
d) Right to advise, warn and suggest
e) Withholding assent to a Bill
f) Statutory Functions and
g) Discretionary power of the Governor of Assam.


160. The Times of India (New Delhi), March 13, 1969.

On the analysis of above study it is submitted that when political crisis arises in the State then the Governor should exercise his discretionary powers in such a way so as to strike a balance between his role as Constitutional Head of the State and his Role as the Representative of the President. For this purpose qualities of greater skill are required. This task can be fulfilled by that person only who is a good, capable and impartial.

During present circumstances the Governors are required to play a more active and constructive role. The prime function of a capable Governor is to win the confidence of the people and project an image of himself as guardian of the public interest. Mr Ananthasayanam Ayyanger, the former Governor of Bihar and also former speaker of Lok Sabha, has rightly observed: "the function of the Governor as a Constitutional Head of the State was to interpret the Constitution for the sake of safeguarding democracy and not to jeopardise it. The Governor should install the Ministry but should not befall it by dragging its legs. Dragging the legs of the Ministry would not be in consonance with the Constitution. The Governor should uphold democracy and should not wreck it.... The office of the Governor should not be guided by political consideration." 162

It is submitted that if the recommendations of the Sarkaria Commission are fully implemented then the office of the Governor can serve meaningful purposes in Indian political system and the emerging strains between the Centre and the States can be minimised to a large extent.

It would be better if the politicians in power as well as those opposed to them, both at the Centre and in the States bear in mind what John Simon said: "our Parliamentary system will work as long as responsible people of different parties accept the view that, it is better that the other side should win than that the Constitution should be broken."163