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CHAPTER IV

THE FUNCTIONING OF THE INSTITUTION OF THE GOVERNORS IN 65 YEARS - AN ANALYSIS

Institution of the Governors in India, The Constitution of India provides for the office of the Governor as the Constitutional Head of the State. It has been pointed out at the outset that our Constitution departs from the federal principle underlying the Constitution of the United States of America and follows the Canadian precedent in providing for appointment of the Governor of the State by the executive Head of the Union.

(a) There shall be a Governor for each State (Article 153 of the Constitution of India)

(b) The executive power of the State shall be vested in the Governor and shall be exercised by him-either directly or through officers subordinate to him in accordance with the Constitution of India (Article 154)

(c) The Governor of a State shall be appointed by the President by warrant under his hand and seal (Article 155)

(d) A person to be eligible for appointment as Governor should be citizen of India and has completed age of 35 (Article 157)

(e) The Governor shall not be a member of the legislature or Parliament; shall not hold any office of profit, shall be entitled to emoluments and allowance. (Article 158)

(f) Every Governor and every person discharging the function of the Governor shall subscribe an oath or affirmation (Article 159)
(g) The President may make such a provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in chapter II of the Constitution. (Article 160)

(h) The Governor shall have the power to grant pardons, reprieves, etc (Article 161)

(i) There shall be Council of ministers with the chief minister as the Head to aid and advice the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. (Article 163)

(j) The Governor appoints Chief Minister and other Ministers. (Article 164)

(k) The Governor appoints the Advocate General for the State (Article 165)

(l) All executive actions of the Government of a State shall be expressed to be taken in the name of the Governor (Article 166)

(m) The Governor shall from time to time summon and prorogue the legislature and dissolve the legislative assembly (Article 174)

(n) The Governor may address the legislative assembly and may send messages to the house. (Article 175)

(o) He may give a special address to the legislature (Article 176)

(p) The Governor can give assent, withhold assent or reserve for the consideration of the President the bill passed by the legislative assembly (Article 200)
(q) The Governor shall in respect of every financial year cause to be laid before the house a Statement of the estimated income and expenditure. (Article 202)

(r) No demand for a grant shall be made except on the recommendation of the Governor. (Article 203(3)).

(s) The Governor shall cause to be laid before the house another Statement showing estimated amount of expenditure. (Article 205)

(t) The Governor may promulgate the ordinances under certain circumstances. (Article 213)

(u) The Governor is to be consulted for appointment of judges of High Court (Article 217)\(^3\)

4.1 The Problems faced by the Institution of the Governors in 65 years

In the Indian Constitution Chapter II of part VI deals with the executive of the State. Article 153 provides that there shall be a Governor for each State who is to be appointed by the President the powers and the functions of the Governors are also laid down. The Constitution provides that the Institution is an independent Constitutional office, not subject to the control of the Central Government, and so not amenable to the directions of the union executive and not accountable to it as, it is not an employment under the Government of India or subordinate to it.

But after the independence and coming into force of the Constitution in 1950, it has been so implemented that the provisions of the Constitution and its spirit have not been properly abided by the Governments coming to power at the centre from time to time. The

\(^3\) The Role of the Governor and of the provincial administration Comparative experiences, 2002 by Patrick Keulers
Institution of the Governors itself has faced many problems and the dignity and the honor of the office has not been maintained, a lot of tensions and controversies have arose which are due to the ambiguities in the provisions of the Constitution itself, and also the misimplementation of the provisions of the Constitution by the Governments of the centre for fulfilling their petty political motives, the Institution has been a puppet in the hands of the union Government and its importance and feasibility has been reduced.

To begin with the Constitution itself, has not laid down any proper guidelines for the qualifications of the persons to be appointed as the Governors of the States the central Government appoints anybody it pleases as the Governors of the States, all politicians retired, defeated, unwanted veterans, overaged, and sometimes physically handicap leaders of the ruling party in centre who are to be kept away from the main stream politics and who are to be rewarded for their dedication and services to the party have been appointed as Governors. Many a times, controversial personalities who are not accepted by the State Governments are appointed. The respective State Governments are not taken into confidence, the central Government has arbitrarily exercised its power of appointment of Governors; the single qualification which became essential was the loyalty towards and affiliation with the ruling party and its ideology.

(A) Some conventions regarding the appointment of the Governor

After the Constitution was implemented, some conventions have been established for the appointment of the Governor which are as following:-
(i) The Governor will not be the resident of the State where he will be appointed as the Governor.

There are two advantages of this convention:-

(a) He will be above party politics and groupism, and will be independent and impartial and will perform his duties very well.

(b) The cabinet of the State will be above the angle of provincialism and perform its duties bearing in mind the interests of the whole of India.

There have been only two exceptions, H.C. Mukharjee was appointed Governor in his own State west Bengal and the Maharaja of Mysore was appointed Governor in Mysore.

Generally the central Government should appoint a person as Governor who is acceptable to the cabinet of the State.

According to this the federal Government consults the chief minister of the concerned State but this practice is not followed always.

While appointing shree Prakash as Governor of Madras the chief minister of the State was not consulted.

But there was no controversy because of the personality of pundit Nehru, but after 1967, when Dharamveer and N.Kanungo were appointed as Governors the result was tension between the chief ministers and the Governors.

Though the chief minister of the State cannot be given any type of vita in respect of the appointment of Governor, yet in order to have cordial relations between the chief minister and the Governor it will be better as far as possible this practice should be followed:
A convention has developed that persons defeated in elections and other unacceptable politicians of the ruling party are appointed as Governors. In this context Hafez Mohammad Ibrahim, Bheem Sen Sachehor, H.V. Pastkar and Ajeet Prashant Jain etc can be named, this practice should be discouraged in the interest of healthy democracy. The Administrative reforms commission in its report suggested Firstly- that a person should be appointed only once as the Governor. The cabinet secretary accepted his suggestion and in March 1976, the late Prime Minister Mrs. Indira Gandhi said “On completion of his tenure Governor he will not be appointed again generally". So far this practice has not been followed but if this is done then the independent and neutral aspect of the Governors can be maintained . But very often those defeated in the elections or unacceptable politicians were appointed on this post, some Central ministers ,retired public servants, the politicians, former Chief Ministers and the members of parliament were appointed as the Governors.

Secondly - Article 156 of the Constitution provides that the Governors shall hold office during the pleasure of the President ,though generally the term was fixed for 5 years, but this was subject to the pleasure of the President. The Presidential pleasure is not justifiable.\textsuperscript{33} it is not regulated and controlled by any provision. The Governor has no security of tenure and no fix term of office. He can be removed or dismissed anytime by an expression of Presidential displeasure it provides no cause of action, the order of President cannot be challenged by in any court, legally the order is conclusive.

\textsuperscript{33}V.D. Mahajan Consitutional Law of India, 1991 Page 485
Thirdly – The Constitution does not provide for any specific grounds on basis of which the President can remove the Governors from the office, as it provides for the removal of the President and the Judges.

Thus from the beginning till date the removal of the Governors from the office before completion of the tenure without giving any justifying cause, or sometimes vague, grounds and not giving opportunity to them to defend themselves has become a trend of the Indian system, all removals are made on political basis, Governors appointed by one party at the centre are removed in bulk by another party coming to power on basis of the political affiliations, the appointments and the removal of the Governors have become a political game.

The parliament and the opposition have no role to play in the appointment and removal of this Constitutional Institution of the Governors, there is no selection procedure and no grounds for removal, in 65 years all the appointments and the removals of the Governors have been on the basis of the political ideologies and affiliations, the recommendations of the committees and the Commissions formed from time to time by the Government have provided many directives regarding the Institution, but no Government has taken them seriously and made efforts to abide by them.

Fourthly- the powers of the Governor have not been clearly defined mainly the discretionary powers, no proper directions have been given for the exercise of these powers and so in exercising the powers the Governors have not followed any uniform practice some have acted one way and the others in another way. Many illustrations can be given in this reference

In 1975 when the Congress lost in the elections at the center and the Janta Party came to power the Government advised the President to
remove the Congress appointed Governors in 1980. Indira Gandhi returned back to power and removed the Janta Party appointed Governors. In 1981, Prabhu Das Patwari Governor of Tamil Nadu and Raghukul Tilak Governor of Rajasthan were dismissed by the President which was unexpected and unique. The dismissal of the Governor on the will of the President, has been controversial, the practice of dismissal of the Governors at the discretion of President is incorrect and disregarded and is undesirable. There is no practice prevalent for the resignation of the Governors in the event of change of the Government at the centre and coming to the power of the opposition parties. The dismissal of the Governors is create conditions in which deserving persons having regard for self respect, will not accept the post of the Governors because of fear of being dismissed arbitrarily anytime.

The dismissal of Governors by National Front Government in 1989. The dismissal of all the State Governors appointed by the previous Congress (I) Government by the National Front Government of Mr. V. P. Singh was a wrong precedent. The manner in which these Governors were asked to resign by the President was against the spirit of the Constitution, and had definitely lowered the status and dignity of this august Constitutional office. It was said that the previous Congress Government had made political appointment of Governors which was not proper and the present Government was committed to remove corruption from public life. It was also argued that with the change of the Government at the Centre the Governors should also be changed in order to give the Government an opportunity to tone up the administration, these arguments are not at all tenable. The Governors are not mere agents of the Centre. There are certain discretionary powers given to them by the

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34 Dr. J.N. Pandey, the constitutional law of India, 2009 Page 517
Constitution and in exercise of these powers they are neither required to consult the President nor the State chief minister.

The V.P. Singh Government has not done better then Congress (I) Government by sacking the Governors and replacing them with its own. The entire exercise had been as blatantly political in nature as something that the Congress did with Governor's appointments. The National Front Government has done nothing to reverse the process, If one runs through the list of new Governors it seems striking similar to the one the Congress had done'. It is a bunch of politicians belonging to various constituents and lobbies of the National Front Government who were rewarded, perhaps because no room could be found for them in Parliament or Government. The exalted office of the Governor, who is a representative of the President in the States as protector of the Constitution, should normally go to persons with high status in society.

The National Front Government has also not followed the norms laid down by the Sarkaria Commission for appointment of Governors. The Centre has not adhered to the criterion of public eminence and prior consultation with the State Chief Ministers in this respect. When the Congress party came to power at the Centre in 1991, the position and status of the office of the Governor was further devalued. The Congress party which had at that time criticized the action of Mr. V. P. Singh Government did the same thing. Mr. Narsimha Rao Government changed at least 14 Governors who were appointed by Mr. V. P. Singh and Chandra Shekher Governments and replaced them with party leaders of congress, this act was done merely to devalue the Institution of Governors.. The Sarkaria Commission does not favor summary curtailment of 5 years-term of the Governors except for extremely

35 ibid
compelling reasons, it has strongly recommended against the appointment of discarded or defeated politicians to the august office as they would only try to justify their choice by acting as agents of the Central Government.

The resignation of Himachal Pradesh Governor Mr. Gulsher Ahmed in the wake of the election commission's order postponing the election to the Satna assembly constituency on the ground that the Governor had been canvassing support for his son in that constituency is enough to illustrate of how political appointees to this august office have devalued its honor and prestige. The Goa episode is a yet another example. Mr. Bhanu Parkash Singh, the Governor of Goa, had to resign after he had wrongly dismissed the D'Souza ministry and installed the Ravi Naik Ministry, the Governor justified his step on the ground that he had asked Mr. Naik to step down when his disqualification by the assembly Speaker was upheld by the Goa Bench of the Bombay High Court, as it was his duty to reinstate him since the Supreme Court had reversed the Judgement. He misread the Constitution, he cannot dismiss a ministry that enjoys the confidence of the House. It is a clear instance of a Governor going beyond his Constitutional role and to settle personal scores as he had strained relations with the Chief Minister.

In spite of lot of criticism regarding the role of Governors in various States thing did not improve. After the tenth lok sabha parliamentary elections 2004, the united progressive alliance under the Prime Minister Shri Manmohan Singh's leadership came to power. The Communist Party which used to criticize the dismissal of Governors by the Congress Party was now one of its important constituents. The UPA government dismissed all Governors appointed by the NDAGovernment and appointed new Governors, all new appointees to this august office
were Congress Party's nominees. The Sarkaria Commissions report was ignored which has recommended that person of outstanding character in society should be appointed as Governors. Although all parties promised for reforms in this regard, but when they come in power, they in their term visualize the role of Governors as the agent of the Central Government.

The action of Governors of Goa and Jharkhand has undoubtedly damaged the dignity of office of the Governor which is against Constitutional norms. It is clear how the political appointees on the Governor's post have misused their power. Unless all political parties seriously decide to improve the position in this regard the office of the Governors would be reduced to bureaucratic norms, there is a demand that the post of the Governor should be abolish.

In 2014 may with the advent of the BJP Government Headed by Narendra Modi as Prime Minister and defeat of the congress led UPA Government a new beginning was hoped.

But the Modi Government followed the same trend established by the Congress Government of politicization of the office of Governors the removal of the previous congress appointed Governors and appointing the BJP leaders as the Governors of States, about 10-12 Governors were asked to resign, some were transferred from one State to another, Maharashtra Governor Shankanarayan was sent to Mizoram, his tenure was to be completed in 2017 but he resigned, B.L Joshi (UP), M.K Narayan (West Bengal), Shekhardutt (Chattisgarh) B.V Vanchu (Goa), Ashwini kumar Nagaland B.V Kirsh (Mizoram) Sheela Dixit kerala had to resign. Gujarat Governor Kamla Beniwal was transferred to Mizoram and later on sacked on the ground of misuse of the office, Congress leader
Virendra Kataria was removed from the office of Lieutenant Governor of Pondicherry.

The Uttarakand Governor Aziz Qureshi went to Supreme Court against the pressure of the Central Government to resign, he was transferred to Mizoram and was later on dismissed. The Governors of Haryana, Rajasthan and Karnataka resigned as their tenure was completed.

The Modi Government appointed all the veteran BJP leaders as Governors in these States, Ram Naik (U.P) Kesrinath Tripathi (West Bengal) Omprakash Kohli (Gujrat) Balramdas Tandon (Chattisgarh), Padmanabh Acharya (Tripura) Kalyan Singh (Rajasthan) Vidya Sagar Rao (Maharastra) Vajubhai Wala (Karnataka) and Mridula Sinha (Goa). The former Chief Justice of Supreme Court of India Justice Sadashivam was appointed as Governor of Kerala, a new debate started whether Judges should be appointed as Governors. All these events prove to be acts of political vendetta and are being criticized as a dictatorial step, and violation of the Constitution and also the disobedience of the guidelines of the Supreme Court of India, and leading to degradation of the constitutional office. It is a political tragedy that after 67 years of the independence, the country is not able to frame a policy by consensus for procedure, of appointment and removal of the Governors, with the coming of new Government at centre the removal of the previous appointed Governors and the appointment of the party supporters begins which is a wrong trend.

4.2 Problems created by the occupants of the Governor’s Office

In 65 years of the independence of India and the enforcement of the Constitution the Institution of the Governors of the States has not
functioned properly it has become controversial and the working has not been satisfactory. The Institution has become a bone of contention between not only centre and States but also between the ruling and the opposition parties, the party in power at the centre misused this office to protect its vested interests, the misuse has been at massive level since 1967. The Constitution makers intended that the Governor should be an instrument to maintain the fundamental equilibrium and to ensure that the mandate is respected in the State, but the role played by the Governor's shows that they have failed to live up to the expectations of the founding fathers of the Constitution, several Governors have debased their high office by landing their services to fulfill the partisan objectives of the political party in power at the centre, as they are accommodated by the ruling party or it can be said rewarded for their loyalty and affiliation to a particular ideology. The politicization of this office is responsible for the imbalance in the dual role of the Governor one as the Constitutional Head of the State and the other as the representative of the centre, whereas in most of the situation he has acted as an agent of the centre.

(A) The Governor and the legislature, powers regarding the composition of the State legislature and the Constitution of the legislative assembly

The Governor is a part and parcel of the State legislature as the President is part and parcel of the parliament of India.

In Article 333 there is a provision that if the Governor of a State considers that in the elections the Anglo-Indian community has not got proper representation then he can nominate a member of that community in the legislature. In principle, this power is vested in the Governor but in practice

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36 The Constitution of India 1950

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in most of the cases the Governor nominates in consultation with the Chief Minister and the Council of ministers.

(B) The Constitution of legislative Council

According to Article 171 (3) of the Constitution the Governor has the power to nominate eminent persons from the various fields such as literature, art, social services and participants of co-operative movement in the legislative council, but this power is nominal, in practice the power is excercised by the Chief-Minister. In this context the case of Vidhya Sagar Singh V.S.B. Sahay can be noted.

In Short the case is that the Governor of Bihar nominated on 07-05-1964 Smt. Parvati Dev Messers, Parmanand, Fazlee Rehaman, Shyam Prasad Singh and Mathura Prasad Singh to the legislative council. Shri Vidhya Sagar Singh filed a petition in the Patna High Court in which he challenged that the nomination of the first four persons as against the provision of chapter 7(3) (B) and 171(5) presenting the case in the court he submitted the following arguments:—

(i) These Persons were neither eminent in the field of literature and science nor they had participated in social service or co-operative movement.

(ii) These nominations have been done by the Chief-Minister and the Governor.

(iii) The Power of the nomination should have been excercised by the Governor authentically with the Consultation of the cabinet while the Governor did not do so.

37 ibid
(iv) The Chief-Minister had got done these nominations with the object of increasing the strength and the majority of his party.

The Attorney – General of India while presenting the case for the Chief-Minister gave the argument that according to Article 154(1) and 63 (1) and keeping in view the provisions of Article 173 (3) (E) the Governor has the power to nominate the members in consultation with the cabinet. Here the nominations have been done in the context of Article 166(2) in the name of the Governor who has such a privilege.

In the end, while delivering the Judgement the Honorable Justice Shri U.N. Sinha Stated “In my opinion the Governor under Article 173(e) should excercise his discretion ,whether he works with the consultation of the cabinet or not, the Court should not discuss this issue.

The concerned nominated members of the State Council have the requisite qualification or not is not to be to decided by the court hence the court does not entertains this question.

It is now evident that the Governor excercises this power as the Head or the Constitutional authority on the advice of the cabinet, but such situations may arise in which the Governor will nominate by exercising his discretion.

To illustrate - The Governor of Madras Shri Prakash had nominated some members in the council in 1952, after the general elections when Chief-Minister of Madras did not give any advice on the nomination of
new members then the Governor nominated Shri Raj Gopalachari (Rajaji) and two others to the State council these nominations seemed to have been done by the free will and the discretion of the Governor but the reality was that there was the interference of the central Government, because the Governor had received the information from reliable sources that the center wants to make Rajaji the Chief-Minister.

Shri Prakash himself said – “at this point I have reached to this conclusion that there was no such person who could apprise me of the real situation and so during the consultation with the Central Government they indicated that they wanted Rajaji to be appointed.”

It is clear that the Governor has been given the power to nominate in State legislature but that does not depend on the free will of the Governor but depends on the will of the State cabinet, or the directions of the central government.

(C) The Right to summon the sessions of the legislature

According the Article 174 of the Constitution the Governor has the power to summon either one or the both the houses of the State legislature, He also has the power to convene or summon the session of the legislature at any place at any time, but the condition is that there should not be a gap of more than six months between the end of last session and the beginning of the new session.

The Governor exercises this power on advice of the Chief-Minister and the cabinet. In the report of the committee on the Rajyapal (Governors) (1971) the same thing has been said,

38 Shri Prakash
39 The Constitution of India 1950
"The Governor has the power to summon the session on the advice of the cabinet, because the actual power of calling of the session is with the Chief-Minister and his cabinet" accordingly they decide the time and date and generally the Governor accepts the same.

As such the Governor of Himachal – Pradesh summoned the session for one day, since the legislative assembly was not prorogued as per Article 174(2) (B). This theory has generally been accepted that the session for passing the bills should be convened on the advice of the cabinet. The former Home-Minister Y.P. Chowan had said in the parliament.

"As the Constitutional Head it is the duty of the Governor to ensure that the Head of the executive i.e. the Chief-Minister has the support of the majority in the assembly." It is evident from this statement that the Governor should summon the session of the legislature to see that the Council of ministers enjoys the majority in the house. Whether it is essential for the Governor to take the advice of the cabinet or not the jurist’s, politicians, members of Parliament, members of legislative assembly, the Home ministry and the Law ministry have expressed different views.

The Law ministry is of the opinion that the Governor has no right to summon the session of the legislature as long as the Chief-Minister is enjoying necessary support from the present Government.

Some Governors agreed with this view. During the conference of Governors in November 1967 in New Delhi they accepted this view point. Shri Neelam Sanjiva Reddy
while agreeing with this view had Stated in the parliament”

According to the Constitution the Chief-Minister can
summon the session at any time at any place on the advice of
the Governor, the Governor can suggest alternative date also
but the final decision should be left generally to the Chief-
Minister and his Council of ministers.

Generally, the Governor convenes the session of the
legislature on the advice of the Chief-Minister in normal
circumstances but in abnormal situations he is not bound to
accept the advice of the Chief-Minister.

Shree Sadhanan, L.M. Singhvi, the Administrative reforms
Commission and M.C. Chhagla agreed with this view. Mr.
M.S. Pathak was also of the view that the Governor can
summon the session of the legislature without the advice of
the Chief-Minister only in a situation when he has doubts
about the majority of the Chief-Minister in the assembly.

After the death of the Chief-Minister of Tamil Nadu in
December 1987 the Governor asked Smt. Janki Ram
Chandran to prove her majority in the assembly within 21
days. Smt. Janki Ramachandran proved her majority on 2th
January 1988 but after some days the ruling Congress and the
Jaylalita group refuse to give support to her and the Governor
Shree Khurana imposed the President’s rule in the State.

In the opinion of Dr. L. M. Singhvi, “He can use his
discretion to ascertain the majority of the cabinet and as a
result of which he can summon the session of the assembly
against the advice of the cabinet”.40 In the State where co-

40 The Statesman, New Delhi, 1967
alition Government is in power the Governor can exercise this power without the advice of the Chief-Minister. When he is convinced that the Chief-Minister does not have the majority in the assembly, as on 2nd November 1987 in West Bengal P.C. Ghosh left the Joint Front the Governor asked the Chief-Minister to convene the session of the house immediately, in the first instance the Chief-Minister was not ready to summon the session of the but when the Governor asked him again he agreed to summon the session on 18th December 1967. When the Chief-Minister didn’t accept the advice of the Governor, the Governor dismissed the Chief-Minister Shree Ajay Mukharjee of the Joint Front and then administered the oath of office of the Chief-Minister to P.C. Ghosh on 21st November.

This step on the West Bengal Governor faced severe criticism because the Governors of Bihar and Uttar Pradesh in similar situations didn’t force the Chief-Minister to summon the session of the assembly. Anant Swami Ayanger the Governor of Bihar didn’t forced the Chief-Minister of the State to summon the session of the assembly, though here also there was lot of party politics. Similarly Gopala Reddy the Governor of Uttar Pradesh turned down the request of Choudhary Charan Singh the leader of Indian Kranti Dal he had demanded the session of the assembly, because at that time there was dissatisfaction in the ruling congress by which Chandra Bhanu Gupta had come in minority.

While being in minority he holded his post but the Governor did not force him to summon the session. On 10th February
1970 a day before the starting of the budget session he resigned. Opposite action was taken by the Governor in U.P. when Charan Singh was the Chief-Minister of, the Congress withdrew the support given to the council of ministers Headed by Charan Singh the Governor Gopala Reddy didn’t allow Charan Singh to hold the office of Chief-Minister, the Governor asked the Chief-Minister to resign by 28th September, though the assembly session was to commence a few days after on 6th October 1970, and the Chief-Minister Charan Singh was ready to summon the house in 24 hours and prove his majority but the Governor summoned the house on October 3, 1970 and dismissed the Council of ministers under Article 356. From the above details it is clear that the Governors didn’t use their Constitutional power in a manner which would prove their political impartiality, specially the Governors of Bengal and Uttar Pradesh did not take identical actions and gave birth to Constitutional controversies by not summoning the House on the advice of the Chief-Ministers, thereby they disregarded the Constitutional conventions. In real sense it would be seen that the Governor took these actions at the instance of the Central-Government in which the importance was given to the interests of the ruling party, for this reason the opposition leaders specifically criticized such actions of the Governors, that the Governors were not able to act non-partisan and keep themselves away from party politics and abide by the Constitutional provisions properly.
The Governor has the power to ask the Chief-Minister to summon the House as an when he is doubtful about the majority of the Government.

(D) The Power to suspend the legislative assembly

Similar to summoning the House the Governor under Article 174 (2) has the power to suspend the assembly. Generally he exercises this power on the advice of the Chief-Minister. To illustrate on 13th June Governor of U.P. Shree Akbar Khan on the advice of the Chief-Minister Kamlapati Tripathi recommended the suspension of the assembly and imposition of the President's rule, in view of exercise of this power a great controversy arose. After the general elections in 1967 on 20th July 1967 the Governor K.C. Reddy suspended the assembly on the advice of Chief-Minister Dwarka Prasad Mishra in M.P. The assembly was suspended because 36 members of the majority party Congress were kidnapped by their opponents who had switched their party loyalties. Behind the suspension of the assembly the Governor's argument was that the Chief-Minister Mr. Mishra told the Governor that two Congress M.L.A.s were tortured, therefore in order to ensure the smooth functioning of the democratic system the assembly was suspended, but some opposition leaders alleged that the Governor had taken this action on directions from the Congress Ministers of Central Government.

Similar incident occurred in Punjab where the session of the assembly was to begin on 2nd April 1968, to discuss the resolution to remove the speaker from his post, but the
assembly was suspended on the same day on the advice of the Chief-Minister. Similarly in February 1970 the Haryana assembly was suspended when a no-confidence motion was introduced against the Chief-Minister. When the Chief-Minister is in minority the Governor should not listen to the advice of the Chief-Minister and need not suspend the House on the contrary, he should ask the Chief-Minister to face the House. According to the report of the Governors committee 1971 also in such a situation the Governor should ask the Chief-Minister to face the House and he should try to have discussion on the no confidence motion. A cabinet not doing this will not be discharging it responsibilities. Before suspending the house the Governor should consult the members of the opposition, and the speaker of the house and should see that the Chief-Minister is not using this as a tool for his benefit. In case the Chief-Minister is using this to hide his political failures and to derive political benefits, the Governor should not accept his advice and must not surrender to the Chief-Ministers will, in such a situation he is free to take the decision at his own discretion, he should neither act on the advice of Chief-Minister or at the behest of the Central-Government, otherwise he will become target of criticism.

(E) The Power to Promulgate Ordinances\textsuperscript{41}

Article 213 of Indian Constitution gives the power to the Governor to promulgate an ordinance. This is not a

\textsuperscript{41} The Constitution of India 1950
discretionary power but he should exercise this power with the aid an advice of his Council of ministers.

If such a situation arises when the assembly is not in session and there is a need to act immediately, then the Governor has the power to promulgate an ordinance on such subject on which the State legislature can enact laws. The ordinances will have the same effect as similar to the law passed by the State legislature but such ordinances have to be presented in the State assembly as soon as the session begins and can be enforced up to period of 6 months, but the State legislature can cancel such ordinances before the expiry of 6 months.

According to the Constitution the gap between the two sessions of the assembly can not be more than 6 months, therefore the ordinance promulgated by the Governor can be in force for a period up to be period of 6 months and 6 weeks and not more then that.

The Governor can not issue an ordinance on the following subjects without the prior approval of the President:-

(i) Any subject intended to put restriction on commerce and trade, Article (304) (B).

(ii) Any subject related to acquisition of the personal properties.

(iii) Subject related to the powers of the High-Court.

(iv) Any law which can create conflict with the Federal law.
The role of the Governor towards the passed bills

The Governor gives his consent to the bills by signing them submitted to him by the Council of ministers, but in certain circumstances he can refuse to sign. As it happened on 17th September 1980 when the Governor Shree Sharma refused to sign the proposal approved by the Madhya Pradesh Government regarding the new MISA.

The Governor has to play a double role, on one hand there are the duties of the Constitutional Head and on the other that of the representative of the centre, because of this double role the Governor may find difficulty in carrying out his duties in certain exceptional conditions, generally he issues the ordinances on the advice of the cabinet, in this matter the conduct of the Governors has been controversial and mostly they have issued the ordinances as the agents of the cabinet where it is expected of the Governor that they should protect the law and the Constitution.

Power to grant assent to the bills

According to Article 200, of the Constitution all bills passed by the State legislature are presented to the Governor for his approval. Any bill passed by the legislature cannot become a law unless it gets the approval of the Governor. The Governor has the power to either give his assent or to send it back to the legislature for reconsideration except the finance bills. If the Governor returns the bill to the legislature for its reconsideration or does not approve, and if the legislature passes the bill again in the same form then the Governor is

42 ibid
bound to give his consent, but in such cases he has to explain and clarify to the centre. Shri Hari Vinayak Pastkar when he was the Governor of M.P had not given his consent to the land finance bill and in an Article to the News paper had Stated “I have not given consent to this bill as the same could be detrimental to the smooth functioning of the administration” of the State.

Therefore he submitted this issue to the Central-Government and simultaneously as the Constitutional Head he kept informed regularly the Council of ministers of the State, as a result of which there was no conflict.

Shri Pastkar succeeded in such a matter because he moved cleverly, carefully with alertness and thereby performed the dual role of the Constitutional Head and the representative of the State perfectly and maintained the balance between the two.

A question arises in regard to the power of the Governor when a bill is passed by the legislature but there is a strong opposition in the State then can the Governor refuse to give assent to such a bill, in this regard some people said that it would not be appropriate for the Governor to refuse to give assent though it has been opposed by a group of people, but some people are of the view that the Governor can refuse to give consent to such a bill In the interest of the State.

In 1957, when in Kerala the communist Government in order to benefit its party brought a controversial bill which was approved in the assembly but which was not mentioned in their manifesto. This bill was opposed by the catholic and
the other Christian communities and they launched a State­wide agitation, seeing this condition the Governor Shree V. Ramakrishna Rao advised the communist Government to discuss the bill with the groups and the classes affected by the bill, but the advice of the Governor was ignored and avoided as a result of which the Governor sent the education bill to the President for his consideration.

(H) The Power to send the bills to the President for his consideration or withhold them

The Governor can forward some of the bills passed by the State legislature to the President for his consideration, but generally he does so on the advice of his Council of ministers. The bills which the Governor forwards to the President, he has the right to grant assent or refuse the same. The President also has the right to return all such bills for the reconsideration of the legislature except the bills relating to finance. Such bills returned by the President will have to be reconsidered by the legislature within a period of six months. If these bills are again passed by the legislature and send to the President he has the right to approve or disapprove the same. It is evident that the centre uses the office of the Governor to modify and amend the bills submitted by the State legislature, this happened in the case of Kerala Education bill (1957) and the Madhya Pradesh Panchayat bill (1991) in which amendments were made keeping in view the suggestions made by the centre.

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In this way the President (the Central-Government) can approve or disapprove the bill sent to it by the Governor.

The Governor has to compulsorily sent to the President for his assent if the bills are related with the following matters-

(i) The bills related to the acquisition of the personal property.
(ii) The bills on subjects or Articles which have to be taxed but which have been declared essential items by the union legislature the (Parliament).
(iii) Such bills which intend to the reduction in the power and status of the High-Courts.
(iv) The bills relating to the distribution of the river waters, production of micro-electricity and imposing of tax on production and distribution and which relate not to any one State but to many States.

It is compulsory to take the advice of the Council of ministers before forwarding the bills related to such matters to the President for his consideration for his approval.

The President can direct the Governor to forward such bills for his consideration those related to the subjects against the directive-principles of the State-Policy. It can be expected of the Governor to send such bills for the consideration of the President either with the advice or without the advice.

While examining this Shri Durga Das Basu had said that: if the Governor thinks that by the resolution or an act passed by the State legislature there will be adverse effect on the powers of the Central-Government, he can forward the bill to the President even with a
difference of opinion with the Council of ministers of the State. It is clear that the politics of the State is affected by the internal rivalaris and groupings the bills passed by the State assembly give the power to the Governors to maintain control on the State assembly and the Government, and to regulate them and fulfill one of the main objectives of the Central-Government.

It is said about this power of the Governor that the Indian Constitution is too much centralized, and if the Governor withholds the State bills for the consideration of the President it would make the Constitution more centralized which is the negation of the federal structure.

Though this power of the Governor is considered contrary to the federal structure, but through this power he plays an important role in coordinating the centre State relationship, and checks and lessens the possibilities of disputes between the States and the centre.

In conclusion it can be said that the powers enjoyed by the Governor are due to his being an inseparable part of the legislature of the State, he excercises these powers in normal conditions as a representative of the centre and during the emergency and abnormal situations either according to the directions of the centre or by exercising his own discretion and wisdom. In this way he is the Constitutional Head on the one hand and on the other hand the representative of the centre. In such a situation his legislative powers are rather very important.
The Governor and the Council of ministers

According to the Shri Durga Das Basu generally, the relations between the Governor and the Council of ministers are like the President and the union Council of ministers. The one major difference between the two is that the Constitution does not give any discretionary power to the President to act where is, the Governor can take decisions in certain matters according to his own discretion. The Indian Constitution gives certain discretionary powers to the Governor.

There are instances where the Constitution gives clear powers to the Governor to act according to his own discretion. The discretionary powers were specially mentioned and given to the Governors of Assam and Nagaland. But from the wordings of Article 163, all the Governors have some discretionary powers.

According to Shri M.V. Payli following discretionary powers are given to the Governors of the States.

(i) To select and appoint the Chief Minister of the State before the formation of the Council of ministers.
(ii) The dissolution of the State assembly.
(iii) The dismissal of the State Ministry.
(iv) To seek information from the Chief Minister regarding administrative and legislative matters of the State.
(v) To ask the Chief Minister to ensure the submission of the decisions taken by one minister to the Council of ministers.

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44 The constitution of India 1950
45 Fadia and Jain, Bhartiya Shashan aur Rajniti Page 457
(vi) To give assent to a bill passed by the assembly or to
return the same for its reconsideration.

(vii) To withhold a bill passed by the State legislature for
the consent of the President.

(viii) To seek the President's direction before the issuing of
an ordinance.

(ix) To advice the President regarding the declaration of
State emergency and the imposition of the President's
rule under the Article 356 of the Constitution in
situation of the breakdown of the Constitutional
machinery in the State

(x) Only for the Governor of Assam the power regarding
the administration of the tribal areas an resolution of
the disputes between the State and the Zila Parishads.

While commenting on the discretionary powers of the Governors
Durga Das Basu has said:-

"The power of discretion areas is only given to the Governor of
Assam and that too is limited and restricted. It is clear from the words of
the Constitution that the Governor has been given powers to act in
discretion in certain conditions this is against the rules and can be said to
be a mistake committed by the members who drafted the Constitution.

In the words of shri M.V. Payli "the Governor is not been given
arbitrary authority regarding the use of his discretionary powers in
ordinary and extra ordinary conditions, he cannot act on this discretion
disregarding the advice given by his ministry in relation to the routine acts
and works, if he does so the situation will take such a turn in which his
dismissal will become a certainty. In extra-ordinary conditions like war,
internal disturbance and failure of the Constitutional machinery in the State, the Governor acts as the representative of the President and the union. even then he is not to be a master undauntedly, it is true that in extra ordinary circumstances he gets actual powers where as in ordinary circumstances he enjoys limited powers.

Before 1967 when mostly all the States were ruled by the Governments of the congress party the office of the Governor of the State was ornamental. He was a nominal Head and his power of discretion was rarely used, but after the fourth general elections of 1967 the congress party loosing in many States and the formation of the non-congress-Governments shook the sleeping discretionary powers of the Governors the changing political scenario, and the growing political uncertainty and instability gave birth to the demand that the Governor should be given the power of dissolution of the State assembly and the dismissal of the Council of ministers, but when the Governors dismissed the State Governments by exercising these discretionary powers a great controversy arose, the Governors exercised their discretionary powers for the first time and they had to become the victim of criticism.

The following are the circumstances where the Governor will be called upon to exercise his discretion and which has been frequently misused by them.

(J) The appointment of the Chief Minister

It is well known that when any party or a coalition of parties does have clear majority in the House, then the Governor does not get a chance to take an independent decision to elect the Chief Minister and form the Council of ministers, the leader of majority party is invited to form the Government.
In case no single party or a coalition gets the majority in the assembly then the Governor exercises his discretionary powers. It is clear that in law and under the Constitution the power of discretion of the Governor is autocratic, More over its use cannot be objected in the court. In 1962, the Governor of Madras Shri Parkash used his discretion and invited Raj Gopala Chari to form the Government, the unfortunate thing was that Raj Gopala Chari was not even a member of the assembly. In 1954, even after the claim made by Hari Krishna Mehta in Orissa assembly, some other person was appointed as the Chief Minister. In 1967, Rajasthan Governor Dr. Sampurnanand rejected the claim of the opposition and invited the leader of the largest party who had the majority to form the Government.

In Bihar in 1969 Governor Nityanand Kanungo refused to accept the list of 182 members submitted by Harihar Singh in after giving about two months time to the congress supporting parites, thereafter he appointed Durga Prasad Rai as the Chief Minister in Punjab also in 1970, after Gurnam Singh Ministry resigned the Governor acted on his discretion and invited Shri Badal to form the ministry.

It is particular that in selection of the Chief Minister the Governors discretionary power is a misnomer, a number of instances after 1967 it have been proved that, the Governors in different States had not followed uniform policy.

Generally, it is believed that this power of the Governor is not autocratic; the Governor is controlled by the central Government or by the party which he is related. It is
appropriate to suggest here that the Governor should leave
the issue of deciding the majority to the assembly, as a result
of which the Governor will not only be relieved of the
burden of the problem but also he will be saved from the
criticism of the people. The Governor should select a person
and allow him to prove strength in the assembly, for
ascertaining the majority the Governor should summon the
session of the assembly as soon as possible.

(K) Appointment of other members of the council of
ministers

The Governor appoints other ministers on the advice of the
Chief Minister, though the list of the ministers is prepared by
the Chief Minister still the Governor can ask the Chief
Minister to add some more names in the list, but in practice
the Chief Minister is not bound to accept the suggestions of
the Governor. When a single party has the majority in the
assembly and the Governor is from the same party than not
playing a special role he accepts, the suggested names, but
when the Governor and the Government are from different
parties then, Chief Minister himself accepts some of the
names suggested by the Governor.

To illustrate - While in 1967 in Madras when Anna Durai form the first
D.M.K. Ministry the Chief Minister had prepared the list of ministers in
Consultation with the Governor Shri Ujjawal Singh and had excepted
some of the suggestions given by the Governor. "Shri Prakash who had
been Governor in Assam, Maharashtra and Madras rights, "during my
tenure in Assam and Madras I found that the Chief Ministers of those
States had while appointing ministers consulted the Governor and not
only this they included one or two ministers in the Council of Minister. suggested by the Governor.

Similarly something happened in U.P. when Vishwanath Das was the Governor.

(L) The dismissal of Council of ministers

Payli has described the discretionary powers of the dismissal of Council of ministers as dangerous. To remain in office the ministry should have the support of Governor and the confidence of the assembly.

In the constituent assembly a doubt was raised during the discussion on the Governor and it was said that, "that the confidence issue will be like that of a war. But Dr. Ambedkar describes this condition that the loss of the confidence of the assembly will solve this issue.

Elaborating this contention the High-Court, as mentioned that the Constitution has not given the right to the assembly to remove the ministry from the office, this power is given to the Governor; therefore if any ministry refuses to resign after the adoption of no confidence motion, then the Governor can withdraw his pleasure and dismiss the ministry.

The responsibility towards the legislature and the loss of confidence of the assembly are two expressions which are not clear. Generally, it is understood that the passing of the no confidence motion, partial cut, rejection of the finance bill or any other important bill are the indicators of loss of confidence.
When ever the Governor dismisses the Government by using his discretion he should see that the Constitution is being followed. when the Government is defeated on the floor of the House, then the matter is clear and there is no difficulty, but when there is party flopping or defection and when a Government hesitates to face the House then the situation becomes difficult. When the Governor dismissed in 1967 the first Joint Front Government lead by Ajay Mukharjee. In 1967 Rao Virendra Singh's Government in Haryana & Charan Singh's Government in U.P. in 1969 the situation was as under:-

(a) The Government was not defeated in the House.
(b) There was some hesitation in summoning the House at the earliest.
(c) In favor of Government to, or by the Government as well party sabotage was too much.

The last two points influenced the Governor to think that the Government has lost the confidence of the House, and as a result of which he can justifiably withdraw his pleasure.

According to the Article 164 of the Indian Constitution the Council of ministers of the State will remain in power as long as they enjoy the pleasure of the Governor. In ordinary conditions the Council of ministers will hold the office as long as they enjoy the support of the House or the assembly but in extra ordinary conditions the Governor can withdraw his pleasure and can dismiss a minister or the Council of ministers.

In this context the Governors committee had quoted the decision of the Calcutta High Court in the case of Mahavir Prasad Sharma vs Praful Chandra Ghosh—that "the Governors power to dismiss the Ministers is perfect and dictatorial".
The opinion of the law minister is also similar to this:

(a) There is no Constitutional restriction on the powers of the Governor to dismiss a Council of ministers, and in special conditions the dismissal of the Government is justified if it does not have the majority in the State assembly.

(b) If the Council of ministers or the Chief Minister acts against the provisions of the Constitution or if they are involved in the activities which endanger the integrity and security of the State or the country the Governor has the power to dismiss them.

(c) If Council of ministers looses the majority in the lower House and if it does not resign on its own than the Governor can dismiss it.

(d) If the Governor is convinced from other sources that the Council of ministers does not have the support of the majority and it is not ready to summon the session of the House, the Governor under his Constitutional power can dismiss the ministry.

Some Constitutional experts on part believe that the Governor cannot not dismiss a ministry as long as it enjoys the support of the House this is not correct for.

To illustrate - In 1953 the then Governor of Jammu and Kashmir dismissed the P.M. Shaikh Abdulla for his carelessness, immaturity, for delivering communal speeches, and for arbitrary policies endangering the security of the State and there after he invited the Deputy badr Shri Gulam Mohammad Bakhi to form the ministry.

On the dismissal of the Mukharjee Ministry the critics had Stated that the Governor had no power to dismiss the Government and to remove it, this power rests with the legislative assembly and that the issue of the majority should have been decided there it self.
An important question arises here that can a Governor dismiss the Chief Minister for his corrupt administration and charges of bribe. From Constitutional angle in such circumstances a Chief Minister or for that matter any other minister can be dismissed by the Governor, even if the Chief Minister and his ministers have the majority in the legislative assembly. But there are no illustrations where in the Governors did dismiss the corrupt Chief Ministers.

In 1963 Sardar Pratap Singh Kairon Chief Minister of Punjab and Biren Mitra Chief Minister of Orissa resigned from their post on the advice given by the then Prime Minister, but in both these cases the Governors remain silent they neither dismissed the Chief Ministers, nor asked them to resign from their post. It is evident from this that in certain cases the Governors said did not use their powers properly and did not abide by their Constitutional responsibilities.

In 1964 there were corruption charges against the Mysore Chief Minister Shri G.C. Sahay, these allegations were inquired into by the Central Committee and its sub committee and he was found guilty but was allowed to continue in the office here also the Governor of the State remained silent, and did not take any action against the alleged corrupt Chief Minister. Similarly a defeated candidate made allegations against the Chief Minister of Rajasthan Shri Mohan Lal Sukhadiya and these allegations were proved in the High Court even then the Governor neither asked Sri Sukhadiya to resign nor dismissed him where as he should have done this.

In Andhra Pradesh, the united socialist party requested the Governor to dismiss Chief Minister Brahmanand Reddy and his four ministers because they were found guilty by the High Court for Partisan policies and misuse of the power. The Governor in this case did not
remove the Chief Minister and the other Ministers nor did the Council of ministers submit their resignation in the light of the decision of the High Court, as such Brahmanand Reddy disregarded the healthy tradition which with was started by the former A.P. Chief Minister Sanjiva Reddy by submitting his resignation following the confirmation of certain allegations by the Supreme Court. On the other side there is a illustration where in on the petition regarding corruption by Shri Kailash Joshi the leader of the opposition in the M.P. Vidhan Sabha Chief Minister Arjun Singh and his son Ajay Singh had to submit their resignation to the Governor, professor K.M. Chandi.

In conclusion it can be said that the Governor can on his own discretion dismiss the Chief Minister and his Council of ministers or and individual minister either on being defeated in the House and reduced to minority or on the proven charges of corruption against them. There has been strong criticism of the misuse of this power by the Governor, but if we see it on the surface of reality the misuse of the discretionary powers of the Governors was done by the occupants of the office by taking the benefit of their Constitutional position.

(M) **The dissolution of the assembly**

In the Government under the parliamentary system, generally the legislature is not dissolved till the period of five years fixed under the Constitution but in a situation of political uncertainty the legislature can be dissolved. The power of the dissolution of the loksabha vests in the President and the power to dissolve the State legislative assembly is vested in the Governor of the State. In principle there are two provisions in the Constitution for the dissolution of the legislature.
(i) The Governor under Article 174 (1) can dissolve the assembly.

(ii) The Governor can recommend the President's Rule in the State under Article 356.

Generally the Governor dissolves the House on the advice of the Chief-Minister, the dissolution of the assembly on the advice of the Chief-Minister has become a controversial issue of the Indian politics, specially after the general elections of 1967 Non-Congress Governments were formed in many States, not being the Governments of the same party at the centre. In the States the Non-Congress Chief-Ministers for their political benefit would not make recommendation for dissolving the assembly even though they had lost the majority in the assembly. The Central-Government wanted the assembly to be dissolved in such a situation the question arises whether the Governor should listen to the advice of the Chief-Minister or the Central-Government.

Another question was that whether the Governor is bound to accept constitutionally the advice given by the Chief-Minister for dissolution of the House. On 29th July 1967 Shree Dwarka Prasad Mishra's Congress Ministry lost its majority in Madhya Pradesh and a strange situation arose, in the assembly during the voting on the grants regarding education, because about 36 congress members had defected to the other party and had withdrawn the support from the congress ministry, in this condition the Chief-Minister lost in the assembly and being in minority, and still was not ready to give resignation of his ministry to the Governor while in a similar situation the congress Chief-Minister Shree C.V. Gupta had submitted his resignation to the Governor and cleared the passage for the formation of an alternative Government of the opposition parties.
In the first instance Shree Mishra asked the Governor K.C. Reddy to dissolve the House and to call for the general election which was inappropriate, but then at the instance of the then Congress President Shree Kamrajs intervention Shree Mishra withdrew, he neither asked for the dissolution of the House or fresh elections but submitted his resignation to the Governor and thererafter the Governor invited Samvid leader Shree Govind Narayan Singh to form the New Government. On 30th July 1967 like Madhya Pradesh in Punjab some members under the leadership of Lashkman Singh changed their party and withdrew support from the Joint Front Government of Gurnam Singh by reducing the Government to the minority.

The outgoing Chief-Minister while submitting his resignation to the Governor advised him to dissolve the assembly and arrange for fresh elections but not accepting the advice of the Chief-Minister the Governor invited Lakshman Singh Gill to form the new Government clarifying his position he told the News Paper “it is not beneficial to call for fresh elections till there is a possibility of forming an alternative Government a chance should be given to form such a Government. In these conditions the Chief-Ministers of Punjab and Madhya Pradesh while they were in minority advised the Governors to dissolve the assembly and the Governor by ignoring these recommendations invited for the formation of alternative Governments. On these decisions of the Governors there are contradictory views of the Home-Ministry and the Law Ministry the solicitor General S.C. Gupta was of the opinion that the Governor can not dissolve the assembly on the advice of the defeated Chief-Minister,” but the Home-Ministry supported the proposal of the dissolution of the House and call for fresh elections like the law ministry the Governor also opposed this inappropriate opinion.
K.M. Munshi the Governor of Uttar Pradesh said “the Governor is not bound to accept the advice of the defeated Chief-Minister”. The former Governor of Madhya Pradesh Pastkar had also said “that the Governor of any State is not bound to suspend and dissolve the legislative assembly on the advice given by the Chief-Minister who has lost his majority in the House.

If the Chief-ministers majority is doubtful and if he gives advice to the Governor for the dissolution of the assembly then the Governor can accept or refuse the advice and act according to his discretion as it happened in November 1967 when Rao Virendra Singh advised the Governor to dissolve the House when his majority was doubtful but the Governor did not accept this advice and sent a report to the President outlaying the conditions and recommended dissolution of the House. Similarly on 11th May 1971 Hitendra Desai recommended the dissolution of the House in Gujarat he had claimed that 89 members out of 163 supported him, but the Governor did not accept his claim, firstly because the Governor thought that the Chief-Minister’s majority is doubtful and secondly the budget had not been passed, while in West Bengal and Punjab in 1971 in Kerala 1970 and in Bihar 1971 the assemblies were dissolved on the advice of the chief-ministers when their were doubts about their majority in the assembly.

When the Chief-Minister looses the confidence of the House the Governor is not bound to accept the advice of of the Chief-Minister for the dissolution of the house. As in November 1954 a no confidence motion was passed in Andhra Pradesh assembly against the congress-Government, to escape this Chief-Minister advised the Governor to dissolve the assembly, but instead of dissolving the assembly the Governor asked the leaders of other political parties whether they were in
a position to form the Government if so they can form an alternative Government, but none of the political parties agree to do the same; there after the Governor dissolved the House.

In 1968, on the advice of Singh Dev in Orissa and Hitendra Desai in Gujrat the Governor did not dissolve the assemblies and made efforts to form alternative Governments. In Madhya Pradesh the Governor succeeded in his efforts to do so. In Gujrat, U.P and Orissa the assemblies were dissolved and the recommendation for imposition of the President’s rule under Article 356 was made, alternative Governments could not be formed.

The Governor community is of the opinion on this matter that in normal conditions the Governor should dissolve the assembly on the advice of the Chief-Minister.

In case of the completion of the tenure of the legislative assembly and to know about the public opinion the elections are to be held then the assembly should be dissolved, but the Governor should not accept the proposal to dissolve the House after a no confidence motion has been moved against the Council of ministers, then the Chief-Minister should be asked to face the no confidence motion. The Governor should accept the advice of the Chief-Minister, till he enjoys the majority in the House.

If the Governor does not dissolve the House on the advice of the Chief Minister then he should try to have an alternative Government formed by the other political parties or under Article 356 he should recommend for the President rule in the State by dissolution of the house. If there has been no voting on the budget (no vote on account) in that case the Chief-Minister should recommend to the Governor for the dissolution of the house as in Punjab the Governor under Article 2 (B) a day before the budget session was to commence dissolved the House on the advice of
the former Chief-Minister whose majority in the House like that of Hitendra Desai was doubtful.

On the recommendation of Bhola Paswan Shastri in Bihar D.K. Barua had dissolved the House, the majority of Chief-Minister Bhola Paswan was uncertain because the C.P.I. had not given support to the Government in the budget session.

In relation to this the Governors committee is of the opinion that the budget should be passed before the recommendation for the dissolution is made. In case when the Governor is convinced that the Chief-Minister doesn't have the support of the majority of the assembly then he should make the efforts to get the budget passed by appointing a majority supported Council of ministers. If both this efforts fail than the Governor has no other alternative except to send a report under Article 356, because in such a situation, only the parliament can make provision for appropriation bill (passing the budget) to run effectively the State administration. In such circumstances no Council of ministers can remain in office without passing of the bill. In such condition it can be said that “the Governor can discharge his duties without being partial the following of British tradition can be more helpful in such circumstances. The future of the parliamentary democracy in India is dependent to the great extent on the independent, active view point of the Governors.

The dissolution of the assembly on the advice of the Chief Minister has become a controversial issue of the Indian politics.

On the issue of the dissolution the assembly, Rajamannar committee was of the opinion, that the Governor in normal circumstances should dissolve the House on the advice of the Chief Minister, if the Chief Minister has got the support of the house, but if the no confidence motion in the house is under consideration against the ministry and if the Chief
Minister instead of facing the House advises the Governor to dissolve the house then instead of accepting his advice, he should persuade the Chief Minister to accept the "No Confidence Motion". According to Dr. Ranjeet Singh Darda, "on issue of dissolution of the house, the Governor should discharge his responsibilities without hesitation and partialities. The use of British convention in this matter will be very helpful. The future of India's parliamentary democracy is dependent to the great extent on the impartial and active attitude of the Governor.

(N) Submission of the report to the President for the declaration of State Emergency that is imposition of President’s rule under Article 356

The President on his own satisfaction or on the report submitted by the Governor of the failure of the Constitutional machinery in the State can declare the Presidents rule. It has been accepted that the Governor sends such a report on his own discretion. The Governor can send such a report in many situations:-

(i) When a C.M. resigns and the Governor decides that there can't he any alternate Government formed in the State.

(ii) The internal differences between the ministry and the ruling party force the Chief Minister to submit his resignation.

(iii) Mass movements, riots, strikes, and violence etc create a situation of anarchy and disorder in the State.

(iv) The State administration comes to a standstill because of maladministration and corruption.
Under Article 356 of the Constitution the Governor of the State is to report to the President that a situation has arisen in which the Government of the State cannot be carried out in accordance with the provisions of the Constitution and on the receipt of the report the President if satisfied can declare emergency in the State under the Article 356, which can also be termed as the President’s rule.

It is clear that in such cases the report cannot be made according to the ministerial advice, where a ministry has resigned and another alternative ministry cannot be formed. Thus in making report to the President under Article 356 the Governor exercises his sole discretion, in accordance with the Constitution. The Governor is required to act bonafide and must have materials to sustain his judgement that the Government of the State can really not be carried on, it has to be seen that in context of hope of rarest of the rare case which the founding fathers apprehended, the Article 356 has been used more than 120 times since the implementation of the Constitution calculating an average more than 2 times in a year. We examine that the imposition of the President’s rule in the States a large number appear to be controversial, active politicians being appointed as the Governors the discretion exercised was not backed by objectivity and rationality and is found to create controversies and the Governors attitudes have been severely criticized.

The Article 356 of the Constitution was most keenly discussed and debated in the constituent assembly the constitution makers knew that when it would be misused it would violate not merely the federal character of the polity envisaged by them, but also make a mockery of the democratic principles the Article will reduce the autonomy of the States.

The State Governments to great subversive to the Central Government placed a hope that the Article will never be called into
operation and would remain a dead letter but use of this Article more than 120 times for the political purposes mostly indicates that article is not only misused but abused as well —further it is mentionable that there are four Institutions surrounding the Article the President the creature of the Constitution and the Constitutional Head of the union executive, the protector of the Constitution, the State Governor a Constitutional office and the Head of the State executive but seen as bawn on political chessboard, the parliament and the judiciary ,but of these the Governor is the most important Institution involved is use of this Article. The misuse of the power given to the Governor has made this Constitutional Article the most controversial, but its use has not been rationalized but has been politicized. There are various illustrations of Article 356 being used by malafide intentions to topple the State Governments of opposition parties by the centre.

(i) **Nine Assemblies Dissolution in 1977**

In 1977, Article 356 was invoked in very peculiar circumstances. The assemblies of 9 States of Rajasthan, Uttar Pradesh, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana were dissolved and the President rule was imposed on the ground that the assemblies in these States no longer represented the wishes of the electorate. The facts which led to the dissolution of the nine assemblies were as follows: The lok sabha in which Congress had an overwhelming majority was dissolved on 18th January 1977 and fresh elections were held in March 1977 in which the ruling Congress

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Party was completely routed out and the Janata Party secured a landslide victory and formed the Government at the Centre. The Congress Party could not secure even a single lok sabha seat in several States, at the time the Janata Party took the office, the Congress was in power in various States. In April 1977 Shri Charan Singh, the Union Home Minister addressed a letter to the Chief Ministers of the these States earnestly recommending for their consideration that they should advice the Governors of their respective States "to dissolve the State assembly in exercise of the power under Article 174 (2) (b) and seek a fresh mandate from the electorate". It was contended that since their party was virtually rejected in the present lok sabha elections a serious doubt had been cast on their enjoying the people’s confidence. When a legislature no longer reflects the wishes of the electorate he said it should obtain a fresh mandate.

(ii) Nine Assemblies dissolution in 1980

In 1980 Article 356 was invoked by the congress (I) government more or less in the similar circumstances in which it was invoked in 1977 by the Janata Government at the Centre. The assemblies of 9 States of Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Punjab, Orissa, Gujarat, Maharashtra and Tamil Nadu were dismissed and the President,s rule was imposed in them on the ground that they no longer represented

47 Ibid, Page 717
the wishes and aspirations of the electorate. The facts leading to the dissolution of the nine assemblies were as follows:-

As Stated earlier, in 1977 lok sabha elections the Janata Party had secured a landslide victory and formed the Government at the Centre, but due to internal dissensions and defections from the party it was reduced to minority and the Prime Minister Mr. Morarji tendered the resignation of his Government. The President invited Mr. Charan Singh, the leader of the alliance to form the Government, but before he could face the Parliament he tendered his resignation and advised the President to dissolve the lok sabha and order fresh elections. The President dissolved the lok sabha and ordered fresh elections. In the elections the Congress (I) secured a massive majority by capturing 351 seats in the house and Janata party could secure only 31 seats. Again at the time when the Congress (I) took office at the Centre, the Janata Party was in power in various States. On 18thFebruary 1980 the Centre dissolved the assemblies of the aforesaid nine States and imposed President rule in them. The grounds on which assemblies were dissolved were the same as those advanced by the Janata Government in 1977. The Congress (I) contended that after the Lok Sabha elections in December 1979, as in 1977, the State Governments and assemblies concerned no longer represented the wishes and aspirations of the electorate. The dissolution order however, did not mention any reasons for the dissolution presumably due to the fear that if reasons were given it might be challenged in the Court of law.
On December 15, 1992 the President's rule was imposed in three BJP ruled States of Madhya Pradesh, Himachal Pradesh and Rajasthan, the assemblies were dissolved on the ground that these States were not implementing sincerely the ban imposed by the Centre on a religious organisation. The main grounds on which the BJP Governments were dismissed were that the Chief Ministers of these States have connections with the RSS, a banned organisation, and secondly that these Governments had encouraged the Kar Sevaks to go to Ayodhya. Thus the basis was mere suspicion that they would refuse to enforce the ban, there were no proofs that they were not following the directions of the Centre. The three Governors had submitted more or less identical report in 24 hours. This was clear abuse of Article 356, where duly elected Governments were dismissed merely on the ground of Suspicions.

The Union Government did not pay heed to the report of the Sarkaria Commission in exercising its emergency power under Article 356. The Commission has pointed out that Article 356 can be used only in the event of political crisis, internal subversion, physical breakdown or non compliance with the Constitutional directions of the union executive. None of these events had happened in these States. As regards violence and killings after the Ayodhya incident; there had been more such
incidents in the Congress ruled States than the BJP ruled States.

The Court agreed with the 7-Judge bench decision in the State of Rajasthan v. Union of India. \(^{49}\) that the Court could undertake Judicial review of the Presidential proclamation if allegations of mala fide exercise of power were made in the petition. The majority held that "simply because a political party had overwhelming majority at the Centre, it could not advise the President under Article. 356 to dissolve the assemblies of opposition ruled States.

The majority said that in cases both the houses of Parliament disapprove or do not approve the Presidential proclamation, the proclamation lapses at the end of two months period, and the dismissed Government is revived.

Regarding Article 74 (2) of the Constitution which bars an enquiry into the question whether any or what advice was given by the Council of ministers to the President, the majority held that "it does' not" bar the Court to call upon the Union Government to disclose to the Court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not form part of the advice.

**In this regard the Court has laid down the following Guidelines\(^{50}\)**

- The Presidential proclamation dissolving a State legislative assembly is subject to judicial review.
- If a State Government works against secularism the President's rule can be imposed.

\(^{49}\) AIR 1977 SC 1361  
\(^{50}\) S.R. Bommai vs Union of India, 1994 (3) SCC
• No wholesale dismissal of opposition ruled State Governments when a new political party assumes power at the Centre.

• If President's rule is imposed only on political considerations the Court can even restore the assembly.

• The imposition of the President's rule and the dissolution of the State assembly cannot be done together.

• The State assembly can be dissolved only after the Parliament approves the Central rule.

• The Supreme Court or a High Court can compel the Union Government to disclose the material on whose basis the President's rule is imposed in a State.

• The power of the President under Article 356 is a Constitutional power it is not an absolute power. The existence of material is a pre-condition to form the satisfaction to impose the President's rule.

(iv) Uttar Pradesh and Rajasthan episode: blatant misuse of Governor's power

The Governors of Uttar Pradesh and Rajasthan were appointed by the United Front Government with the sole object of toppling the BJP Government of these States, they acted against all constitutional norms and flouted the recommendations of sarkaria commission as well as the guidelines laid down by the Supreme Court in the landmark judgement in the Bommai Case.

51 Dr. J.N.Pandey, The Constitution Law of India, Page 540
In U.P after the assembly elections held in October 1997 no party got majority. In a 425 member’s house, the BJP emerged as the single largest party and had strength of 176, Samajwadi Party 134 and BSP and its combine 100. The State was still under the President rule. The Governor did not invite the single largest party – the BJP to form the Government, instead he recommended to the Centre for imposing to President rule, as according to him, no party was able to form a stable Government. The Governor with the connivance of the Centre ignored the electoral mandate and recommended for the imposition of the President rule. The Centre acted on his report and imposed President’s rule in the State. The validity of the presidential proclamation was challenged in the Allahabad High Court. A division Bench of three Judges of the High Court held that the Presidential proclamation imposing President rule under Article 356 was unconstitutional “based on irrelevant and extraneous grounds” and hence liable to be quashed.

An appeal against the decision of the High Court was filed in the Supreme Court by the State of Uttar Pradesh. In the Supreme Court an argument was made that an attempt was being made to form a Government in the State. The Supreme Court, instead of hearing the appeal on merit, directed that if an attempt was make to form a ministry in the State it would have no objection. After this a BJP and BSP ministry was installed in the State, but on 20th October 1997 the BSP withdrew its support from the BJP Government. The Chief Minister claimed that he still enjoyed the majority in the house and was ready to prove it on the floor of the house, presumably on the pressure from the Home Minister, the Governor gave him 48 hours to prove his majority in the House, by manipulating defections from the Congress and the BSP Kalyan Singh proved his majority in the House. The motion of confidence in his favour
was carried through by 222 votes to nil amidst unprecedented violence in the assembly.

Again, on Feb 21, 1998 when the Loktantrik Congress and the Janata Dal, withdrew their support from the Kalyan Singh ministry, the Governor dismissed the Kalyan Singh Government and invited the Loktantrik Congress leader Jagdambika Pal to from the new Government without giving Kalyan Singh an opportunity to prove his majority in the house. The Governor administered the oath of secrecy of office to Mr. Pal at 10:30 in the night, the two parties had claimed the support of the Congress, Samajwadi Party and Bahujan Samaj Party, Kalyan Singh had met the Governor along with two of the members of the Lok tantrik Party and BSP and had claimed that he should be given an opportunity to prove his majority in the house. The President Mr. R.K. Narayanan had also advised the Governor not to act in haste, the President’s advice was available to him at 6 P.M, this happened when the polling for the second phase of the parliamentary elections was scheduled to be held after two days, ignoring the advice of the President the Governor Romesh Bhandari dismissed the Kalyan Singh’s Government and appointed Mr. Pal as the new Chief Minister. But the Allahabad High Court stayed the operation of the Governor's order and ordered the restoration of the Kalyan Singh’s Government in the State as it existed. On Feb 21, Mr Pal filed a Special Leave petition in the Supreme Court, the Supreme Court refused to stay the High Court’s order, instead it ordered that a composite trial of strength be held in the house. Mr Kalyan Singh emerged victorious in the House by securing 225 votes to 196 in the composite trial of strength ordered by the Supreme Court.
At last when the BJP Government was installed at the Centre the Governor, Mr. Bhandari resigned from his post knowing fully well that if he continued in the office he would be dismissed.

(v) Gujarat Episode

A similar role was played by the Governor of Gujarat, Mr K.P Singh and he was dismissed by the Vajpayee Government. In 1996 general elections the BJP had secured a two third majority and formed the Government under the leadership of Keshubhai Patel, but soon after internal dissensions started and a senior party leader Shankar Singh Vaghela revolted against the leadership. He was expelled from the party. He formed a separate party by the name of the Gujarat Janata Party and claimed the support of 42 MLAs. The Chief Minister claimed that he was ready to prove his majority in the house, when the house met to prove the confidence motion the Speaker recognized the breakaway of 42 MLAs as a separate group and adjourned the house. The Governor summoned House on the request of the Chief Minister to prove his majority. When the house met to take up the confidence motion there was unprecedented disturbance in the House, amidst this the Chief Minister secured a confidence vote by 92 votes to nil. The Governor recommended for the imposition of President's rule in the State. The United Front Government acted on the report and imposed

52 Dr. J.N.Pandey, The Constitutionsal Law of India. Page 541
Presidents rule in the State. The State assembly was however, kept in a suspended animation and later on a ministry was installed in the State under the leadership of Mr. Vaghela with the outside support of the Congress party. This was a clear case of abuse of Article 356 of the Constitution. Violence in House does not amount to breaking down of the constitutional machinery within the meaning of Article 356.

(vi) Kashmir and Andhra Pradesh Episode

The role of Governor in the appointment of the Chief Minister and the dismissal of a ministry had again assumed a great importance in view of the developments which took place in the States of Andhra Pradesh and Kashmir. Even after the report of the Governor's Committee on the role of the Governors which had laid down certain norms to be followed by them, the Governors have continued to exercise their discretionary powers in an arbitrary and partisan manner. This has certainly downgraded the dignity and prestige of this august office.

It is submitted that the Governors of both the States had exercised their discretionary powers in an arbitrary and undemocratic manner, they did not even follow the report of the Governor's Committee according to which the majority of the ministry must be normally tested on the floor of the house. The role

53 Dr. J.N. Pandey, The Constitutional Law of India, Page 538
of Karnataka Governor Mr Bhanu Pratap Singh in recommending the imposition of Presidents rule in the State has considerably lowered the prestige and dignity of the Governor's office.

(O) Differences between the Council of ministers and the Governor

While on one side, the Governor appoints and dismisses the chief minister and the Council of ministers on the other hand he plays a very important role to resolve the controversies and problems created as a result of certain differences among the ministers.

To illustrate - In 1963 Governor Shri Vishvanatha Das very darely resolved the differences in the Gupta ministry of U.P. arising as a result of organizational differences of the Congress Party in which the Chief Minister Shri C.V. Gupta and his forest-minister Shri Algu Rai Shastri were involved, the Chief Minister C.V. Gupta asked his forest-minister to submit his resignation, but Shri Choudhary and other five ministers of his Council of ministers opposed this decision, in such a situation of differences Governor Shri Vishvanath Das visited Delhi and met some central ministers and the high command and had consultations with them, it may be mentioned here that late Prime Minister Shri Jawahar Lal Nehru played a very important role in resolving this crisis.

In a similar crisis again in 1964 Chief Minister Shri C.V. Gupta granted extension to an official of the law department Headed by the Shri Ali Zaheer who made it a prestige issue the law minister tendered his resignation to the Governor, but the Governor assured the law minister that his prestige and privileges will be protected and persuaded him to withdraw his resignation, and simultaneously persuaded the Chief
Minister to reduce the extended tenure of the concerned official and satisfied the law minister, and thus resolved the dispute between the Chief Minister and his law-minister by playing courteous mediatory role.

(P) Co-ordination and Co-operation between the Governor and the Council of Ministers

Co-operation and Co-ordination are the indicators of success. If there is mutual feeling of Co-operation and Coordination between the Governor and the Council of ministers than the State will achieve success and attain progress, but this feeling does not exist in certain States, because the Chief Ministers did not take the Governors advice and sought their co-operation in the matters related to the State and ignored them, therefore in 1958 a request was made to Prime Minister Pandit Jawahar Lal Nehru to make the Chief Ministers take advice in the matters of the State from the Governor considering him a knowledgeable administrator and the one associated with the matters of the State.

In the annual conference of the Governors in 1965 "Some Governors complained to the Prime Minister Shri Lal Bhadur Shastri that in the matters of the State there opinion was not taken many a times, even to the extent some of the decisions taken by the Chief Ministers became known to them through the daily newspaper". On this issue the late Prime Minister had written to the Chief Minister's of some of the States that in important matters of the State as far as possible the Chief Minister's should consult and seek co-operation of the Governor".

Shrimati Vijayalaxmi Pandit tried her best to understand the administration in Maharashtra and to create and maintain cordial relations with the Council of ministers, and at the same time wanted to give advice.
and help in matters relating to the State affairs, but the hope converted into despair, she didn’t get any Co-operation from the ministers.

Therefore she wrote that from the beginning till end we remain unknown to one another, even after great efforts we could not create means and ways which could give us mutual benefit and be helpful for the State affairs. I did not misuse the office I tried to link the chain of confidence. But Srimati Pandit didn't get any Co-operation and lost the confidence of her Council of ministers.

But such things are not associated to every State. Praising the co-operation extended to him the former Governor of M.P. Dr. Pattabhi Sita Ramyya in an interview to a News-Paper had said "he received every possible support from the Council of ministers of M.P., not only this when a correspondent asked U.P. Chief Minister, Shrimati Sucheta Kriplani whether you have fully followed the advice of the Prime Minister Lal Bahadur Shastri that the Chief Minister should accept the advice given by the Governors and should consult the Governors on all the important issues she replied as far as in the context of U.P it can be said that "the relations between the Governor and the Chief Minister are very sweet and audible and on all important issues we have exchange of opinion and views. Shrimati Vijaylaxmi pandit had herself felt that this is possible only when both the sides agree to the policy of exchange of views and communicate with one another

As such, it can be said that while remaining in the Constitutional limits, the Governor can influence the determination of relations between him and the Council of ministers by using his personal influence. If the Governor is a person having intellect and follows the policy of non interference than definitely Council of ministers will consult him on all important matters, by this process the State will get adequate benefit and
by the feeling of mutual co-operation confidence and advice Cordial relations will be established between the Governor and the Council of ministers, and day by day the standard of the administration will improve. For the proper conduction of the administration of the State, the cordial relations between the Governor and his Council of ministers are imperative.

(Q) The problem of specialization

The fourth General elections have been given the name of "Political Revolution through the medium of vote because these elections brought important change in the Indian politics and also the role of the Governors in various States became important and controversial.

Among the elements which gave birth to this situation the first of those is the establishment of the Governments of the opposition parties in at least half of the States of the Indian union. When there were Governments in these States of the same congress party as that the centre, till then in practice the Chief Ministers were the representatives of the central Government and the Governors did not get much chance to function as the representative of the central Government, but when the Governments of the opposition parties were formed in the States then the Governors began to get chances to act as the representative of the centre secondally in half of the States coalition Governments were formed these Governments were comparatively weaker then the single party Governments, because they were not formed on the basis of ideological similarity but on the basis of the opposition of the congress party, and as such there was lack of stability in these Governments, from March 1967 to March 1972, 24 times the Governments in the States were dismissed and the President’s rule was imposed 15 times. In these conditions it was
natural that the Governors acted on their own discretion and exercised this power beyond their limits, the more the office became controversial. Such types of controversies mainly arose in matters related to the appointment of the Chief Minister his removal and the dissolution of the assembly etc.

Before in 1967, the conduct of the Governor in Kerala had become the matter of dispute. In 1967 no party got majority in the Rajasthan assembly. In those conditions the opposition parties under the leadership of Maharaja Laxman Singh formed a United Front which claimed the majority in the assembly but the Governor did not give a chance to them to form the Government. In this context the argument was that the United Front was not acceptable since it was formed after the elections and the status of the independents was not regarded important this argument can not be said to be justified.

After this in West Bengal 17 legislators under the leadership of Dr P.C. Ghosh withdrew their support from the Ajay Mukharjee ministry the Governor Dharamveer asked the Chief Minister to summon the session of the assembly on 23rd November 1967 and prove his majority.

The Chief Minister didn't accept the advice given by the Governor saying that the session can be summoned anytime within a period of 6 months from the last session and as such he is not bound to accept the advice of the Governor. On this the Governor dismissed the ministry of Ajay Mukharjee & appointed Dr P.C. Ghosh as a Chief Minister. The basis of the criticism of the Governor in this incident is that in similar circumstances the other Governors had not adopted the similar attitude.

We find that, in similar circumstances the Bihar Governor Anant Shayam Aiyangar and the Governor of Haryana didn't insist their congress Chief Ministers to summon the sessions of their assemblies.
A controversial situation arose in U.P. in 1970 at that time Charan Singh was the Chief Minister with the support of the Congress, but when differences arose between them the Congress withdrew its support from the ministry, though in such a situation Charan Singh was ready to summon the session of the assembly at the earliest and prove his majority, but the Governor of the State Gopal Reddy did not give him a chance to do so and dismissed the ministry. This act of the Governor was severely criticized by different parties. In 1973 the roles of Orissa and U.P. Governors also became the subject of sharp criticism as well as of dispute. In 1973-74 when Dr. Bhandare publically made allegations of corruption against the ministers of the State then a controversy arose that whether the act of the Governor is justified.

The office of the Governor has become controversial since 1967 in such a situation Shri Ajay Mukharjee the Chief Minister of West Bengal requested the President to seek advice on the following issues from the Supreme Court:-

- Whether the Governor, without ascertaining the opinion of the assembly can dismiss the Council of ministers.
- Can the Governor based on his own discretion inform the President that the Council of ministers has lost the confidence of the State assembly?
- Can the Governor reject the advice given by the Ministry to summon the session of the assembly.
- If the Chief Minister doesn't summon the assembly on the advice given by the Governor then can the Governor considering it as the violation of the Constitution dismiss the Council of ministers.
- If the advice given by the Governor is not accepted by the Council of ministers can he send a report to the President under Article 356.
- Can the Governor accept the advice given by the Council of ministers till the majority is proved in the assembly.
- Can the Governor turn down the proposal of the Chief Minister to dissolve the assembly.

Ajay Mukharjee raised very important issues in his letter but disregarding this the Central Government said that there is no need to seek the advice of the Supreme Court on these questions, thus it was natural that the office of the Governor became a matter of more criticism in such conditions, many people expressed the view that to free the Governor from the unnecessary influence of the Central Government, the procedure of his appointment should be changed.

Dr. Ram Sugam Singh suggested that the Governor should be appointed by the President on the advice of a council which includes persons with independent and impartial views and opinion.

Dr. Laxami Mal Singhvi gave a similar suggestion and the Administrative reforms commission in its report on 19th June 69 recommended that while appointing the Governors the Chief Ministers of the concerned States should be consulted compulsorily.

After the general elections in 1967, Non-Congress parties got majority in many States of India and their Governments were formed. The situation of conflict arose between the Governors as a representative of the Central Government and as the Head of the State, it was not clear in certain States who enjoyed majority in the assembly, in such situations the Governor did not have any other alternative except to act on the basis
of his discretion, but mostly the exercise of the discretion was in the favor of the Congress party.

**To illustrate** - In U.P. and Rajasthan where the Congress did not have clear majority, the leader of the Congress party were invited to form the Governments as such the Governors created a new controversy.

In this regard the first thing which became clear is that the exceptional circumstances had become normal rules, as a result of which the Governor had many occassions to use their discretion, in these circumstances the Governor could effectively interfere in the politics of the State, he did not remain a silent observer only.

The second thing which becomes clear is that in excercising his discretion he was not bound to except the advice given by the Chief Minister.

The third thing which emerged is that while excercising the discretionary powers the Governor can be partial because he is appointed by the central Government and is the chief representative of the centre. Therefore on many occasions while excercising the discretionary powers the Governors had tried to serve and protect the interests of the ruling party at the Centre the Congress and tried to benefit the Central Government. Dr. D.P. Singh who had done a research in Bihar University on the office and powers of the Governor has written regarding the partial behaviour of the Governors that some Governors because of their old links with the Congress and for their personal interest many a times acted in favor of the ruling party at the centre the Congress. The research scholar had written that some Governors openly supported the views of the people in power at the centre. Many scholars have propounded the view that in India many Governors have acted in a partisan manner.
S.P. Ayer in an Article published in 1970 by “The Centre of Constitutional and parliamentary studies had written that the Governors are the pillar of the structure of the Indian federal system," but this can strictly be said that the roles of some Governors are contrary to their expected role as the Constitutional Institution”

Because of the exercise of the discretionary powers in a partisan manner the disputes were further complicated as there were many situations where the Governors were forced to take decision on the basis of their discretion

When leader of any party does not have a clear majority in the assembly then he has to decide that who enjoys the confidence of the house and who should be invited to become the Chief Minister of the State, or suppose if the Chief Minister is defeated on the confidence motion and then he advices the Governor to dissolve the assembly, and the Chief Minister does not summon the session of the assembly what should the Governor do.

There may be a number of occasions when the Governor has to decide himself and such situations may arise every day in this context, a strange difficulty is that the Governor is a representative of the centre, he has to accept the direction of the centre as he is under its pressure, in such situations the Governor is faced with the problem that whose order he should obey the central Government or the Chief Minister or he should use his discretion. The problem and the difficulty is that the makers of the Constitution had not imagined this type of situation, therefore the Constitution is not only silent about the powers of the Governor but is also not certain. Shree Prakash had said "the duties and the responsibilities of the Governors should be defined clearly so that they know what is expected of them and that they should work accordingly."
When the Governor acts on his discretion it is natural that one or the other party will be displeased with him, as a result in the last few years a demand has come to the forefront that the office of the Governor should be abolished. The main argument is that the office of the Governor is useless, and as a result the tension between the Governor and his Chief Minister the administration of the State comes to a standstill.

But there is no justification to abolish the office of the Governor, in a parliamentary system of the Government there is someone who is a formal Head, therefore instead of the Governor if some other office would be created then also the situation will remain the same and there would be no difference regarding the formal Head.

In the words of D.P. Singh, "as long as the present administrative system of parliamentary form exists the Institution of the Governor is essential."

It is another thing that if there is a complete change in the parliamentary system of Government because this system has proved to be a complete failure at the level of States. In anarchy like situations arising in the parliamentary form of Governments, the Governor has to prove to be a like a rock against the floods.

Therefore it is desired that the powers of the Governor should be clearly explained, at present the controversial discretionary powers are such the analysis of which is very essential.

It is clear that because of unstable and uncertain politics in the States, the Governors get ample opportunity to exercise their power of discretion. The Governor while using the power of discretion should follow the well-established democratic conventions and while playing the role of the Constitutional Head, he should not indicate, that the use of
discretion is at the instance of the centre. The Governors should play their role fearlessly without any pressure on them.

The Governor can perform certain other acts other than the above under his power of discretion, he can seek information on any subject from the Chief Minister particularly when some individual minister had taken the decision and when it is submitted before the Council of ministers. He can send for reconsideration any bill passed by the assembly or he can forward the same to the President for his consideration. In 1957, The Kerala Governor had sent Kerala education bill to the President for his assent, and he had not consulted the Chief Minister.

It is empiclear from the above that though the Governor can not be said to be the real Head of the State executive even then, he is not only a nominal Head but such on official who can participate significantly in the administration of the State.

From the above description it is clear that the discretionary powers in the Constitution are implied and are exercised in special circumstances, so whenever a situation arises, the Governor will exercise such powers.

(R) Recently some more Controversies regarding the Governors have come up

(i) The Governor of Madhya Pradesh Ramnaresh Yadav has been found involved in the Vyapam grand scam and has been made an accused in the scandal by STF. The Governor has recommended the names of two persons from Uttar Pradesh for selection. The case has been filed against the Governor, and FIR has been lodged against him, but there has been no action
against him, no dismissal, no removal despite of corruption charges.

(ii) In history of Madhya Pradesh – again there was a tussle between the State Government and Raj bhavan. The Governor Ramnaresh Yadav had directed the State Government to summon a special session of the assembly to discuss the No confidence motion brought by the Congress Party but the Madhya Pradesh Government was not in favor of calling a special session a new dispute has come up.

(iii) Latest case is of Assam where the Chief Minister of the State Tarun Gogoi has written a letter to the President to remove the State Governor P.B. Acharya. He said in the letter that if the Governor remained in the office there will be a problem in functioning according to the parliamentary system, he also complained that the Rajbhavan has been converted into the BJP office. In Assam the Government is of Congress and the Governor is of BJP ideology. If both belong to the same party and ideology there are less tensions and controversies but if they belong to different political parties then there is nothing except tension and friction. The Chief Minister is a political person, but it is seen that the rajbhavans become Centers of petty party politics, on some occasions the Governors function as political leaders instead of the centers representatives and Constitutional Heads.
The Rajbhavans don't become Centers of party politics, it is the responsibility of all to see, all political parties, the prime Minister, the union Government, the State governments, both the houses of parliament and the Judiciary, they have to make sure that the honour and dignity of the constitutional office is not violated. It is not so tough the need is to change the attitude of seeing everything with a political eye. The complain and grievance of the Assam Chief Minister should be enquired and if it is found correct it should be provided a solution as soon as possible.

(iv) In another case of conflict between the Lieutenant Governor of Delhi Najeeb Jung and the chief minister Arvind Kejriwal looks like the game of children, on every issue every matter tussle, disputes and confrontation have become permanent part of Delhi State politics. It can be termed as the fight for rights, powers, existence, and ego problem of the two functionaries. The tussel is such that it reaches the High court and the Supreme Court. Though in the Constitution the powers and rights of the Governors have been laid down but still there are controversies in relation to it. The supreme law making body the parliament, the Government and the leaders of various political parties have failed to find a solution to the problem of conflicts and tensions between the Governors, and the State Governments and Chief Ministers. The truth is that this has put the people of
the State in problem and the day to day functioning and Governance are adversely affected.

(v) Again in Arunchal Pradesh a political crisis has come up and the role of the Governor in it is controversial the constitutional office is again indulged in party politics, the ruling Congress was in minority 20 MLAs joining hands with BJP and asking the Governor to summon a special session, the session was held in the hotel room, the role of the State Governor is being questioned, in all this the Congress is blaming the Governor and the Central Government for destabilizing its Government. The power game between congress and BJP will put the unity and integrity of the Country in danger strengthening the motives and desires of China. Arunachal being a strategic bordering State whose boundaries are touching China and many a times China is interfering and intruding illegally, its soldiers constructed roads and showed Arunachal in its Map. The turmoil and crisis in the State is creating a dangerous challenge for democracy and the security of the country together with the institution of the Governor. The role of the Governor seems to be doubtful; the Governor B.S. Raj Khova has been charged of destabilising the Congress Government, the act of the Governor is termed to be political in coordination with the Central Government.
As a result the Central Government recommended the President’s rule to be imposed in the State, the Congress went to Supreme Court against the imposition of the President’s rule, the Supreme Court issued a notice to the Centre to give a reply and the Governor to present the report on the grounds on whose basis the President’s rule has been imposed in the State. The Governor replied that there was no law and order in the State due to incidences of cow slaughter and he and his family and the rajbhavan were in danger. The President questioned the union Home Minister on the cause and the need of the President’s rule in the State.

The Supreme Court said that we can’t be dumb spectators on democratic murder. The court also said that the Governors work is not to hurt democracy and raised questions on the role of the Governor and said that the Governor has to work according to the constitution, he has nothing to do with and see that who will get majority. As a result the Central Government took back its recommendation of imposition of President’s rule in Arunchal Pradesh and a new ministry was installed there.