CHAPTER - II

FEDERALISM, DEMOCRACY AND THE INSTITUTION OF GOVERNOR

The unity of India has been in its cultural and civilizational attainments which extended to thousands of years. These provided inner unity and one could locate the strong currents generated by Indian culture which flowed from the Himalayas to Kanyakumari. Under the Indian Constitution, it is the spirit of liberty, equality and justice which promote fraternity amongst people rather than the federal structure. The right of dissent or diversity of thought and action, within the Constitutional framework, is accepted as part of personal freedom in the political system established in India. This freedom is both with regard to individuals and to the matters of Union-State relationship. The concept of federalism is not a stagnant one, it is dynamic and the pendulum slowly swings back and forth between conflicting views for more powers and responsibilities for the constituent States or the National government of the federation.¹ The federal scheme was adopted, by our Founding Fathers, to meet the scars left by the partition of the country and to consolidate politically what was left including the native States. It is submitted that present demand

¹ Gupta U.N. 'Indian Federalism and Unity of Nation at page XVI.
for greater State autonomy and development of regionalism may be fatal and can disintegrate the country.

The special status granted to the State of Jammu and Kashmir is already creating problems day by day.

In regard to Union-States relationship, the role of Governors under the Constitution and the way in which and the purposes for which President's Rule has been imposed from time to time in various States can not escape criticism. Governors are being looked as chameleons in the national politics being at the top of the administrative set-up under the Constitution of India. They have their title and status inherited from British Rule. The Aura and powers of the Governor during British Rule were so much frightening and fearful that Constituent Assembly thought of other names but could not improve it

The Governors assume much more controversial role making State Chief Ministers jittery when they recommend to the President suppression of the State's democratic set-up under Article 356 of the Constitution of India. While Article 356 is a significant source of tension for States, the status of Governor, along with his dependence on Union Government for remaining in office, makes him suspect in the eyes of States.

Therefore, the basis of the fundamental features of Indian Constitution is to be discerned in the balance which prevails

between federalist principle, democratic polity and the maintenance of the unity of the nation. While the unity is indispensable for political existence and viability of India as a nation, democracy is the ideal for political government and federalist principle is the political means for a lasting democratic united India in the midst of diversity of popular aspirations and interests.

The Constitution of India recognizes as its objective and purpose the protection of the dignity and worth of the individual. This is well proclaimed through its Preamble, the Fundamental Rights and the Directive Principles of State Policy. The division of powers given in the Seventh Schedule between the Centre and the States is based on the assumption that, in the light of the Constitutional limitations and directives, the exercise of power in accordance with the division would promote the realisation of the dignity and worth of the human person and unity and integrity of the nation.

A. FEDERAL CHARACTER OF INDIAN CONSTITUTION

a. Meaning

Federalism is the method by which integration is achieved, in politically organised communities. It is prompted by the desire to reconcile the twin forces of unity and diversity and is
a kind of compromise between the sentiments of localism and nationalism. Etymologically the term is derived from the Latin word "Foedus", which means a treaty: a treaty embodying details of the distribution of functions between the Union and the constituent Units.

The term 'federalism' is generally used to mean an association of States. But every kind of association of States can not be called a federation. Robert Garran, an eminent Australian scholar, defined federalism as, 'A form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other'.

At the end of the 19th century, Lord Bryce, in his book, American Commonwealth, described the Federal and State governments as "distinct and separate in their action". The system, he said was "like a great factory wherein two sets of machinery are at work, their wheels apparently intermixed, their bonds crossing one another, yet each set doing its own work without touching or hampering the other.

Following the definition of Bryce, K.C. Wheare gave a traditional concept of federalism. In order to assess whether a

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3. Danielwit, Comparative Political Institutions p. 79.
Constitution is federal or not, where the test as follows:

"Does a system of government embody predominantly a division of power between general and regional authorities, each of which, in its own sphere, is co-ordinate with the other's and independent of them if so, that government is federal". 6

The term 'federalism' has been used very loosely in political discussions and seldom given a meaning that is at once clear and distinct. As Elazar has elaborated in his article, 'Federalism', that it has often been equated with confederations, leagues, empires and intergovernmental relations. 7 Even Dicey ambiguously used the two words 'federation' and 'confederation', and found little distinction between them. 8

It is submitted that use of various terms, such as, federation, Union, confederation, commonwealth etc., further adds much to prevailing confusion. Canada and Switzerland even today describe themselves as 'confederation'. Australia calls herself as 'commonwealth'. Now defunct Soviet Union called itself as 'Union'.

Hence, federalism is a political association of free people

and free States. But it is difficult to give any exact
definition of 'federalism'.

b. **Necessity of Federalism:**

All political systems require federalism in some sense, even
if some of them are unitary systems. It is essential to have
participatory territorial democracy, decentralised decision-
making, larger individual liberty, regional growth, socio-
cultural diversities, national integration and political
development. Federalism was accepted and sustained to realize
these objectives. Karl Lowenstein has regarded it as essential
and indispensable system, particularly, "where strong tendencies
of multinational or tribal diversity prevail". Federalism is an
apt instrument for reconciling the necessity of national unity
and integration with the natural urges of sub-national, regional,
multi lingual and multi-religions communities to maintain their
respective identities. It can lead to a balance between national
unity and regional autonomy. Neither the Constitution nor the
institutions established under it, are in a position to control
and regulate the process of centralisation. Thus, there is an
urgent need to search out an effective authority which may be
held responsible for the maintenance of a federal polity.

9. Karl Lowenstein, "Reflection on the value of the
Constitution in our revolutionary age", comparative politics
ed. by Harry Eckstein and David (1964) P. 157.
c. Development of Federalism

The making of a federation is never a single event, occurring all of a sudden or by a limited number of individuals. There are two processes of making federations, centripetalisation and centrifugalisation. Under centripetalisation process, several independent States join together by voluntary surrendering of their ultimate decision-making powers and retaining a major part of governance under some permanent Constitutional arrangement, and form a new State. In the centrifugalisation process, one independent State transforms itself into a federal State, through the instrumentality of a Constitution made by a Constituent Assembly or a convention, distributing powers and functions between the Union Government and the Unit Governments\textsuperscript{10}.

A federation emerges out of necessity, crisis-situation, or compulsion. Similarity of feelings, nationalism, mutual economic gains, urgent need of defence and security, cultural cohesion, political association and experience, historical background etc. are some of the important factors for making up a federation.

Federalism has been practiced since ancient times. Greek city States united into leagues for common worship and to resist common enemies. In medieval times three notable confederations were established. The Lombard League was formed by northern

\textsuperscript{10} Verma, S.L. Federal authority in the Indian political system (1987) P. 9
Italian cities to resist the Hohenstanfens. In northern Germany, the Hanseatic League achieved considerable commercial and political strength. The Netherlands confederations bound the northern lowland Provinces through the years of Spanish oppression.

In the modern period, the Constitution of the United States of America of 1787, is treated as the first experiment in establishing a federal system of government. Subsequently federalism as a mode of political organisation was embodied in the Constitutions of the Swiss Confederation (1848), the Dominion of Canada (1867), and the Commonwealth of Australia (1900). This increasing appeal of the federal idea is discernible also in the 20th century, in spite of the observation of some Critics like Harold J. Laski that, "The epoch of federalism is over".

It is rightly said that nearly all countries having large geographical area have adopted the federal principle. Among the far-flung nations using federalism in one form or another are the United States, Canada, Australia, Mexico, Brasil, Argentina, India and Pakistan. Historical or ethnic factors have made unitary government difficult in virtually all the modern nations.


12. In 1939, Harold J. Laski in his Article, "The obsolescence of Federalism" declared, "I infer in a word that the epoch of federalism is over" Quoted in Sharada Rath, "Federalism today" Approaches, issues and Trends, P. 1.
that have federal systems. The American States sought effective unity on common problems but individuality in local affairs. Switzerland is a quadrilingual country, with strong traditions of cantonal self-government. The Empire (1871-1918) and Weimer Republic (1918-1933) eras in Germany found federation an appropriate device in transition from individual principalities to the centralized totalitarian State. Canada and Australia were made up of former colonies of Great Britain; in each the geographic extent and historical separation ruled out the unitary form. In Canada, the French problem made federation even more necessary. The polyglot population, scattered lands and large area of Russia dictated the federal form, if not its spirit." 

Latin-American federalism has a disappointing record. It is often negated by National intervention in State affairs. Following the second world war, federal principle was useful in launching new governments for India, Pakistan, Malaysia, Yugoslavia, West Germany, and Indonesia, although the last mentioned subsequently became a Unitary State. In the Soviet Union and other autocracies the control of both central and regional governments by the one political party precluded the free exercise of self-government as we have known it.

d. Development of Federalism in India

Indian History bears the testimony of the fact that India was never a single political unit\textsuperscript{14}, even during the reign of Ashoka the Great. The provinces and the local Governments in the various empires, from the Mauryas to the Mughals, enjoyed considerable degree of autonomy. As noted by the historian, Sir Jadunath Sarkar, in ancient empires "each Province led its own life, continued its old familiar system of Government (though under the agents of the central power) and used its local language". Whenever an over-ambitious emperor attempted centralisation by steam-rolling the local autonomy, it evoked strong resentment and reaction. Such extreme centralisation proved not only detrimental to administrative efficiency, but, in counter-effect, weakened the capacity of the central power to maintain its hold over sub-national forces on a stable and enduring basis. The last of the great Mughals made a strong bid for complete centralisation and abolition of traditional diversities and autonomy of the regions. Soon after his death, the regional forces discarded the mantle of the central autocracy. Governors of the Provinces and local chieftains asserted their independence and the entire structure crumbled.\textsuperscript{14a}

\textsuperscript{14} Pardeep Jain Vs. Union of India A.I.R. 1984 S.C. 1423.

\textsuperscript{14a} Sarkaria Commission Report on "Centre-State Relations". Part-I P.5, para 1.2.03.
In fact it was only during the British rule that India became a compact political unit, having one single political regime over its entire territory.

According to Amal Ray except for certain periods under the Maurya, the Gupta and the Mughal Emperors, India was always some kind of loose federation\textsuperscript{15}. As early as 1904, Sir Henry Cotton, in his Presidential address to the 20th session of the Indian National Congress, touched upon the federal idea, in terms of establishing a federation of free and separate States, the United States of India placed on a fraternal footing with local autonomy cemented together, under the aegis of Great Britain\textsuperscript{16}.

The federal concept in India was the product of a gradual process of evolution but represented a decision which was somewhat abruptly taken in 1930 as a result of the necessity of including the Indian States within the Indian polity. From the time of the regulating Act of 1773, which consolidated British possessions in India at the time to the commencement of the Government of India Act of 1935, in April 1937, the Government of India was subject to general and detailed control by the Secretary of State for India who had responsibility to the British Government and Parliament\textsuperscript{17}.

\textsuperscript{16} Ibid.
\textsuperscript{17} Shiva Rao B, 'The framing of India's Constitution," P. 592.
Both the Simon Commission (1927-1929) and the Butler Committee (1927-1930) visualized, even though as a distant ideal, a Federal Union for the whole of India. The picture, however, changed with dramatic swiftness at the three Round Table Conferences held in London (1930-32) with the delegates of British India and those of Indian States alike unanimously accepting the federal idea as the immediate solution to the Indian Constitutional problem.

In 1928, the Motilal Nehru Committee had before it the suggestion for an All India Federation, though the attitude of the Princes was still in some doubt. It adopted the line that,

"It would be a most one-sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and otherwise the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full

17a. The commission looked forward to the possibility of a federation to include the States which would render it possible to reconsider the issue of responsibility, provided that arrangements could be made for defence which would facilitate transfer of authority. (Cited in Keith A.B, "A Constitutional History of India", P.293-4).

18. The most significant conclusion of the Butler committee was that "paramountcy must remain paramount", (Cited in Rao, B. Shiva", The Framing of India's Constitution", P.13).

18a. Ibid P.593.

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enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories.

During this period, federalism was demanded mainly by two major forces; the Indian States, and the muslim community. For the Indian States, the growing powers of the British paramountcy, which were gradually encroaching upon, the autonomy of the States, were unacceptable. The resentment of the Rulers of the Indian States grew keener at the thought of a cabinet composed of the British Indian Ministers exercising paramountcy over them, if dominion status were given to India. For the muslim community, federation was one of the pivotal demands as the community was dissatisfied with the report of the committee appointed by the all parties conference. This was clearly reflected in one of the "Fourteen Points" of Mr. Jinnah after the failure of the all parties conference suggesting that the form of the future Constitution of India should be federal with the residuary powers vested in the Provinces.

In the Government of India Act, 1935, for the first time, a scheme for an all India federation was embodied. According to Bombwall, "The Act of 1935, brought about a qualitative change

19. Indian Quarterly Register, 1928 Vol. 1 P. 40.
in the status, powers and authority of the Provinces"\(^{21}\). The Act
no doubt provided for federalism specifically but, in general,
there was a strong tendency towards centralization in the
distribution of legislative powers. Though the Act worked only
partially for a short spell of time, it "served to perpetuate
the belief in the inevitability of federalism " in India.\(^{22}\)

On May 16, 1946, the Cabinet Mission recommended that the
Constitution should take the following basic form:

"That there should be a Union of India
comprising of British India and Indian States.
The phrase used was Union of Indiag but in
essence it was not a federal system."\(^{23}\)

On 6th June, 1947, the Union Constitution Committee, dealing
with the basic question whether India should be a Unitary State
or a federation, arrived at the tentative decision:

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209.

(eds) p. 17. "Federation never came into existence under the
Act of 1935. The federation envisaged by the 1935 Act was to
come into being only after the Rulers representing not less
than half the aggregate population of the Indian States had
signified their decision in favour of accession. (Joint
select committee report 1934, para 27). Rulers considered
the proposed federal scheme inadequate for protecting their
special rights and interests. Therefore it was rejected by
the Rulers. (Proceedings of the meetings of Chamber of
Princes, Gwyer and Appadorai, Vol. II, PP.757-8.)

23. Supra, note 17, p.67.
"That the Constitution should be a federal structure with a strong Centre".\(^{24}\)

The term 'federalism', used in the objective resolution, was replaced by another significant word 'Union' in Art. 1 of the Constitution with the explanation that "the use of the term 'Union' is deliberate .......the drafting committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join a federation and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible".\(^{25}\)

In fact, a large number of the members of Constituent Assembly did not understand the meaning and implications of the proposed Union or quasi-federation. They patiently listened like school boys to the speeches of the other members of the Assembly.\(^{26}\) However, the Fathers of the Indian Constitution refused to adhere to any particular theory or dogma about federalism. India had a number of problems that were unknown to other federations in the world. These unique problems were unlikely to be solved by recourse to any particular theory or dogma, because federalism "was not a definite concept and lacked a stable meaning", Dr Rajendra Prasad, chairman of the

\(^{24}\) Union Constitution Committee minutes, June 6, 1947, select documents 11,16, Pp. 555-556.
\(^{26}\) C.A.D., Vo.XI P. 680.
Constituent Assembly made it clear when he observed, "Personally, I do not attach my importance to the label which may be attached to it whether you call it a Federal Constitution or a Unitary Constitution or by any other name, it makes no difference so long as the Constitution serves our purpose".  

Dr. Ambedkar, while moving the draft Constitution on 4th Nov., 1948 said that the Indian federation had special features which were not only different from the American federation but from all other federations. He stated, "All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary". On the other hand, the draft Constitution could be both Unitary as well as Federal according to the requirements of time and circumstances. In normal times, it was designed to work as federal system, but in times of war it was so framed as to make it work as if it was unitary".

e. **Is the Constitution of India Federal**

The word 'federal' is no where used in the Indian Constitution. In fact even in the Constitution of the United States, the word federal does not find any place, although it can claim to be the first federal State in the modern world, originating in 1787.

27. Ibid, p.186.
The Constitution is always framed according to the needs and aspirations of the society. When the Constitution of India came to be enacted, its people were inspired by a new feeling of enthusiasm and strong sense of nationalism and in the Constitution, which they framed, they designed a strong and powerful nation based on certain cherished values. The integrity and the unity of the India was upper most consideration which is reflected throughout the Constitution. The Constitution makers were aware of the past history of the country and they were also conscious that the divisive forces of regionalism, linguism and communalism, may one day raise their ugly head and threaten the unity and integrity of the Nation and the ever present danger of the imperialist forces, adopting new stratogems, apparently innocuous, but calculated to destabilize India and reestablish their hegemony and therefore, they laid great emphasis on the unity and the integrity of the Nation.29.

Following are some of the instances of unity and integrity of the India enunciated under the Constitutional framework:-

Firstly, the Preamble of the Constitution represents the aspiration of the people of India. It emphasises that the people who have given to themselves this document are the great people of India. It solemnly resolved to secure to all its citizens the

29.Supra, note 14 at p 1424.
dignity of the individual and unity (and the integrity)\textsuperscript{30} of the nation.

Secondly, the very first Article of our Constitution enshrines in its corpus the historic pledge of the nation while making an altogether catagorical statement that India is a Union of the States\textsuperscript{31}. It indicates that the Indian federal system is not the result of any agreement entered into by its constituent units as in the United States and the constituent units have no liberty to secede from it. The term indicates the practical necessity for India which is vast country having diversities of language and culture.

Thirdly, Part II of the Constitution\textsuperscript{32}, dealing with citizenship recognises only one citizenship, the Indian citizenship. Indian Constitution though federal in form has provided for single citizenship in contrast with the Constitution of the United States which provides for dual citizenship\textsuperscript{33}.

Fourthly, discrimination and arbitrariness in State action, legislative and administrative both, are prohibited under Article 14. The State is restrained from denying any person equality before the law or the equal protection of the laws within the

\textsuperscript{30} Inserted by the forty second Amendment Act, 1976.

\textsuperscript{31} Art. 1(i) reads, "India that is Bharat shall be a union of States".

\textsuperscript{32} See Arts. 5 to 11 Constitution of India.

\textsuperscript{33} Sect. 1 of Amendment 14 of the U.S. Constitution.
territory of India. Again the State is restrained from discriminating against any citizen, on grounds only of religion, race, caste, sex, place of birth or any of them in view of Article 15. However, exception is made for making any special provision for the advancement of socially and educationally backward classes of citizens and for the scheduled casts and tribes.\textsuperscript{34}

Fifthly, the federal character of India is again streamlined under Article 19 of the Constitution which provides that all citizens shall have the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India.\textsuperscript{35} A citizen of India has the right to move in any part of the Indian land and after going there, he may reside there temporarily or settle permanently, their being no internal barriers. Freedom of movement and settlement is basic to our Constitutional values.

Sixthly, Trade, commerce and intercourse, throughout the territory of India is made free under the Constitution.\textsuperscript{36} The problem of inter-State trade and commerce in a federal system is a very ticklish one as it is often difficult to reconcile local

\textsuperscript{34}. The same spirit is maintained under Art. 16 which provides equality of opportunity in matters of public employment.

\textsuperscript{35}. Art. 19 (1) (d) & (e).

\textsuperscript{36}. See Art. 301 of Constitution of India.
interest with the national interest. Economic unity and integrity of India prevails over the regional interest throughout Part XIII of the Constitution. Although due respect is accorded for regional interest but the Union is empowered to intervene with a view to secure coordination of conflicting interests and implementation of uniform economic policy.

Seventhly, in some Articles of the Constitution, the executive power of a State forming part of the Union, is exercisable by the Union government or is subject to the directions of it. 37

The extent of federalism in India is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the central government 38. According to Beg C.J., the duality or duplication of organs of

37. See Art. 353 & 356 of Constitution of India. Art. 256 and 257 are also important in this connection, under which the executive power of the union extends to giving of directions to State governments, so that the laws made by the parliament and the exercise of the executive power by the union government are not impeded.

government on the Central and State levels did not reflect a truly federal demarcation of powers based on any separatist sentiments which could threaten the sovereignty and integrity of the Indian Republic to which the members of the Constituent Assembly seemed ardently devoted, particularly after an unfortunate division of the country with certain obviously disastrous results.39 Federal character has been enumerated as one of the features of the basic structure of the Indian Constitution by Sikri C.J. and Shelat and Grover. J J include 'unity and integrity of the nation' among the features of the basic structure.40

The development in the Indian federation had, at times prompted some observers to doubt if India would continue to retain its federal structure. Thus writing in 1968, after reviewing the political developments, which had resulted in a reduced majority for the Congress Party at the Centre and its losing control in about half the number of States, professor Sawyer observed:

"The consequences of these political developments could be a break down of order to such an extent as to cause either a division of the country into several independent States, or the

adoption of a completely centralized system under a military dictatorship." 41

But the question which strikes our mind is whether federalism in India remained at the same level as was at the inauguration of the Constitution, or has it moved towards either end of the federal spectrum? It is well known that the Indian Federation was not made by the Union of previously existing sovereign States. So the chances of the concept of a State's rights developing and its finding expression in the context were remote. The division of powers between the Federation and the Units in India was made in the Constitution in 1950 after mature deliberation and in the light of the needs felt at that time. Since initially for a number of years the same political party governed at the Centre and practically in all the States, the Constitutional machinery was seldom invoked for settling differences. Most of the Federal-State problems would have been settled at the party level extra-Constitutionally. Now that situation has changed. At present some of the States are ruled by parties different from the one at the centre. Claim for more powers for the States, particularly in the matter of finances have been raised. Some times claims are also advanced by States, on the basis that due share of central assistance has not been given in plan allocation and in grants.

At present there are a number of problems facing the relations between Units and the Federation. There has been the long standing problem of Kashmir, of foreign nationals in Assam, of the Sikhs demands in Punjab, problem of Jharkhand in Bihar and there has been the problem of reservation in Gujarat and some other States. Some of these problems have called for the assistance by the Centre through army intervention for the maintenance of law and order in the Units. It is hoped that these problems would no longer pose threat to Indian federalism. Federalism can never be strengthened by the mere transfer of powers to the States unless it is ensured that those powers will be used to improve the quality of life of the people. It is also open to doubt, in the light of the social structure and political developments in India, whether, greater powers to the States would result in improvement of the quality of life of the people.

It is submitted that though the Constitution of India provides for a cooperative federalism, what is actually functioning in India is organic federalism. A comparison of the Indian federal system with the other federal systems of the world indicates that in India there is a strong tendency towards centralisation. But practically there is a tendency of strong Centre in all federations. In U.S.S.R. federal system, States had a right to secede also but in fact all governmental power was concentrated in the Union Government. The same is the case with
the United States. Recently, four Soviet Union’s republics—Latvia, Estonia, Lithuania and Moldavia declared themselves as independent States.\textsuperscript{42}

Indian Constitution not only lays down the framework of a controlled federal system by designating India as "a Union of States" but also makes it very much clear that it is a Union of composite States of a novel type.\textsuperscript{43} That the term 'Union of States' implies a federal Constitution was made clear by B.R. Ambedkar, Chairman of the Drafting Committee, who, while moving the Draft Constitution on Nov. 4, 1948, said: "The Draft Constitution is a Federal Constitution in as much as it establishes what may be called a dual polity. The dual polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution".\textsuperscript{44} However, Amal Ray comments: "The choice of Union of States and not federation of States as Article - I of the Constitution was deliberately made to emphasize the centralized bias of an indestructible Union and that was done clearly to avoid the recurrence of the American civil war on Indian soil.\textsuperscript{45}

\textsuperscript{42} 'The Tribune' Chandigarh, Sept. 3, 1991.
\textsuperscript{44} Constituent Assembly Debates, Vol. VII, p. 33.
\textsuperscript{45} Ray Amal, Inter-Governmental Relations in India, 1966, P. 18.
It, therefore, becomes evident from the above discussion that the framers of the Indian Constitution took meticulous care in creating a strong and powerful Union government, a parallel of which does not exist in any federal polity of the democratic world. The framers of the Indian Constitution took note of these tendencies and kept in view the practical needs of the country designed on federal structure not on the footing that it should conform to some theoretical, definite or standard pattern, but on the basis that it should be able to subserve the need of the country. The Indian Constitution, therefore, constitutes a new bold experiment in the area of federalism.

Therefore, it can be said that the Indian Constitution is a combination of both federal and unitary form of governments. It enunciates the principle that in spite of federalism, the national interest ought to be paramount. Thus, the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth.\textsuperscript{46}

B. DEMOCRATIC CHARACTER OF INDIAN CONSTITUTION

a. Meaning of Democracy

The word 'democracy' has been derived from the two greek words 'Demos' and 'Cratia'. 'Demos' means 'the people' and

\textsuperscript{46} Jennings, "Some characteristics of Indian Constitution", P. 55.
'Cratia' means 'the power'. Democracy in this way means the Government in which the power of the people is supreme. Today, the term 'Democracy' has resulted in a lot of confusion about its true meaning.\textsuperscript{47}

Although the term "DEMOCRACY" has wide application of and its use in the common language is everybody, its definition is yet not easily come by. For the question "What is Democracy", two kinds of answers are possible. One answer defines democracy in terms of a particular system, a form of government, or a method by which the people, or the majority of the people, exercise a political control. The other answer ranges beyond this mere mechanical concept of a form of government, to a way of life. This answer describes democracy in terms of ideals, attitudes and philosophical concept\textsuperscript{48}.

It is easy to define democracy in the strict sense by translating the word, which is Greek in origin, as "the rule of the many" and this definition is to be understood in the strict governmental sense noted in the first kind of answer. On the wider basis mentioned in the second kind of answer material and spiritual values are also taken into account, culture, the standard of living, all social and economic relationships being covered\textsuperscript{49}.

\textsuperscript{47} Lewis, J.R. 'Democracy' the Theory and Practice (1966), P.13
\textsuperscript{48} Ibid p.14.
\textsuperscript{49} Ibid.
Therefore, democracy is that form of government in which every body has a right to share in the exercise of Sovereign power. It stresses the idea that no class has special privileges or monopolised political power. It imposes confidence in the capacity of the people to rule themselves.

It is worth mentioning here that the democratic set up can be of two kinds; (i) Direct (ii) Indirect. In a direct democracy the legal and political sovereignty vests in the people, as is the case in Switzerland. In the indirect system of democracy, it is the representatives of the people who exercise the power of legal as well as political sovereignty. The electorate choose their representatives who carry on the government. It is for this reason that this type of democracy is called representative democracy. In the Indian Constitution we have adopted indirect or representative system of democracy. All the persons above the age of 18 years have a right to vote.

b. Development of Democracy

The concept of democracy, which has become a key political ideal of the present century, has a long history. Democracy as a term was first mentioned in ancient Greece neither as a positive form nor as an ideal system but merely as the 'Rule of many'.

50. Ibid.
It was only in 17th century in England, with the emergence of the movement of Levellers, that democracy came to mean something desirable and positive. But the democratic idea never spread. Even in the late 18th century the founding fathers of the American Constitution in the Philadelphia convention of 1776, preferred the term 'republicanism' to democracy. In Great Britain, which is called the mother of parliamentary democratic system in the world, the existence of hereditary monarchy and (that too restricted to those adhering to the established protestant church of England), the house of Lords (comprising Lords temporal and ecclesiastical) negates theoretically the elementary assumptions of democracy, namely equality, secularism and republican system. What is more startling, though not much realised, is the fact that even in Great Britain, adult universal franchise, the bedrock of popular democracy was introduced reluctantly, and only as late as in 1929 by the representation of the people.  

It was really the end of the first world war that saw the tidal wave of popularity for democracy, both as an ideal and as a system. It was in that world war that it was proclaimed that the war was being fought to make the world safe for democracy. "Till 1850 the word democracy awakened dislike and fear. Now it is a word of praise".  

51. Equal Franchise Act, 1928.  
53
Two events in the 18th century and two in the 20th century, may be recognised as significant landmark in the onward march of humanity towards the democratic ideal. Firstly, the American declaration of Independence 1776, led to the establishment of world's first federal democracy, with its famous Bill of Rights. Secondly, the rigging slogan of the French revolution, 1789, projected powerfully the centrality of the three vital principles of liberty, equality and fraternity. Since then they have remained the pillars of the edifice of democracy. Thirdly, the October socialist revolution in Russia, in 1917, proclaimed with the salvoes of the gun, the triumph of the common man as the creator of history. Fourthly, independence of India in 1947, which came as the fulfilment of the national movement, opened on the one hand, the floodgates of decolonisation in Asia, Africa and Okana, and on the other hand resulted in the emergence of the world's largest democratic polity. These four events constitute in world history, glorious stages in the unfolding of the democratic idea.  

**c. Democracy in India**

During the present era, 'Democracy' has become so popular and important that almost every country claims to be democratic. India's declaration of independence on 15th August 1947 and its
formation as the sovereign Democratic Republic in 1950 was the culmination of the long drawn out struggle for independence against British Colonial rule. It represented the fulfilment of goal of national movement.

The Constituent Assembly of India consisting of "we, the people of India", adopted, enacted and gave to us the Constitution about 43 years ago. For the sovereign, socialist\textsuperscript{53a}, secular\textsuperscript{53b}, democratic republican Union of India, the framers provided Parliamentary democracy, and established the framework and structure of Parliamentary government. They preferred Parliamentary government for very sound reasons and time honoured practice and form of governance. It was already known and experimented upon through stages of Constitutional reforms introduced since 1919: Hence, the systems of government adopted by, and structured in the Constitution was no doubt modelled on the framework and structure of the Westminster that was raised, evolved, built and practised on the banks of the river Thames and it resembled in no manner with the system established by the American conventionists on the side of the river Potomac.

The parliamentary democracy and government were inaugurated by Dr. Rajendra Prasad, Pt. Jawahar Lal Nehru, Sardar Patel and others who had been at work on the potter-wheel of the

\textsuperscript{53a} Substituted by Sec. 2 of the Constitution (Forty-second Amendment) Act, 1976.
\textsuperscript{53b} Ibid.
Constitution-making. Not only they had provided inspiration to the discussions and debate on the floor of the Constituent Assembly, but were also most competent to act as the builders of the system. They worked the system and they did so with exemplary success. Till now, the system has worked well, even if it might have not been as efficacious, efficient or effective as some might have thought or imagined.

The Indian Constitution laid down the framework and structure of the Parliamentary government, and provided the essential principles of Parliamentary democracy. The Preamble of the Constitution declares India to be a sovereign, socialist, secular, democratic, republic. The term 'democratic' shows that the Constitution has established a form of government which gets its authority from the will of the people. The Rulers are elected by the people and are responsible to them. Justice, liberty, equality and fraternity which are essential characteristics of a democracy are declared in the Preamble of the Constitution as its very objectives. The Preamble to the Indian Constitution declares that it is adopted and enacted by the people of India and they are the ultimate master of the republic. Thus the real power is in the hands of the people of India, both in the Union and in the States.

The essence of Parliamentary form of government is its responsibility to the legislature. So, looking at Indian
Constitution, the President of India is the Constitutional Head of the State. The real executive power is vested in Council of Ministers whose head is the Prime Minister. The Council of Ministers is collectively responsible to the Lower House, i.e. Lok Sabha. The members of the Lok Sabha are elected directly by the people on the basis of adult franchise normally for five years. The position is the same in the States. Hence, Indian Government can be called a responsible government.

The term 'democracy' in its wider sense embraces, in addition to political democracy, also social and economic democracy. The term 'democratic' is used in this very sense in the preamble of the Constitution of India.

Democracy would indeed be hollow if it fails to generate this spirit of brotherhood among all sections of the people - 'feeling that they are all children of the same soil and the same motherland. It becomes all the more essential in a country like India composed of many races, religions, languages and of culture. Article 1 of the declaration of Human Rights adopted by the U.N.O. embodies, this noble and human principle that "all the human beings are born free and in equal dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". It is this concept of brotherhood of man which is contained in the Preamble.

of the Constitution and is given practical shape by abolishing title and untouchability and many other social evils which swayed the social arena of Indian society. "Liberty, Equality and Fraternity" which the Constitution seeks to secure for the people of India are to serve the primary objective of ensuring social, economic and political justice. Justice is the harmonious blending of selfish nature of man and the good of the society. The attainment of the collective good as distinguished from individual good is the main aim of rendering justice. Combining the ideals of political, social, economic democracy with that of equality and fraternity in the Preamble, Gandhiji described as "The India of my Dream", namely "an India in which the poorest shall feel that it is their country in whose making they have an effective voice, an India in which all communities shall live in perfect harmony."

Although there is a controversy, whether in India there is a true democracy or not, yet there are many characteristics in Indian Constitution which can be said to be the foundation of any system claiming to be democratic in nature. These features are as such:

55. See Article 18 Constitution of India.
55a. See Article 17 Ibid.
(i). Popular Sovereignty

The supreme power of the State is vested in the people. People choose their representatives directly for the period of five years. If these representatives violate public opinion, the people can defeat them at the next election.

(ii). Equality

All are equal in the eyes of law. Equality before law and equal protection of laws is guaranteed to every person in India. Rule of law is a basic feature of the Constitution. Right to equality has been given new interpretation by the supreme court. It includes right against arbitrariness.

(iii). Liberty

In the Indian Constitution second object of the Preamble is liberty of thought, expression, belief, faith and worship. To

58. Popular sovereignty means that the ultimate authority rests with the people in their corporate capacity.

58a. Articles 14 to 18 and 29(2) of Constitution of India guarantee right to equality.

58b. Maneka Gandhi Vs. Union of India, A.I.R. 1978 SC 597, In this case Bhagwati, J. observed: "Equality is a dynamic concept with many aspects and dimensions and it can not be imprisoned within traditional and doctrinaire limits". See also R.D. Shetty Vs. Airport Authority, A.I.R. 1979 SC. 1628.

59. See Article 15 and 25 of Constitution of India.
achieve this, specific fundamental rights have been incorporated in - Arts. 19 to 22 & 25 to 28.

(iv). Fraternity

To promote fraternity amongst the people so as to assure the dignity of the individual and the unity and integrity\(^{59a}\) of the nation is the fourth objective of the Preamble of the Indian Constitution\(^{60}\).

(v). Fundamental Rights

The incorporation of a formal declaration of fundamental rights in part III of the Constitution is a distinguishing feature of the democratic State sought to be established by the Constitution. For the enforcement of these rights, Constitution confers on the Supreme Court the power to grant most effective remedies in the nature of writs of Habeas corpus, mandamus, prohibition, quo warranto and certiorari.\(^{61}\)

59a. Inserted by the Constitution (42nd Amendment) Act, 1976.

60. Although fraternity as an object is not reflected in article of the Constitution, but there are provisions in the Constitution which are designed to promote fraternity, such as a common citizenship in Art. 5 and the right of citizens of India to move freely throughout the territory of India, to reside and settle in any part of India, or to practice any profession, or to carry on any occupation, trade or business in any part of India (See Art. 19(2)(d- to (g) of the Constitution of India.

61. Art. 32 Constitution of India.
(vi). Independent Judiciary

An independent and impartial judiciary with a power of judicial review has been established under the Constitution of India. This power of judicial review is a basic feature of the Constitution and can not be restricted or taken away.

(vii). Adult Sufferage

Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect representatives for the legislatures. The adoption of the Universal Adult Sufferage without any qualification either of sex, property, taxation, or the like is a bold experiment in India, having regard to the vast extent of the country and its population, with an overwhelming illiteracy.

(viii). Freedom of Press

Freedom of press is essential for sustaining democracy. The Constitution of India guarantees to all citizens freedom of speech.

62. Past experience has shown that the people of India did not tolerate curbs on independence of judiciary imposed during emergency period by Indira regime and voted Janta Party to power.


64. See Article 326 Constitution of India.
and expression which include press also. Freedom of press has no geographical limits. As long as freedom of press is not crushed, one can say that future of democracy is safe in India.

Hence, from the above noted features, it can be rightly observed that Indian Constitution contains all such features which are essential in a democratic structure. Today India is the biggest democracy of the world.

(d). Danger to Democracy in India

It can be argued that since more than 70% of Indian population lives below poverty line, therefore, such electorates can easily be swayed by money temptations which can be offered by the rich few who contest elections. Money, therefore, plays a decisive role in all elections. So, due to poverty and illiteracy in India, the people have not appreciated great power of vote, which has been given to them. It is evident from the fact that even though democracy is about 43 years old in India percentage of electorates who go to polls at the time of each election is not more than 40, though in some it goes up higher.

In India there is growing a personality cult. Political parties coming into existence after the names of the

individuals, who give programmes and ensure that these are implemented. As soon as individual is away from the scene, the party becomes shaky and sometimes even goes out of political scene. This is not a sign of good health of democratic system.

Another cause which is endangering democracy and making its successful working difficult is that some very far reaching decisions are taken by the executive government without getting any mandate from the public. Gold control order, compulsory deposit schemes, Bank nationalisation, abolition of privy purses etc. were introduced without consulting the masses. When the people are not consulted on changes of very far reaching importance, how can it be said that democracy in the country is a success?

However, it is worth mentioning here that the hideous nightmare of authoritarian tyranny which was inflicted on our country and our people from June, 1975 until March, 1977 served to arouse and awaken the people to the potential and permanent threat to our parliamentary democracy posed by the misuse of emergency provisions of the Constitution. H.V. Kamath was right when he said that unless these provisions were drastically amended, these would always hang like a Damocle's sword over the

65. For example, Congres (I) i.e. Indira, Congress (S) i.e. Swaran Singh, Janta Dal (Chander Shekhar) Akali Dal (Badal), Akali dal (Mann), Akali Dal (Longowal) etc.
head of democracy in India. Hence the Constitution (44th Amendment) Act. was passed to provide adequate safeguards, so that during emergency power is properly exercised and is not abused and to remove or correct the distortions which came in to the Constitution by reason of amendments enacted during the period of the internal Emergency.

One of the important questions debated down the years ever since the decolonisation of the British empire began with the independence of India in 1947 has been: can democratic parliamentary government survive and if so in what form the Westminster model or something quite new?

India remained throughout the fifties and sixties a model of Parliamentary democracy. Nehru, for long was in such a Supreme political position that he could easily have treated Parliament with contempt, but instead insisted on meticulously subjecting himself and his government to Parliamentary scrutiny.

But in Pakistan Parliamentary government failed and has kept on failing to this day. It is submitted that today the general impression among people in the West is that Parliamentary

67. For detail see Constitution (Forty fourth-Amendment) Act, 1978.
government has not succeeded in post-colonial period. It is a misleading impression, created because of concentration of attention on what has gone wrong rather than on what has gone right.

All commonwealth Parliaments are not following the Westminster model and this is not surprising; it was never sensible to expect that what had evolved was the right formula to reproduce unquestioningly in countries with as wide a variety of background and culture as Zambia and Fizi and Trinidad and Malaysia.

Several countries started with a federal system, which in itself was a different one from Britain's, a few remained monarchies, but most are republican. Sri Lanka, is currently moving towards a French-style Presidency.

A debate has been going on for the last several years in the country whether the Parliamentary form of democracy should be continued or should be replaced by the Presidential form of democracy. It is submitted that the makers of our Constitution preferred the Parliamentary form of democracy for specific reasons. Firstly, the system was already in operation and people were well acquainted with it. Secondly, to avoid conflicts between the executive and the legislature which are common in America, and thirdly, due to the Vastness of the country and

69.Ibid.
diversity of its culture. Again the Swaran Singh committee appointed by the Congress Government for suggesting Constitutional reforms unanimously rejected the introduction of the Presidential form of democracy and was of the opinion that, the present Parliamentary form of democracy was working well.

For making Parliamentary form of democracy more effective in India, suitable reforms must be made. Firstly, the accounts of political parties must be properly checked and audited. So that a limit for spending the money on election campaign by the political party may be prescribed and utilization may be checked. It would help in having a watch on sources from which they get money; it would help in eliminating to some extent at least the influence of black money and money received from foreign countries in an unauthorised manner. The expenses incurred by the candidate should also include the expenses incurred by his party on his election. It would to a great extent help in reducing the influence of money power. The limit on expenses by candidate should be suitably enhanced to make it realistic. At present every one knows that actual expenses are two hundred times more than the prescribed limit. Secondly, some qualifications must be laid down for the legislators. Because the time has come when citizens must wrest the initiative from professional politicians.

70. Swaran Singh Committee Report, 1975.
and from political parties, and insist upon men of knowledge, vision and character being chosen as candidates for Parliamentary and the State elections. It is only such men who can give India the type of Government it needs—a government which is strong without being authoritarian and human without being weak.  

Thirdly, during election, open campaign should be banned and only campaigning through, Radio or T.V. should be allowed. So that clashes among the political parties and candidates may be avoided. Moreover, common citizens are not perturbed by the loud voices of open campaigning system.

(C) DISTRIBUTION OF POWERS BETWEEN CENTRE AND STATES

a. DEVELOPMENT IN INDIA

The distribution of powers is one of the essential features of federalism. "The object for which a federal State is formed involves a division of authority between the National Government and the separate States....... The tendency of federalism to limit on every side the action of the government and to split up the strength of the State among co-ordinate and independent authorities is specially noticeable, because it forms the essential distinction between a federal system.......and a

unitary system of government". The basic rule of federalism is that the legislative, executive and financial authority is divided between the Centre and the States not by any law passed by the Centre but by the Constitution itself. This is what the Indian Constitution does. The Constitution of India has consistently striven to provide rationalised approach on the relationship between the Union and the States. The problem has two aspects. Firstly, the realisation of inter se equality among the States subject to Art. 2 of the Constitution of India and maintenance of reasonable classification where special provisions had to be made in favour of any State, such as provided by Articles 370, 371 to 371-F of the Constitution. Secondly, giving of free play to the States in the democratic process and with regard to assigned functional latitude to the States.

The Government of India Act, 1919, provided for a considerable measure of devolution of authority to the Provinces. This was accompanied by a further classification of Provinicial subjects into reserved and transferred categories, the latter being entrusted to ministers who were to work in responsibility to their legislatures. The Act also laid down that the powers of superintendence, direction and control over Provinicial


73. Article 2 lays down: Parliament may by law admit into the Union or establish, new States on such terms and conditions as it thinks fit.
subjects vested in the Government of India could, in relation to the transferred subjects, be exercised only for certain specific purposes. All this undoubtedly gave a certain measure of autonomy to the Provincial ministries. The Constitutional position, however, enabled the Government of India to exercise full control and in practice the autonomy of the Provincial ministries was hedged in by several reservations. It was with some justice that the joint select committee on Constitutional Reforms observed in 1934:

"Notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralized government, with the Governor-General in Council as the keystone of the whole Constitutional edifice: and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good Government of India."  

The Government of India Act 1935, which represented the culmination of the discussions which started with the Round Table Conferences, set up a federal polity in India, with a Central government and Provinces deriving their jurisdiction and powers by direct devolution from the Crown.

74. Government of India Act (1924 Reprint), sec, 45A.

75. Quoted in Rao B. Shiva "The framing of India's Constitution", P. 593.
Under the cabinet mission's plan of May 16, 1946, British India and the Indian States were together to constitute a Union of India with jurisdiction over the subjects of foreign affairs, defence and communications and with powers necessary to raise the finances required for these subjects. All subjects other than Union subjects and all residuary powers were to vest in the Provinces. The Indian States were to retain all subjects and powers other than those ceded to the Union.

The first attempt in the direction of analysing the precise content and scope of Union subjects, as well as the Union's power to raise finances, was made by B.N. Rau, the Constitutional advisor to the Constituent Assembly, in his notes on Constitutional precedents published early in Sept. 1946. In these notes he explained generally the ambit of foreign affairs, defence and communications with reference to the position in regard to those subjects under various modern Constitutions of the world and the Government of India Act, 1935.

The Union powers committee received a number of notes on different aspects of Union powers from Alladi Krishnaswami Ayyar and K.M. Munshi. The former observed that in dealing with the subject of union powers, one of the chief issue requiring


77. Constitutional precedents (First Series), select documents II, 26 (i), Pp. 687-706.
consideration would be the relationship between the Union and the Units. He emphasized, in particular, the widely accepted principle of the paramountcy of the Union or federal laws over Provincial laws. In view of the existing differences between the Constitutional status of the Indian States on the one hand and the British Indian Provinces on the other, it would be necessary to have a definite provision to the effect that the laws of the Union should have the same force within the territory of every Unit. Special attention would also have to be paid to the question of the execution of federal laws and to the subject of Provincial or State militia.  

GopalaSwami Ayyangar and Alladi KrishnaSwami Ayyar recommended that, as in the Government of India Act 1935, there should be three legislative lists—an exclusive federal list, an exclusive unit list and a concurrent list. 

The Union Constitution Committee and the Provincial Constitution Committee decided at a joint meeting on June 5, 1947 that in view of the June 3 announcement, the limitations imposed...

79. K.T. Shah's "General Directives", paras 6 and 7 and "Summary of the Draft Constitution for the union of India", Chapters VII and XII; Munshi's "Draft Constitution of the Union of India", Chapter IV, Articles XXX-XXXIV (not printed) and "Memorandum on the principles of the Union Constitution", prepared by Gopalswami Ayyangar and Alladi Krishnaswami Ayyar, Chapter III, articles 20-23, Select Documents II, 15(i) and (vi) Pp, 457, 545-46.
by the Cabinet Mission's plan on the form of the Constitution no longer existed. The Union Constitution Committee, dealing with the basic question whether India should be Unitary State or a federation, arrived at the following tentative decisions:

1. That the Constitution should be federal in structure with a strong Centre;
2. That there should be three exhaustive legislative lists, viz., Federal, Provincial and Concurrent, with residuary powers for the Centre; and
3. That the Indian States should be on par with the Provinces as regards the federal legislative list, subject to the consideration of any special matter which might be raised when the lists are fully prepared.

The three decisions accepted at the joint meeting were later incorporated in the Report of the Union Constitution Committee, July 4, 1947.

b. Present Position

The part XI of the Indian Constitution is the sine qua non of federal principle since it defines the domains in which the

81. Ibid.
82. Ibid; II, 20, P. 616.
union and the States respectively are to exercise their powers. But, it makes the Union all powerful and the States with their administrative machinery highly dependent on or subordinate to the Union. Only in the legislative field the States have some exclusive powers.

The division of legislative powers under Article 246 of the Constitution gives, in practice, more than 75% of the legislative powers to the Union. List I of the seventh schedule with 97 items is union list, list II with 66 items is exclusive State list and the list III with 47 items is the Concurrent list. Residuary powers\(^82\) are with the Union. Article 254\(^82\) establishes the primacy of the Union over the concurrent list and practically on all items of this list either there was existing federal law or the Union government has made laws. The State enactments can be operative as against the Union or existing laws only if the President gives special assent to its Bills under Article 254. The Union Parliament has made enactments on the

\(^82\) In the case of Union of India Vs H.S. Dhillon - A.I.R. 1972 S C 1061, the Court held that "Once it was found that the matter does not fall under list-II, Parliament will be competent to legislate on it under it's residuary power".

\(^82\) Art. 254(1) only applies where there is in-consistency between a Central law and a State law relating to a subject mentioned in the concurrent list". (Vijai Kumar Sharma Vs State of Karnataka (1990) 2 SCC 562). See also Deep Chand Vs State of U.P., A.I.R. 1959 S C 648 and Zaverbhai Vs State of Bombay A.I.R. 1954 S C 752.
concurrent list items for the sake of uniformity of laws for the country.

The problem of Centre-State relations in a federal polity is a very delicate one. One may expect harmonious relationship between the two consistent with the path of national progress, but it may or may not materialise. Under the Indian scheme wide powers have been conferred on the Union and the States are made dependent on it. At about the time the Constitution was being written or during the actual working of the Constitution till 1967, when the congress party controlled the central and the State polity, such arrangement did not seem incongruous and the dissatisfaction was subdued. But after 1967 general election, the entire scenario of Centre-State relationship changed and the equation was broken, when in many States non-congress Governments eager to fulfil their own election pledges, came to control the State affairs. They were frank enough to criticise and condemn the policies of the Centre. They found that the States are tooth-less, clawless and resourceless. If the Union government is favourably disposed, they survive and prosper, if not, they are doomed. The hard pressed State governments, in their opinion,

83. The laws of preventive detention, criminal law and procedure, civil procedure code, law of evidence, law of transfer of property, the laws for economic and Social planning, Social insurance laws, factory law, trade union law, labour disputes and welfare laws are now all union laws.
are bound to keep running to New Delhi and thus giving rise to the begging bowl syndrome.

The danger of overbearingness on the part of the Union Government on the State governments always lurks in a federal kind of polity. A comparison of the Indian federal system with the other federal systems of the world indicates that in India there is a strong tendency towards centralisation. But practically there is a tendency of strong Centre in all federations.

To examine the working of the arrangements between the Centre and the States, the Administrative Reform Commission looked at some aspects of the problem in 1960, but its report carried little conviction with the Centre. The Tamilnadu Government appointed a committee under the chairmanship of Justice Rajamannar in 1970 and the left front Government of West-Bangal in 1978, but their reports have only gathered dust. Sarkaria Commission Constituted in 1983 has also made various recommendations.

The subject of Centre-State relations has been under discussion at different forums for a long time. Recently it has gained momentum and has since attained an explosive situation. Different commissions had been set up by the government and many resolutions had been adopted by various bodies to settle the conflicting issue, but no consensus could be reached or a
reasonable and perfect formula evolved by way of compromise.\textsuperscript{84}

The controversy between the Union and the States is because of certain Constitutional provisions which allegedly give more powers to the Union Government and lesser powers to the component States, bringing the latter into a position of subordination. The area of tension covers the field of distribution of legislative powers, administrative powers, financial powers and in particular, appointment of Governors and his power and function etc.

Although, there are three lists distributing the legislative powers between the two governments, yet there are circumstances when the Union can legislate on subjects coming under State list\textsuperscript{85} and if any law made by a State becomes repugnant to the law made by Parliament, then the State law shall be void to the extent of repugnancy and apparently therefore deliberate primacy has been granted on the Union legislature.

So, is the case with administrative relations as the distribution of executive powers is generally co-terminus with

\textsuperscript{84} Centre-State relationship in the Indian Constitution is not a static concept but is a changing perception. India has since independence made significant achievements which have brought about important economic and social changes in our national life style. These changes have influenced this relationship as well. What does centre-State relationship mean in the Indian Constitution has been a matter of deep study as well as certain amount of controversy among Constitutional laywers and writers.

\textsuperscript{85} See Articles 249, 250, 251, 252, and 253, Constitution of India.
the legislative powers. The Constitution provides that the executive power of every State shall be so exercised so as to ensure compliance with the laws made by Parliament and any existing laws which apply to that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. The executive power of every State shall be so exercised as not to impede or prejudice the exercise of executive power of the Union and the executive power of the Union shall extend to the giving of such directions to a State.

Under the Constitutional division of powers between the Centre and States, maintenance of the public order is the primary responsibility of the States and they have their own institutions and agencies. But in addition to the existing police organization of the States, the Centre has also raised certain para military organisations such as CRPF, BSF and CISF for ensuring law and order in the States. The Administrative Reforms Commission had supported the use of such forces by the Centre in the States. In its report on "Centre-State relations" it observed:

"The central Reserve Police and the Border Security Force are armed forces raised by the Union to meet the needs of the security of the country, both external and internal. In the circumstances, the use of the armed police forces of the Union in aid of the civil power is perfectly Constitutional. It is also clear

86. Ibid Art. 256.
that such aid can be provided at the request of the State government or suo motu. The question whether such aid is needed must obviously be a matter of judgment by the Centre." \(^{87}\)

In the matter of finance the position is similarly very unhealthy. While assignment of Income-Tax among States is obligatory, proceeds of the corporation Tax and the surcharge of Income-Tax are monopolised by the Union government. There are instances of discriminatory treatment of the States by the Union, where the Union gives only 10 percent of the market borrowing to the States which amount reaches 4000 crores. \(^{88}\) There is also the planning commission which is an extra-constitutional authority and exercises super-power in matters of discretionary grants. \(^{89}\)

There is nothing wrong to say that the States suffer from inadequacy of resources and there is need for allocating more

88. Sathi J.D., 'Politics of centre-State relations'.
89. On several items of taxation, although the proceeds are meant for the State treasury, the State is denied the power to levy, or to levy and collect the taxes, and must depend upon the will of the union to do so in the exercise of its exclusive power. In yet other matters of taxation, the State must be satisfied with such part of the collection as the union may allot to it in the scheme of distribution between the union and the States. The union government may give loans to States or any guarantee for loans raised by the States and as long as any of these loans are outstanding, the State is not permitted to raise any further loans without the consent of the union govt. (See Articles, 268, 269, 270, 272, 293 (2) and 293 (3) of Constitution of India).
resources to the States. However, this also cannot be denied that the cake as a whole is much inadequate. The Eighth Finance Commission observed:

"The cure of the problem is that the resources are limited, and the needs of the States are enormous...... At the same time, it has to have regard to the needs of the Centre which has many responsibilities. The overriding consideration which has guided this commission, is the national interest taken as a whole. Ultimately, the solution we have chosen have been judged on this touch stone....... In this connection, the demands of the Centre's resources, also, need to be remembered. The expenditure on defence, subsidies on food and fertilizers, and interest payment is, in the present circumstances, in-escapable. These items alone absorb nearly half the Centre's revenues out of what remains with the Centre, about 37 percent is at present being transferred to the States, largely on the recommendations of the Finance Commission and the planning commission."

The Administrative Reforms Commission (1960) in its report, says that the Governor of a State is a link with the Centre....... he is appointed and dismissed by the President..... The Constitution thus specifically provides for a

91. See Ibid.
departure from the strict federal principles and it is relevant to observe that this departure is not fortui
tous or casual....the Constitution makers did not intend the Governor to be only a component in the apparatus of governance at the State level.

The report of Rajamannar Committee, 1971 appointed by the D.M.K. Government of Tamilnadu in 1969 to examine the entire range of Centre-State relations, recommended for restructuring the provisions, namely Articles 249, 257, 275, 282, 352, 356, 360, 365 delegation of union function to States, All India Service, reservation of Bills for submission to the president and extra Constitutional agency like planning commission.

The memorandum of the West Bengal Government (1977) also made useful recommendations and suggested amidst others substitution of the word, 'Federation' for 'Union', transfer of residuary powers to the States, deletion of Union powers from State list, not to keep Bills passed by States reserved for approval of president, financial autonomy to States, non-deployment of Central police force to State, and to make Constitutional amendment more rigid. It specifically mentioned that a strong and unified India can only be one in which the democratic aspirations and the distinctiveness of the people of

the different States are respected and not treated with disdain.\(^\text{94}\)

The Anandpur Sahib Resolution passed at the Shiromani Akali Dal meeting held at Anandpur Sahib, on 16th - 17th October, 1973, declared the resolve of the Dal to strive and wage struggle for among others the following some of the objectives, namely:

1. Merger of certain areas, which have been "taken away from Punjab and were intentionally kept apart" with the Punjab Province.
2. Restriction of powers of the Centre to the enumerated power heads: Defence, Foreign affairs, Post and Telegraph, Currency and Railways;
3. Endeavouring to make the Indian Constitution federal in the real sense.
4. The institution of Governor, his powers, functions and duties should be brought in line with a federal polity so that the Governor does not remain an executive agent of the centre but becomes a truly Constitutional head of the State.\(^\text{95}\)
5. Constitutional provisions which empower the Centre to dismiss a State Government and/ or dissolve its

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assembly should have no place in federal framework. In the event of Constitutional breakdown in a State, there should be a provision for immediate holding of elections and installation of new democratic government. When there is no provision for the President to take over the Central Government in the event of failure of Constitutional process then there is no justification for the Presidential powers when a similar contingency arises in a State.\textsuperscript{96}

The resolution adopted by the National Development Council in March, 1978 says that the strength of the Centre lies in the strength of the States and the strength of the States lies in the strength of the Centre. Neither can be strong without the other. It advocated for a meaningful restructuring of Centre-State relations.

At the Srinagar Conclave consensus was reached on the following points:\textsuperscript{97}

(1) The States should be strengthened, and be given autonomy.

\textsuperscript{96} Ibid.

(2) The leaders assembled in the Conclave were not so vociferously critical of the provisions of the Constitution as of the attitudinal approach and political motivation behind the actions of the Centre. They picked up, for instance, the instances of misuse of the office of State Governors, and abuses of the provisions empowering the Centre to issue directions to the State governments to ensure compliance of executive directions, laws etc. by the State governments, or power to take over State administration, if the State(s) was held for the time being by the non-congress(I) parties. They attacked the assumed role of the Centre of taking over and carrying the burden of the State government(s) functionally ultra vires the provisions of the Constitution.

(3) The distribution of powers between the Centre and the States should be redone so as to ensure multilingual, multicultural and secular character of the country. The residuary legislative powers should be given to the States; and the central legislation under Art. 249 and 250 should not be permitted.

(4) The enabling provisions under Art. 200 and 201 in respect of reservation of the State Bills for consideration by President should be abolished.
(5) The Central paramilitary forces, and also C.R.P.F. or B.S.F. should be sent to the States only with their consent.

(6) The Planning Commission and Finance Commission should be restructured so as to provide effective States' representation and participation.

(7) Law and order should exclusively remain a State subject.

(8) Any attempt by the Centre to topple popularly elected non-Congress (I) government should be firmly resisted. Article 356 should be amended appropriately.

(9) An Inter-State Council should be set up. It should debate and consider references pertaining to all Centre-State relations.

(10) A Communication council should be established to prevent misuse of official media-A.I.R. and T.V.

(11) The Election Commission should be broad-based by making it a three member body, as already permitted under Art. 324.

The three member 98 Sarkaria Commission has observed that while the Union-State relations were intended to be worked on the

98. The Commission was formally constituted per Government of India, Ministry of Home Affairs Notification No. IV/11017/1/83-CSR, dated June 9, 1983. Subsequently, two more members were inducted. shri B.Sivaraman was appointed on July 7, 1983 and Dr. S.R. Sen on July 27, 1983.
basis of co-operative federalism and consensus in all areas of common interest, they have not been so worked and the forums envisaged by the Constitution for that purpose, have not been established.99

Sarkaria Commission recommended that "the residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation".100 It further recommended that "the enforcement of Union laws particularly those relating to the Concurrent sphere, is secured through the machinery of the States. Coordination of policy and action in all areas of Concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, consultation may be carried out with the State Governments individually, and collectively at the forum of the proposed Inter-Governmental Council."101 However the Commission suggested that it is not

100. Ibid p.89 para. 2.43.01.
101. Ibid page 89 para 2.43.02 (i).
necessary to make the proposed consultation a Constitutional obligation. This will make the process needlessly rigid. The advantage of a convention or rule of practice is that it preserves the flexibility of the system and enables it to meet the challenge of an extreme urgency or an unforeseen contingency. This convention as to consultation with the State Governments, individually, as well as collectively, should be strictly adhered to except in rate and exceptional cases of extreme urgency or emergency.  

In regard to Administrative relations, the Sarkaria Commission recommended that "the Articles 256, 257 and 365 are wholesome provisions, designed to secure coordination between the Union and the States for effective implementation of Union laws and the national policies indicated therein. Nonetheless, a direction under Articles 256 and 257 and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. Before issue of directions to a State or application of sanction under Article 365, utmost caution should be exercised and all possibilities explored for settling points of conflict by all other available means."  

It also recommended that Article 258 provides a tool, by the liberal use

102. Ibid para 2.43.02 (ii).
103. Ibid p.110 para 3.9.01.
of which, co-operative federalism can be substantially realised in the working of the system. A more extensive and generous use of this tool should be made, than has hitherto been done, for progressive decentralisation of powers to the Governments of the States and/or their officers and authorities.\textsuperscript{104}

In regard to Financial relationship the Sarkaria Commission recommended that "under the present circumstances, duties on all the items covered by Article 268 do not appear to be a buoyant source of revenue amenable to frequent revisions. Since basic circumstances do not always remain constant, the Union Government should, in consultation with the State Governments, periodically consider and explore the revision or imposition of these duties. The revenue raised from these duties should be separately specified in the budget and other relevant publications."\textsuperscript{105} It further recommended that "the step taken by the Union Government to initiate a process of consultation with the States in finalising the terms of reference of the Finance Commission is in the right direction. Any consultation to be meaningful should be adequate. However, there is no advantage in formalising the same through a change in the Constitutional provisions which would introduce undue rigidity. Nonetheless, it is desirable that this healthy practice of informal consultation with the States in this

\textsuperscript{104.} Ibid p. 110 para 3.9.02.  
\textsuperscript{105.} Ibid p. 315 para 10.11.01.
matter should continue." 106

The commission has, however, pointed out that the Centre has been usurping the States' prerogatives, poaching on their spheres and violating the letter and the spirit of the Constitution by expanding the Concurrent list at the expense of the State list of subjects. The commission has cited central notifications, for example on the industry, to prove how slowly and gradually the Centre has taken over more than 85 percent of the industry, while the States were pretty autonomous in the initial years of the Constitution's operation 107.

One specific recommendation of the Sarkaria Commission is to constitute an Inter-State council 108 as provided under Art. 263 of the Constitution. The commission has expressed its disappointment that the government has not done so even after 38 years of the Constitution's operation. A permanent secretariat and a series of Standing Committees have been proposed to keep

106. Ibid p 315 para 10.11.15.
108. The inter State council, under the Indian Constitution, is charged with the duty of enquiring into and advising on disputes which may have arisen between States; investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or making recommendations for the better coordination of policy and action with respect to that subject."
the Inter-State Council for a constant touch with the Centre and the States.\footnote{109}

The skeptics have been proved right, the Sarkaria Commission's much-awaited report has come as a big disappointment to those who were expecting it to usher in an era of greater State autonomy and put an end to the social strife and tension that had, in the first place, necessitated its appointment.\footnote{110}

The Sarkaria Commission has come to the conclusion that under the Indian Conditions, a strong Centre is necessary not only to protect and preserve the independence, integrity and unity of the country but also to coordinate a uniform, integrated policy on basic issues of national concern, and that the working of the Constitution during the past 37 years has demonstrated that its scheme and provisions are basically sound and that no structural changes are called for. By and large, the commission has called upon the Centre and the States to build up a cooperative relationship in development planning, determining the terms of reference of the finance commission, augmenting the sources for revenue, etc.\footnote{111}

It is worth mentioning here that the present government headed by P.V. Narasimha Rao is attaching "greatest importance" to the strengthening of Union-State relations and the major issue

\footnote{110. Chintan Devendra , "Indian View" real and unreal published in 'The Tribune'Chandigarh, Feb. 9, 1988.}
\footnote{111. Supra note 109 p.544, paras 21.4.01 & 21.4.11.}

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but the mode in which we work is not change in the Constitution "but the mode in which we work under it". 112

Some army officers in an "open house" during a seminar on "India's security concern subsequent to the Gulf War leading to the 21st century" 113, held on 7.10.1991, put forth their views that, looking at the quality of politicians, aberrations in the elective process (booth capturing and money power), the educational standards of our political leaders and strained Centre-State relations, India was on the brink of a break-up if immediate remedial measures were not taken. The officers took turns to caution the country. Loosening of federal powers, or giving more powers to the States was their suggestion in the wake of what had happened in the U.S.S.R. which was also made up of several linguistic republics. In India also regionalism, communalism, and casteism were being used by politicians to win seats. These were disturbing factors. 114

The Orissa Chief Minister, Biju Patnaik 115, has also come out in support of more fiscal autonomy to the States and empowerment of the States to directly establish commercial ties with other countries. He has warned the Union government that if

114. Ibid.
115. Supra note 95.
the Centre failed to understand the feelings of the States and grasp the meaning of the winds of change sweeping the globe, the results may be disastrous. He has suggested that Centre-State relations should be redrawn on the following lines:

1. Defence and currency should remain within the exclusive domain of the union.
2. Framing of foreign policy should not remain the exclusive right of the Union government. The Union and the States should collectively decide on foreign relations and policies leading to war and peace.
3. Entering into treaties with foreign countries should involve the collective effort of the Centre and the States.
4. The Union and the States should have joint control over issuance of passports. The citizenship will be Indian but the power to issue passports should vest in the States.
5. States must have the power to have trade and commerce with other countries to attract foreign investments and to directly deal with the money centres of the world.
6. States should have the right to develop ports and infrastructure like railways.
7. Industrial development, regulation and development of
mines and exploitation of mineral resources should be left to the States.

8. Broadcasting should no longer be the exclusive privilege of the Centre. The control of the second T.V. Channel should be given to the States.

The sub-committee of the Inter-State Council met on September 26, 1991, at New Delhi. It appears from the deliberations of the sub-committee that the Union government is reflecting a spirit of accommodation which was missing in New Delhi's, approach to federal matters earlier. Mr. S.B. Chavan, Union Home Minister, who was also the convener of the sub-committee agreed with the Chief Ministers' suggestion to make Centre-State relations more balanced at the earliest through mutual consultation and cooperation. The sub-committee decided that detailed consultations with States individually and collectively should precede before initiating legislation on concurrent subjects. The sub-committee has resolved that all the 247-odd recommendations of the Sarkaria Commission should be considered in the shortest possible time and the new culture of forging mutual consultation and co-operation between the Centre and the States strengthened.¹¹⁶

The Home Minister has also conceded the request of the Chief Ministers that a paper reviewing the concurrent list should

Looking at above discussions and suggestions, it is obvious that the success of federal system of a country depends upon the balance maintained between the Centre and the States. The federal system breaks under its own weight if balance is not maintained. Looking at the provisions of the Indian Constitution and practices being followed, there is no real federal set-up in India. In actual working during the last 43 years it has been observed that the Centre has been given over-riding powers, even on small matters which exclusively fall within the purview of the States. Off and on States run to the Centre for assistance which leads discontentment and frustration among the States.

There is nothing wrong and new to say that a number of States have been demanding more powers in order to attain financial autonomy and political non-interference by the Centre. It is not only in India where States are demanding more powers, but States in many countries feel suffocated in the present system of federalism. Wherever the unitary system exists, the States struggle to turn it into a federal and liberal structure.

It is high time that the people at the helm of affairs in our country accept the validity of these present trends and redraw the whole political structure by devolving more powers on the States. In this way India will be able to keep its unity and
integrity intact. Ours being a pluralistic society, it needs a real federal structure where ethno-political development of the minorities may be ensured and grassroots of democracy may develop properly. We should learn lessons from the events in the U.S.S.R. and other East European countries, if we fail to take immediate corrective measures, the unity and integrity of our country will be in danger.\textsuperscript{118}

D. INSTITUTION OF GOVERNOR AND HIS ROLE AS AGENT OF CENTRE AND AS HEAD OF THE STATE.

a. EVOLUTION OF THE GOVERNOR'S INSTITUTION IN INDIA

The office of the Governor in the Indian polity is not something new. It is interesting to note that each of the ancient and medieval empires of India had the institution of Governor; but it was in effect a centre of disintegration, rather than of integration- a fact which should disprove the claims of the champions of centrally appointed Governors. In reality, the Governors in the ancient and medieval empires functioned as mini-emperors who subsequently revolted against their overlords. It was under the British that Governors became not merely the appointees but subordinates of the central Government.\textsuperscript{119}


one of the previous political structures—the empires of the Maurya, the Gupta, the Mughals and the British—was based on the central authority of an oppressive ruling class. None of them provided for democracy. The Central Government and the Governor as the appointee of the Centre, helped the ruling classes i.e. Indian Rulers earlier and the British later, to suppress and exploit the common people and thus enabled the feudal lords to continue their hegemony. In fact, institution of the Governor is as old as the East India Company and dates back to 1600. The charter granted by the queen on 31st December, 1600, provided for the office of the Governor elected by the company in addition to twenty four committees. Thomas Smith Alderman of London, was appointed the first Governor. The office as such was created to safeguard the commercial interests of the company of merchants of London operating in India. Thus Governor was head of the Company only and nothing to do with the government powers as such.

It should, however, be noted that the office of the Governor

120. Ibid.
122. Singh, G.N. Land Marks in Indian Constitution and National Development, (1963) P. 4
never allowed the spirit of the democratic form of government in India to develop freely on the lines of the British political system. The British rulers modified the powers and position of the Governor from time to time, but the status of the office as an institution was never affected; i.e. the spirit of the centralized nature of the office of the Governor remained intact. In other words, the office of the Governor was the key agency of the whole British Empire in India, which successfully safeguarded the vested interests of the British India.  

When 'Swaraj' came there were mostly Europeans and a very few Indian Governors functioning. In the beginning of the new arrangements, the old traditions persisted, but soon afterwards new Governors were appointed, and it became incumbent for them to act according to the new directives. Human nature is always stronger than human ideals and aspirations and almost all the new functionaries found it difficult to adjust themselves to the new alignments.  

At the time of the establishment of Swaraj, Lord Mountbatten was the country's Governor-General, and we accepted him as free India's Governor-General as well. Our Constitution was not ready.

124. Banerjee A.C.: Indian Constitutional Documents, (1948) Vol. 1. It should be noted that the company's role came to an end with the passage of the Act of 1858. This brought the rule of the crown -His majesty in India. The Governor became his appointee from 1858.

125. Prakasa, Sri "State Governors in India, 1975, p. 19
by then; but because of the instinctive political sense of the Englishman, and seeing the shadows that coming events were already casting in front of him, Lord Mountbatten turned himself voluntarily into a Constitutional Governor-General. By the time the Indian Independence Act, 1947 became effective, the Governors in various provinces tendered their resignations to the Governor-General to be effective from August 15, 1947. Except in Madras, Bombay and Assam, fresh appointments were made in each Province and these appointments were approved by the British King. In fact, these appointments were made by the Congress High Command in consultation with the Chief Ministers of Provinces.

b. ROLE OF GOVERNOR AS AGENT OF CENTRE AND AS HEAD OF THE STATE UNDER THE INDIAN POLITY.

The new Constitution of India came into force with effect from 26th Jan. 1950, but with a few significant changes in the office of the Governor at the State level. The Constitution of India has made the President and the Governor as the Chief executive of the Union and the States respectively. The framers of the Constitution expected that in course of time healthy conventions will be evolved, and the Governor would be a link

126. Ibid
128. Singh Purshotam, "Governor's office in Independent India". (1968) p. 32.
"The Governor functions for most purposes, 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 centre". 135

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

135. Ibid P.273.
to emphasize one aspect of the character of his role at the expense of the other and successful discharge of his role depends on correctly interpreting the scope and limits of both".  

As already mentioned above, it is submitted that the office of the Governor, in these days 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. The recent happenings in Kashmir, West Bengal and Andhra Pradesh have led the respective governments to look down the office of the Governor as an agent of the Union waiting for an opportunity to destabilise them from the office. This prompted the Andhra Pradesh, Chief Minister, Sh. N.T. Rama Rao, to demand even the abolition of the office of the Governor.

The Constitution provides a Council of Ministers with the Chief Minister to aid and advise the Governor in exercise of his

136. Ibid at p.272.

137. The Governor of Jammu and Kashmir dismissed Sri Farooq Abdullah's Ministry and appointed Shri G.M. Shah as the Chief Minister.

138. The Governor of West Bengal declined to follow the cabinet advice in the matter of appointment of Vice-Chancellor to the Calcutta University.

139. Shri Ram Lal, the Governor of Andhra Pradesh dismissed the N.T. Rama Rao's Ministry on August 16, 1984 and installed Shri N. Bhaskra Rao as the Chief Minister.
functions. However, he need not take the aid and advise of the council of ministers in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. The Constitution framers did not intend the Governor to over-ride the wishes of his Council of Ministers at his discretion. These discretionary powers do not affect the normal position, and like the President of India the Governor must act on the advice of his 'Council of Ministers'. To read otherwise, Art. 163 (1) would not only defeat the principle of Parliamentary government but will also make the Constitution unworkable, as the Governors can not dispense with the necessity of keeping Council of Ministers and the Council of Ministers shall not like to remain in office if the Governor does not act on its aid and advise.

The Constitution prohibits the Governor from seeking advice from any one else except from the Council of Ministers. Professor Laski's apt. view that 'A Patriot King', whatever the character of his opinions, is incompatible with parliamentary government.

140. Article 163 (1) of Constitution of India.
141. Ibid, for details see Chapter VI also.
144. Ibid
democracy in the British form, equally holds good in our system. However, in the field of Centre-State relationship, the Governor has been given specifically two functions by the Constitution where he is to act in his own discretion:

1. Under Article 200 the Governor can reserve a Bill passed by the State Legislature for the consideration of the President. The Constitution nowhere requires that the Governor in making such a reference should act on the advice of his Council of Ministers.

2. Secondly, under Article 356 the Governor can make a report to the President recommending Presidential Rule due to the failure of Constitutional machinery in the State. In this matter the Governor acts in his own discretion. He acts as the Representative of Centre.

The Rajmannar Committee stated that only areas in which the Governor can be said to possess any power of discretion are three in number, namely:


146. Since the coming into force of the Constitution, President's rule has been imposed on the States over eighty six times and this has been normally on the reports of the Governor. In most of the cases the Governors have not often acted in a neutral and non-partisan manner but have acted to serve the political ends of the party to which they owed their allegiance.
(a) Chief Minister's appointment.
(b) Dismissal of the ministry and,
(c) The dissolution of the legislature

It further says that the role of the Governor has assumed greater importance in the changed political set up in the country. It is equally important to protect the Governors from being accused of partisanship or subservience to the Centre. The Governor should be above party politics and his actions should be such that no suspicion of central interference should arise. The committee desired the President to lay down specific guidelines or principles with reference to which the Governor should act including the occasions for the exercise of discretionary powers. The committee suggested that the Constitution be amended suitably in this regard to enable the President to issue the guidelines. The Rajmunnar Committee recommended that the instruments of instructions, to be issued by the President to the Governor, should specify the following:

(i) The Governor should appoint as Chief Minister, the leader of the party commanding an absolute majority in the Legislative Assembly.

148. Ibid.
149. Ibid at p. 129.
150. Ibid at p.130.
(ii) Where the Governor is not satisfied that any one party has an absolute majority in the 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.

(iii) The advice of the Chief Minister to the Governor to dismiss any Minister should be accepted by the Governor.

(iv) Where it appears to the Governor at any time that the Chief Minister has lost the Confidence of the majority of the members of the Assembly, the Governor should immediately and of his own motion summon the Assembly and direct the Chief Minister to secure a vote of confidence in the House.

(v) If the Chief Minister fails to seek the vote of confidence or having sought it fails to get the necessary votes, the Governor should dismiss the Chief Minister and the Council of Ministers headed by him.

Sarkaria Commission\textsuperscript{151} has recommended that the discretionary power of the Governor as provided in Article 163 of the Constitution of India should be left untouched. It is neither

feasible nor advisable to regulate its exercise or restrict its scope by an amendment of the Constitution. The Commission suggested that when a Governor finds that it will be Constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

In the Case of **M.P. Sharma Vs. P.C. Ghosh** the Calcutta High Court laid down that the Pleasure of the Governor under Article 164(1) has not been fettered by any condition or restriction. The withdrawal of pleasure by the Governor is a matter entirely in the discretion of the Governor. The provision in clause (2) of Article 164, that the Ministers shall be collectively responsible to the Legislative Assembly of the State, does not in any manner fetter or restrict the Governor's power to withdraw the pleasure during which the Ministers' hold office. The court laid down that the exercise of discretion by the Governor in withdrawing the pleasure under Article 163(2) can not be called in question. It is for the Governor to make such inquiries as he thinks proper, to ascertain whether the person appointed would be in a position to enjoy the confidence of the majority in the Legislative Assembly of the State.

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153. Ibid at p.209.
An awkward situation may arise for the Governor when a Chief Minister resigns on a difference of opinion with the Governor but still has majority of MLAs on his side. In such a situation, it would be extremely difficult to find an alternative Chief Minister who can form a stable government. The Governor’s position as a head of the State as well as his neutrality may become target of public criticism. The Administrative Reforms Commission has also made a similar recommendation in its report on the State administration.

In the case of K.A. Mathialagan Vs. The Governor, the Madras High Court considered the position of the Governor and the scope of his prorogation power under the Constitution of India. It was held that Article 163 (1), refers only to those functions in which the Governor is expressly required to act in his own discretion. In the exercise of the function to prorogue or dissolve the Assembly under Article 174, the Governor is bound by the advice of the Council of Ministers and in the instant case by the advice of the Chief Minister under the rules of allocation of government. The Court further held that no lack of good faith or malafides could be imputed to him. The Governor though cannot be personally or otherwise called upon to answer a charge of bad

155. (1967) at p. 11
faith or lack of bonafides with reference to his official act, the validity of his act is open to attack on that ground in a Court.

The most important fact to be borne in mind is that the President has no discretionary power whatever under the Constitution and is bound by the advice of the Council of Ministers headed by the Prime Minister. The Governor of a State has been on the other hand expressly vested with certain discretionary powers and he is not bound by the advice of the Council of Ministers headed by the Chief Minister in the exercise of those discretionary powers. Therefore, it can be said that the Governor is expected to play a somewhat more active role than the President, and to this extent Governor differs from the President.

In case of conflict between the Governor's role as the Centre's Representative, and as the Constitutional Head in the State, undoubtedly the former will take precedence over the latter. This is the direct result of his being nominee, and holding the office during the pleasure of the President of India. The Constituent Assembly preferred to adopt the system of

157. Art. 74 of the Constitution of India states that the President is bound to act in accordance with the advice tendered by the Council of Ministers, except that he may return the advice for reconsideration only once, but if the same advice is given again he is bound to act on it.


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centrally nominated rather than elected Governor, as the former system would keep the Centre in touch with the State and would remove a source of possible 'separatist tendencies'.

The Governor has to follow the directions of the Central government but he has distinct and separate Constitutional role. He is the umpire in the Constitutional process and he has to inspire confidence. He is a component of the Legislature of each State and in determining whether a particular Ministry has lost the majority in the State Legislature, he must always go by the vote on the floor of the House. The majority should be tested in the State Assemblies and not in Raj Bhavans. It is the House that should decide the majority unless special circumstances arise.

The experiences in Jammu and Kashmir and Andhra Pradesh highlight the correctness of the recommendation made by the Committee of Governors. The report of the Committee of Governors appointed by the President Giri in 1971 Stated as follow:

159. The illustrated weekly of India; January, 20, 1985 p. 25. Among the recent instances of misuse of powers by the Governors and their totally subservience to the Centre are installations of Mr. Bhajan Lal as the Chief Minister of Haryana, Shah as the Chief Minister of J.& K. and Bhaskara Rao as the Chief Minister of Andhra Pradesh. (The Times of India, Sunday, Sept. 2, 1984, p. 1-III).

"The Governor as head of State, has his own functions laid down in the Constitution itself, and is in no sense an agent of the president......... In the framework of the Constitution as it is conceived there is no power vested in any authority to issue any directions to the Governor."

The committee also recommended that the practice of parading legislators should be deprecated and when it seems to the Governor, that a Ministry had lost majority support, the proper course is that the Governor should ask the Chief Minister to have his strength tested on the floor of the legislature as soon as possible.161

Therefore, it is submitted that a Governor is a necessity but he must be controlled and restricted authority and an unqualified discretion vested in him may lead to political misuse and abuse of his office. It is said that the fear of the misuse or abuse of the office of Governor are only imaginary because, if he does so he can be removed or dismissed by the President who appoints him as the Governor holds the office of Governor during the pleasure of President.162 But this opinion has no weightage in view of decision of our Supreme Court in the case of Hargovind Vs. Raghukul163.

161. Ibid.
162. See Art. 156 (1) Constitution of India.
163. AIR 1979 SC. 1109.
Hence, it is submitted that with the coming into power of different parties both at Centre and States, the Governor's office has assumed great importance. Governor occupies a very important position under the Constitution by virtue of his dual position, as a representative of the President in the State, and as Constitutional Head of the State. In order to maintain a balance between these two diverse positions and for the purpose of evaluating situations in which he has to exercise his Constitutional powers, he has also been endowed with express and implied discretionary powers. From the critical analysis of the role of Governors in Centre-State relations during the last 43 years, it can be concluded that:

(a) The Governors have failed to behave in a manner to defend and protect the Constitution in the States.

(b) The Governors have idenced to the tune of their party bosses of high command as most of them have been defeated party members or the Governorship has been offered as a consolation prize to some party members or has been a reverse gear party arrangement for ambitious politicians among ruling elites.

There is nothing wrong in saying that between the Constitutional position of the Governor and the actual practice there is a wide hiatus which defeats the very basic beliefs of the Framers of the Constitution. The then, 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". Therefore, it is submitted that to make the role of Governors really meaningful in Centre-State relations and for maintaining the principles and spirit of Parliamentary government, it becomes essential that the exercise of discretionary powers by the Governors should be guided by the healthy and democratic convention which may grow from time to time in the working of the Constitution. 164

It is further, suggested that the Governor should discharge his functions within the framework of the Constitution and should not give any scope for suspicion that he be called as an agent of the Centre. This can be avoided by choosing persons to the office who are politically non-controversial.

It is worth mentioning here that the tenure of the Governor is not protected by our Constitution. After independence, the Governor emerges as the least secure and least protected of all

The Constitution must give him some security of tenure so that he may work as a link between the Centre and the States.

c  WHETHER GOVERNOR IS AN EMPLOYEE OF THE CENTRAL GOVERNMENT

Rajasthan High Court full Bench observed:166

"In a federal structure of our Constitution, the Governor has a pivotal role to play and it would be absolutely subversive and totally destructive of framework of the Constitution and autonomy of the States contemplated therein to describe the Governor as an employee of the Central Government."

Joshi J, of the same Bench further said:

"The very oath which the Governor takes before entering upon office clearly establishes that he is not at all the servant of the President or the Central Government."

Upholding the Rajasthan High Court's verdict, our apex court applying the test of employer and employee relationship held:

165. The President of India can be removed from the office after following the impeachment procedure of Art. 61 of the Constitution. A judge of Supreme Court or High Court can be removed by impeachment procedure (Articles 124 & 217) Chairman or member of Public Service Commission can be removed only after reference to Supreme Court (Art. 317). The comptroller and Auditor General of India and the Chief Election Commissioner can be removed only by impeachment (Articles 148 & 324).

"It is impossible to hold that Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions 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 not subject to the control of the Government of India. He is Constitutionally the Head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State."

In the same case the Supreme Court speaking through Bhagwati J, said that the office of the Governor was not an employment under the Government of India and it did not come within the prohibition of Article 319 (d) of the Constitution (Prohibition of re-employment for members of the State Public Service Commission).

Adopting a wider meaning of the word employment as connoting any engagement or any work in which one is engaged, the Supreme Court Stated that though it was true that the Governor was in employment in that sense yet the question was whether he was in employment under the Government of India. To determine this question, the court applied the test of control by master over the servant. As in the case of Governor there was no control of the Centre over his functions, he was not a servant of the

168. Ibid.
Central Government. 169

In the instant case the Supreme Court also took the guidance from its earlier judgements in Pradyat Kumar Bose Vs. The Hon'ble Chief Justice of Calcutta High Court 170 and Baldev Rai Guliani Vs. The Punjab & Haryana High Court, 171 for interpreting the phrase "under the Government of India". The Supreme Court in both the cases has held that officers and members of the staff of the High Courts and judicial officers could not be said to be persons serving under the Government of a State. Relying on these two cases, the Court in the instant case said that the Governor is not either under the employment of the Government of India or the State Government.

169. Ibid.