CHAPTER V

THE RECOMMENDATIONS OF THE COMMITTEES AND COMMISSIONS AND THE JUDICIAL RESPONSE REGARDING THE INSTITUTION OF THE GOVERNORS IN INDIA

5.1 The Recommendations of the Administrative Reforms Commission 1969.
5.2 The Recommendations of the Rajamannar Committee 1969.
5.4 The Recommendations of the Sarkaria Commission 1983-87.
5.6 The Judicial Attitude or Response regarding the Institution of Governors.
CHAPTER – V

THE RECOMMENDATIONS OF THE COMMITTEES AND COMMISSIONS AND THE JUDICIAL RESPONSE REGARDING THE INSTITUTION OF THE GOVERNORS IN INDIA

The concern of the Government towards the Institution of the Governors and the problems related to it, and efforts for finding solutions to it led to appointment of administrative bodies of experts in the form of commissions and committees from time to time to analyse, and give advice and suggestions for the improvement and reforms, regarding the Institution of the Governors. The recommendations, are as following :-

5.1 The Recommendations of the Administrative Reforms Commission – 1969

The Administrative Reforms Commission set up by the Government of India in its report submitted in 1969 gave suggestions regarding the harmonious relations between the centre and the States and the Governors. The Commission recommended that only those persons should be appointed as Governors who have a long experience in public life and administration and can be trusted to rise above party prejudices and predilections, they should not be eligible for further appointment as Governor, and The Convention of consulting the Chief Minister before appointing a Governor should be continued.

The Guide lines on the manner in which the discretionary powers of the Governor are to be excercised should be formulated by the Inter State Council. The Commission also recommended that the Judges on retirement should not be appointed as the Governors, however if they enter public life and become legislators they can be considered.


210
5.2 The Recommendations of the Rajamannar Committee – 1969

On 22\textsuperscript{nd} September 1969 the Tamilnadu Government constituted a Committee consisting of Dr. P.V. Rajamannar, Dr. Lakshmana Swami Mudaliar and P.C. Chandra Reddy to examine the relationship that should subsist between the centre and the States in a federal setup and to suggest suitable amendments to the Constitution. The committee recommended that the Governor should be appointed always in consultation with a high power body specially constituted for the purpose, the Governor should be ineligible for a second term in office and he should be liable to removal only for proved misbehavior or incapacity after the enquiry by the Supreme Court. It also recommended that there should be a Constitutional provision enabling the President to issue instrument of instructions to the Governors laying down certain guidelines in respect to the matters on which the Governor should consult the centre or on which the centre could issue directions to him. The instrument should also lay down principles for the Governors to act as the Head of the State including the occasions for the exercise of discretionary powers. The provision in the Constitution that the ministry holds office during the Governor’s pleasure should be omitted: - regarding Article 356 the committee recommended the provision to be totally omitted: - if the provision was to remain the only contingency which may justify the imposition of the President’s rule is the complete breakdown of the law and order in a State in which the State Government itself is unable or unwilling to maintain the safety and security of the people and the properties in the State. Also the President before issuing a proclamation of imposing Article 356 should refer the report of the Governor to the State legislature for its views.

55 The Report of the Rajamannar Committee -1969
The Committee gave suggestions in respect of appointment of Governor:-

(A) The practice of consulting the Chief Minister of the State should be continued by the Central Government prior to the appointment of the Governor, this will help in establishing the fact that the Governor is not only nominated by the centre but accepted by the concerned State also.

(B) The committee has also suggested that an arrangement should be made where in the President should consult the committee of eminent jurists, advocates, and administrators while appointing the Governor.

5.3 The Recommendations of the Governor’s Committee – 1970-71

Due to the emerging political scenario when political loyalties fast changed and multiparty Governments came up and the governments of different parties at the centre and the States were installed, it became necessary to have greater clarity in regard to the functions and the duties of the Governors, it become desirable to define the powers of the Governors. President V.V. Giri appointed a Committee of 5 Governors comprising of Bhagwan Sahay Governor of Jammu and Kashmir, Gopal Reddy Governor of Uttar Pradesh, V. Vishwanathan Governor of Kerala, Ali Yawar Jung Governor of Maharashtra and S.S. Dhawan Governor of West Bengal on November 30, 1970, known as the Governor’s Committee to consider and formulate norms under the Constitution and for providing guidelines for the Governor’s to ensure uniformity of action in identical situations. The Committee submitted its report on November 26th, 1971 the report in the words of President Giri represented the pooled

56 The Report of the Governor’s Committee -1971

212
wisdom of all the Governors, according to the official announcement the Committee was asked to study and report on the three issues mainly, the appointment of the Council of ministers, the summoning and the dissolution of the State legislature and the failure of the Constitutional machinery in a State.

At the very outset the Committee categorically rejected the doctrine of the Governors being the President's agents, it held that the Governor as Head of the State has his functions as laid down in the Constitution itself and in no sense is an agent of the President not even when the Government of a State has been taken over by the President under Article 356. The Committee came to the conclusion that no guidelines could be provided and that in each situation the Governor concerned would have to take his own decision but it suggested a system of pooling of information by a special wing in the President's secretariat.

Such an arrangement, the Committee said, aimed at putting the Governors in possession of authentic information regarding political and Constitutional developments in the States from time to time. The proposed wing in the President's Secretariat, the Committee explained, would ascertain all the facts and circumstances relating to each situation which might arise from time to time requiring action by a Governor in the exercise of his powers and the reasons for the action taken by him in a particular situation. The facts as ascertained could then be confidentially communicated to all the other Governors with the permission of the President.

"The Governor does not", the Committee observed, "by virtue of anything contained in the Constitution become an agent of the President.

Briefly Stated, the Governors' Committee has defined the role of Governor in several ticklish situations. It clearly Stated that the Governor
will be well within his right to dismiss a Chief Minister, if he is satisfied, that the Chief Minister has lost a majority in the legislature and either refuses or is reluctant to test his strength on the floor of the house. The committee also noted that the choice of the Chief Minister and imposition of the President's rule under Article 356 are not the only two situations when the Governor has to act without consulting his Council of ministers, other occasions may arise where Governor may find that to be faithful to the Constitution and the law and his oath of office, he has to take his decision independently.

To aid the Governors, the committee suggested that setting up of a special wing in the President's secretariat to collate and make available authentic information regarding political and Constitution developments in all the States from time to time is a valuable innovation of great practical utility to Governors, for taking appropriate decisions and ensuring a certain uniformity of approach in establishing sound conventions and precedents.

5.4 The Recommendations of the Sarkaria Commission 1983-1987

The Central Government appointed the Sarkaria Commission in June 1983 to report on the entire gamut of the Center State relations. It consisted of Justice Ramjeet Singh Sarkaria a retired Judge of the Supreme Court as the (Chairman) B. Shivaraman and S.R. Sen as members of the commission, the Committee submitted its report to the Prime Minister on October, 1987.

The Sarkaria commission recommended that the Institution of the Governor must stay but laid, comprehensive guidelines for the appointment of the Governor. It said that a politician from the ruling party

57 The Sarkaria Commission Report -1987
at the union should not be appointed as the Governor of the State which is being ruled by some other party or combination of parties. It suggested that Article 155 of the Constitution should be suitably amended to prescribe consultation with the Chief Minister of the State on appointment of the Governor. The commission stipulated that a person to be appointed as a Governor should satisfy the following criteria:-

(A) He should be eminent in some walk of life.

(B) He should be a person from outside the State.

(C) He should not be to intimately connected with local politics of the State, and

(D) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

The commission also recommended that the vice president and the speaker of the house of people may be consulted by the prime Minister in selection of the Governor, the consultation should be confidential and not a matter of Constitutional discussion. The commission felt that the State Government should be given prominence in appointing the Governor, this will greatly enhance the credibility of the selection process, the Chief Minister of the concerned State should be consulted before appointining the Governor to ascertain the objections, if any to the proposed appointment.

The Governor's tenure of office of 5 years in a State should not be disturbed except very rarely and that too for extremely compelling reasons, the commission suggested that as a matter of convention the Governor should not on demitting his office be eligible for any other appointment on office of profit under the union or the State Government, also after laying down his office the Governor should not return to active
partisan politics, the main aim of the commission was to recommend the appointment of non political persons as the Governors of the States.

In a situation of the political breakdown in the State under Article 356 of the Constitution the Governor should explore the possibilities of having a Government enjoying majority support in the State assembly.

If it is not possible for such a Government to be installed and if fresh elections can be held without unavoidable delay, he should ask the outgoing ministry to continue as a caretaker Government to carry on day to day work but prevent from taking any major policy decisions.

The commission was of the view that if the important ingredients were absent the Governor should recommend the proclamation of the President's rule in the State. Normally the President is moved to action under Article 356 on the report of the Governor, and the report of the Governor is to be placed before each house of the parliament.

The report of the Governor is crucial in the political life of the State and should be a speaking document, containing a precise and clear Statement of all the material facts, and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

5.5 The Recommendations of the National Commission for the review of the Working of the Constitution 2002-2009

The central government formed a committee to review the working of the constitution in the year 2002.

The commission had issued a consultative paper with a questionnaire on the office of the Governor for eliciting public Opinion. The issues raised and the suggestions made in the consultation paper

---

58 The Report of the National Commissions for the review of the working of the Constitution 2009
related to amending the Articles 155, 156, 200, 201 with a view to entrusting the selection of Governors to a committee, making 5 year term a fixed tenure, providing for the removal of the Governor only by impeachment and limiting his powers in the matter of giving assent to the bills and reserving them for the consideration of the President.

After carefully considering the public responses and full deliberations the commission did not agree to dilute the powers of the President in the selection and appointment of the Governors, however the commission felt that the Governor should be appointed after consultation with the Chief Minister of the State, normally the five year term should be adhered to and the removal and transfer of Governors should be made by following a similar procedure as for the appointment, that is after consultation with the Chief Minister of the concerned State, regarding the selection of the Governor the same guidelines given by the sarkaria commission were recommended that is :-

(i) He should be eminent in some walk of life.
(ii) He should be a person from outside the State.
(iii) He should be a detached figure and not too intimately concerned with the local politics of the States.
(iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past, along with the above criteria the persons belonging to minority groups should continue to be given a chance.

Regarding the assent to the bills or to reserve a bill for the Consideration of the President the commission said, that there should be a time limit a period of 6 months within which the Governor should take a decision whether to grant assent or to reserve a bill for the consideration of the President.
Regarding Article 356 – The failure of the constitutional machinery and imposition of the President’s rule in a State, whether or should Article 356 be deleted a large majority of the responses were against deletion of Article 356 but favoured its being suitably amended to prevent its misuse.

It is important that Article 356 be read with the other relevant Articles, 256, 257, 355, and 365. All these provisions were regarded as bulwark of the Constitution and ultimate assurance of maintaining or restoring the representative Government in the States responsible to the people.

In a fairly large number of cases the invocation of Article 356 has been found to have been not only warranted but inevitable.

If Article 356 is deleted the Article 365 would lose its relevance and use of Article in absence of 356 might bring a drastic change in the union State relations which may be worse from the point of view of both the States and the union.

These are the three patent reasons which require the retention of the Article, the commission is therefore not in favor of deletion of Article 356 from the Constitution.

In considering the issues roused regarding misuse of the Article 356, a great part of the remedy to prevent the misuse lies in the domain of creating certain safeguards and constitutional conventions. The process of invocation of Article 356 must follow the principle of natural Justice and fair consideration. The commission feels that there are a large number of cases where Article 355 is neglected while imposing President’s rule by Article 356 – it is most unfortunate that Article 355 has been hardly used. In case of the political breakdown the commission recommended that before using a proclamation under Article 356 the concerned State should be given an opportunity to explain its position and redress the situation.
The Commission criticises the role of the Governors in recommending Article 356. The Governors are unseemly in a hurry to suggest the imposition of the President’s rule without exploring all the possibilities of having an alternative Government enjoying confidence of the house, even while making such an exploration the Governors placed excessive reliance on their subjective satisfaction to ascertain the majority support for one or the other political parties. The commission favors that the objective determination of the majority is possible only on the floor of the house.

The commission recommends that the Governor should not be allowed to dismiss the ministry so long as it enjoys the confidence of the house.

The commission also recommends that Article 356 should be amended to ensure that the State legislative assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356 has been laid before the parliament and it has had and opportunity to consider it. Thus the commission recommends in the spirit of the framers of the constitution that Article 356 must be used sparingly (and only as a remedy of the last resort, as it is a giant protection which has been lodged in the Constitution after all the other possible avenues have been explored) as since coming into force Article 356 and the analogous provisions have been frequently misused and abused.

It is further observed that it is desirable that a politician from the ruling party at the union is not appointed as Governor of a State which is being run by some other party, or combination of other parties. It is further recommended that in order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the
Constitution itself by amending Article 155. The vice president of India and the speaker of the Lok Sabha may be consulted by the Prime Minister in selecting the Governor. The consultation should be informal and confidential and should not be a matter of constitutional obligation.

In cases where the President proposes to terminate the tenure of the Governor before the expiry of five years, the National Commission has recommended that a show-cause notice is to be issued to the Governor and an opportunity should be given to explain, which shall be considered by an advisory board consisting of the vice president of India and the speaker of Lok Sabha or a retired chief justice, and on the basis of the recommendation by the board, the decision must be taken.

In case where before the tenure of five years, the Governor resigns, or is transferred to another State or in case where his tenure is terminated, the union government shall lay a Statement before both the houses of parliament explaining the circumstances leading to the ending of the tenure. If any expenditure is received to the show cause, the explanation also will be placed before both houses.

The National Commission has further recommended that as a matter of convention, the Governor should not, on demitting his office, be eligible for any other appointment, or office of profit under the union, or State Government except for a second term as Governor, or election as vice president or President of India. Such a convention should also require that after quitting or laying down his office, the Governor shall not return to active partisan politics.

The Commission has also recommended that the Governor should at the end of his tenure, irrespective of the duration, be provided post retirement benefits for himself and for his surviving spouse.
5.6 Judicial response regarding the Institution of Governors

In India the third organ of the Government that is the Judiciary enjoys the power of judicial review and is termed to be as the custodian and the final interpreter of the Constitution, and haves a responsibility to see that the Constitution of India in all circumstances is not violated by anyone be the people and be the Government, and the governance of the Country is carried on according to the provisions of the Constitution as there is constitutional supremacy in India. The Institution of the Governors being a Constitutional office is under the purview of the judiciary and any problem with its functioning brings the judiciary in the picture, as it is responsible for the administration of Justice and to keep all the organs and the offices under the Constitution within their limits, and see that they discharge their duties according to the will and the provisions of the Constitution without destroying the basic structure and the norms of the Constitution.

The attitude of the Judiciary that is the Supreme Court and the High Courts towards the Institution of the Governors and the problems and the controversies related to it has been remarkable.

In the various cases and litigations coming before it, the honorable Supreme Court has given its valuable opinion from time to time, and laid down certain guidelines for the functioning of the Governors, and cleared the actual Constitutional position of their office, and also given many suggestions for the improvement in the situation.

No matter how we enact laws and various control regimes in the end it is the Judiciary which in any legal system is responsible for the administration of the justice. There are plethora of judicial decisions which act as the guidelines and lay down the precedents for comparatively
easier decisions in similar matters and in terms of interpretation of the various laws.

Judicial Pronouncements regarding the Institution of the Governors.
A Kit of 33 Cases

1. **In Ram Jawaya kapoor Vs State of Punjab**[^59] In this case the Apex court held that our Constitution has adopted the British system of parliamentary form of Government and that the President and the Governors are the constitutional Heads of the State that is the nominal executive and the real executive powers of the State are vested in the Council of ministers Headed by the Chief Minister and they are the actual rulers.

2. **In Satyapal Dang Vs State of Punjab**[^60] In this case the Supreme Court held that the Constitutional power of the Governor to prorogue the legislature and to promulgate an ordinance was untrammeled by the Constitution and was valid.

3. **In Epuru Sudhakar Vs State of A.P**[^61] In this case the Supreme Court held that the Governor cannot-exercise his pardoning power arbitrarily. In the instant case a Congress worker was awarded death sentence by the trial court for committing murder of a Telegu desam party worker. The High Court of Andhra Pradesh had confirmed the death sentence, the Governor of the State granted him pardon. The deceased's son filed a writ application in the Supreme Court challenging the validity of the pardoning power of the Governor. The Supreme Court quashed the pardoning power of the Governor as illegal and upheld the judgement of High Court of

[^59]: AIR 1955 SC 549
[^60]: AIR 1969 SC 903
[^61]: AIR 2006, SC 3385
the Andhra Pradesh awarding the accused the sentence of death. The Apex Court held that if the exercise of pardoning power is exercised on the ground of caste, religion or political considerations the Court can examine its Constitutional validity.

4. In Shamsher Singh Vs State of Punjab

In this case the Supreme Court held again that the President and the Governors are only Constitutional Heads of the union and the State and exercise their powers and function with the aid and advice of the Council of ministers Headed by the Chief Minister and not personally, except in the matters where the Governor is required by the Constitution to exercise his functions in his discretion.

5. In K. M. Nanavati Vs State of Bombay

In this case the petitioner was convicted of murder and was sentenced to imprisonment for life by the Bombay High Court. At the time of the decision of the High Court the petitioner was in naval custody, soon after the judgement was pronounced by the High Court the petitioner made an application for leave to appeal to Supreme Court. On the same day the Governor issued an Order under Article 161 suspending the sentence subject to this that the accused shall remain in the naval jail custody till the disposal of his appeal by the Supreme Court, The warrant issued for the arrest of the accused was returned unserved. The question involved was should the accused surrender to his sentence as required by rules of the Supreme Court or should remain in naval custody in pursuance to the order made by the Governor under Article 161. The Court held that the power to suspend a sentence by the Governor under Article 161 was subject to the rules made by the Supreme Court with respect to

---

62 AIR 1974 SC 2193
63 AIR 1961, SC 112
cases which were pending before it in appeal. The power of
Governor to suspend the sentence of a convict was bad in so much
as it came in conflict with the rule of the Supreme Court which
required the petitioner to surrender himself to his sentence. It is
open to the Governor to grant a full pardon at any time even during
the pendency of the case in the Supreme Court in exercise of what
is ordinarily called mercy Jurisdiction. But the Governor cannot
exercise his power of suspension of the sentence-for the period
when the Supreme Court is seized of the case. The order of the
Governor could only operate until the matter became sub judice in
the Supreme Court and it did become. So on the filings of the
petition for special leave to appeal, and till the judicial process is
over the power of the Governor cannot be exercised.

6. **In Krishna Ballabh Sahay Vs Commission of inquiry**\(^{64}\) – In this
case the Supreme Court observed that a person once appointed a
Governor continues to hold that office till his successor enters upon
his office.

7. **In Hargovind pant Vs Raghukul Tilak**\(^{65}\) - In this case the
Supreme Court held that the office of the Governor of a State is not
an employment of Government of India, he is not amenable to the
directions of the Government of India and is also not accountable to
the Central Government for the manner in which he carries out his
functions and duties. The Institution of the Governors is an
independent Constitutional office which is not subject to the control
of the Government of India he is constitutionally the executive
Head of the State without whose assent there can be no legislation.

\(^{64}\) AIR 1969 SC 258
\(^{65}\) AIR 1979 SC 1109

224
8. **In Mahabir Prasad Sharma Vs Prafull Chandra Ghosh** - In this case the Supreme Court held that the Governor in making the appointment of the Chief Minister of the State and dismissal of a ministry acts in his sole discretion. Article 164 (1) does not impose any restrictions or conditions on the powers of the Governor.

9. **In Sunil Kumar Bose Vs Chief Secretary Government of West Bengal** - The Calcutta High Court observed that the Governor under the present constitution cannot act except in accordance with advice of his Ministers, the power to act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his ministers. The Governor can act in his discretion only in matters in which he is expressly required by or under the constitution to do so.

10. **In Upendralal Vs Naraine Devi Jha** - In this case the Supreme Court held that the language of the Article 213 clearly indicates that it is the Governor and he alone who has to satisfy himself as to the existence of the circumstances necessitating the promulgation of an ordinance, and the existence of such a necessity is not a justifiable matter which the Courts would be called upon to determine by applying an objective test.

11. **M. P. Special Police Establishment Vs State of M.P.** - In a decision of far reaching political ramifications in, in this case the Supreme Court has held that the Governor can sanction for prosecution of Ministers under the Corruption Act. In the instant case a complaint was made against the respondents, two Ministers

---

**Notes:**

66 AIR 1969 Cal 189  
67 AIR 1950 Cal 274  
68 AIR 1968 MP 90  
69 AIR 2005 SC 325
in the Government of Madhya Pradesh, to the Lokayukta for having released 7.5 acres of land illegally to its earlier owners even though the same had been acquired by the Indore development authority. After investigation the Lokayukta submitted a report holding that there was sufficient ground for prosecuting the two ministers under the Prevention of Corruption Act and also offences of criminal conspiracy punishable under Section 120-B of the Indian Penal Code. By the time the report was submitted the ministers had already resigned. A sanction was applied to Council of ministers for prosecuting the ministers. The Council of ministers refused sanction on the ground that no prima facie case had been made out against them. The Governor was of the opinion that the available documents and the evidence was enough to show that a prima facie case for prosecution had been made out and granted sanction for prosecuting them under section 197 of the Criminal Procedure Code. A five Judge Constitutional Bench comprising Mr. Santosh Hegde, Mr. S.N. Variava, Mr. B.P. Singh, Mr. H. K. Sema and Mr. S.B. Sinha, JJ, held that under Article 163(1) the Governor, under his discretionary power can grant sanction for the prosecution of ministers for offences under the Prevention of Corruption Act and the Indian Penal Code. Normally, the Governor acts on the advice of the Council of ministers. However, an exception may arise while considering the grant of sanction to prosecute a Chief Minister or a minister where as a matter of propriety the Governor may have to act in his discretion. Similar would be the situation if the Council of ministers disables itself or disentitles itself. Article 163(2) postulates that there can be matters where the Governor can act in his discretion even though the Constitution has not expressly so provided. The Lokayukta made a detailed inquiry on a complaint
and found prima facie case for the prosecution. The office of Lokayukta is held by a former Judge, it is difficult to assume that said authority will give a report without any material whatsoever. The Supreme Court held that it was quite satisfied with his report and dismissed the appeal of the ministers the decision of the Council of ministers refusing to grant sanction was clearly irrational and based on non-consideration of relevant factors. The decision of the High Court was set aside and the case was remanded for trial.

12. S.R. Bommai Vs Union of India.\textsuperscript{70} : Judicial Guidelines for imposing President's Rule

In a landmark judgement in S.R. Bommai v. Union of India, hearing the appeal from the judgement of the Allahabad High Court, a nine member Constitution Bench of the Supreme Court held that the dismissal of the BJP Governments in Madhya Pradesh, Rajasthan and Himachal Pradesh in the wake of the Ayodhya incident of Dec. 6, 1992 was valid and imposition of the President's rule in these States was Constitutional. The Court held that 'Secularism' is a basic feature of the Constitution and any State Government which acts against this ideal can be dismissed by the President. It was held that in matters of religion the State has no place. No political party can simultaneously be a religious party as well as political party.

But the Court held that the imposition of President's rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991 was unconstitutional and, therefore, liable to be struck down. In these States however, no action could be taken as elections had subsequently taken

\textsuperscript{70} (1994) 3 SCC
place and new Government had been installed and it was not possible to revive old State assemblies. The Judges unanimously held that President's power under Article 356 to dismiss a State Government and imposition of President's rule is subject to judicial review, if the dismissal is found to be illegal then the Court can revive the dissolved State assembly.

The Court held that no State assembly can be dissolved simultaneously with the imposition of President's rule, dissolution of an assembly can be done only after Parliament had ratified the Presidential proclamation. The Court also ruled that the President can only dissolve the State assembly after the proclamation has been approved by both houses of Parliament and not before, until such approval is given, the President can only suspend the legislative assembly.

The Court agreed with the 7-Judge bench decision in the Rajasthan v. Union of India that the Court could undertake Judicial review of Presidential proclamation if allegations of malafide 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 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:**

1. Presidential proclamation dissolving a State legislative assembly is subject to Judicial review.
2. If a State Government works against Secularism, President's rule can be imposed.
3. No wholesale dismissal of opposition ruled State Governments when a new political party assumes power at the Centre.
4. If President's rule is imposed only on political considerations the Court can even restore the assembly.
5. Imposition of President's rule and dissolution of State assembly cannot be done together.
6. The State assembly can be dissolved only after Parliament approves central rule.
7. The Supreme Court or a High Court can compel the Union Government to disclose material on whose basis President's rule is imposed in a State.
8. 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.

13. **In Rameshwar Prasad Vs union of India**\(^71\) - In this case a five Judge bench of the Supreme Court emphasized that the

\(^71\) (2006) 2 SCC 1
Governor while recommending dissolution of an assembly has to annex with his report to the union Government the relevant material substantiating his decision, in the absence of the relevant matter of much less due verification the report of the Governor has to be treated as the personal opinion of the Governor. In the view of stinging remarks by the Court on the role of the Governor a directive has been laid down for the Central Government that it should recommend persons who have not taken too great a part in politics generally and particularly in the recent past for the Governorship.

14. **In Arjun Munda Vs Governor of Jharkhand**\(^2\) - In this case the Supreme Court made it clear that the discretionary power under the Article 164 (1) of the Governor is subject to the judicial review and the exercise of such power can Constitutionally be insured by conducting the floor fest to determine which party/ or political alliance commanded majority in the legislature.

15. **In Jagdambika pal Vs union of India**\(^3\) - In this case a Special Leave petition filed in the Supreme Court against the Judgement of the Allahabad High Court ordering restoration of the Government of Kalyan Singh the Court held that the Governor acted with malafide intentions – and also directed the Governor that if he had any doubt about the majority of the Government he should ask the Chief Minister to prove his majority on the floor of the House and not to act in haste without giving the Chief Minister a chance to prove his majority and order composite floor fest.

\(^2\) (2005) 3 SCC - 399
\(^3\) (1999) 9 SCC - 95
16. **In State of Rajasthan Vs union of India**\(^ {74}\) - In 1977 Article 356 was introduced in 9 States the State assemblies were dissolved and the President’s rule was imposed on the ground that assemblies no longer represented the wishes of the electorate. The States filed a petition in the Supreme Court, by a unanimous Judgement the Court rejected the petition and upheld the centre’s action as constitutionally valid.

The court held that the President does not act only on the report of the Governor but otherwise. The satisfaction of the President cannot be questioned, however the court did not give a blank cheque to the centre and the Governors to dissolve the State assemblies. The Court observed that if the satisfaction and the recommendation are found to be malafide and based on extraneous and irrelevant grounds the court will have the jurisdiction to examine it.

17. **In Sunderlal Patwa Vs union of India**\(^ {75}\) - In this case after the demolition of the Babri Masjid at Ayodhya on 6-12-92 the President’s rule was imposed in Uttar Pradesh, Madhya Pradesh, Himachal Pradesh and Rajasthan, in the BJP ruled States the Governments were dismissed and the assemblies were dissolved. The Governors of the respective States had submitted more or less identical reports within 24 hours. The imposition of the President’s rule was challenged in the respective High Courts. In an historic Judgement the Madhya Pradesh High Court quashed the Presidential order imposing the Presidents rule in the State the court said that the order was invalid and unconstitutional as being beyond the scope of Article 356 the court said that the Governor in his

\( \text{\textsuperscript{74} AIR 1977 SCC 1361} \)

\( \text{\textsuperscript{75} AIR 1993 MP 214} \)
report recommending the dismissal of the ministry and dissolution of the assembly failed to substantiate how the Constitutional machinery had broken down.

The Governors report to the centre had not provided any other material to justify the case of Constitutional breakdown in the State. The court held therefore, that the Presidential proclamation can be challenged in the court of law and open to judicial review on the ground of irrationality, illegality, impropriety or malafide or in short, on the ground of abuse of the power.

18. **In B.P. Singhal Vs Union of India** - In an Public Interest litigation filed in 2004 by senior BJP leader B.P. Singhal challenging the removal of the Governors of States of Uttar Pradesh., Gujarat, Haryana, and Orissa by the Central Government the Supreme Court delivered a path breaking unanimous verdict. A five Judge Constitution bench Headed by Justice K.G. Balakrishnan held that the power to remove the Governors by the centre is not arbitrary and unlimited and they cannot be removed with the change of power at the centre or for refusing to act as its agents and being out of sync with its ideology or lost of the confidence in him by the Union Government. It follows therefore the change in the Government at the centre is not a ground for the removal of the Governors. The Apex court said that while some of the Governors may come from political backgrounds, once they are appointed as the Governors they owe their allegiance and loyalty to the Constitution of India and not to any political party and are required to protect and defend the Constitution.

The Court said although the centre need not assign any reason for removing the Constitutional Head of the State but such actions can
be judicially revealed and the Government has to explain before it. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure if the Government does not disclose any reason or if the reasons disclosed are found irrelevant arbitrary and malafide the court will interfere.

The challenging reasons would depend on the facts and circumstances of each case. The Court also said that the Governor is not the agent or employee of the Union Government and cannot be politically active.

19. **Sardari Lal Vs Union of India**\(^{77}\) In this case it was held that where the President or the Governor, if satisfied, make an order under Article 311(2) proviso (c) the satisfaction of the President or Governor is his personal satisfaction.

20. **Narayan Dutt Vs State of Punjab**\(^{78}\) - In this case the Court held that the Governor's power of granting pardon is an exercise of executive function and independent of the power of the Court to pronounce on the innocence or guilt of the accused. The powers of a Court of law in a criminal trial and subsequent right to appeal upto the Supreme Court and that of the President/Governor operate in totally different arenas and the nature of these two powers are totally different form each other. The Governor has exceeded the permissible Constitutional limits in exercise of powers.

---

\(^{77}\) 1971 SCC 41

\(^{78}\) AIR 2011 SC 1216
21. **H.S. Verma Vs T.N. Singh**\(^79\), In this case the appellant challenged the validity of appointment of Mr. T.N. Singh, as Chief Minister of Uttar Pradesh, on the ground that he was not a member of either House of the legislature at the time of his appointment. The Supreme Court held that the appointment could not be challenged on the above ground.

22. **In State of Gujarat Vs Mr. Justice R.A. Mehta**\(^80\), In this case the Supreme Court held that the Governor as the Head of the State has to exercise his formal Constitutional powers only upon the aid and advice of the Council of ministers. He is bound to act under the rules of Business formed under Article 166 (3) of the Constitution. The provisions of Articles 200, 239 (2), 371-A (1) (b), 371-A (1) (a), 371-A (2) (b) and 371-A (2) (0, 6th Schedule Para 9 (2) and Para 18 (3) until omitted w.e.f. January 21, 1972 have expressly spelt discretionary powers of the Governor. Under the provisions of Articles 161, 164, 165, 233, 315, 174, 175, 176, 2W, 203 (3), 202, 213, the functions of Governor belong to the category where the Governor is found to act on the aid and advice of Council of ministers. Articles 324 (1), 324 (6), 333 and 348 (2) are illustrative of functions of the Governor. Save in well known exceptional situations the Governor shall act with the advice of the Council of ministers without being exhaustive or dogmatic these situations relate to the choice of Chief Minister, dismissal of the Government and dissolution of the House. In case of grant of sanction required to prosecute a public functionary, the Governor is usually required to act in accordance with the aid and advice of Council of ministers. There may arise an exception while considering the sanction for the

\(^79\) AIR 1971 SCC 616
\(^80\) AIR 2013 SC 693
prosecution of the Chief Minister or a minister, as a matter of propriety, the Governor may have to act upon his own discretion. Similar situations may arise where the Council of Minister disables or disentitles itself from providing such aid and advice because the facts situation indicate bias on the part of the Chief Minister or Council of ministers. Article 163 (2) permits the Governor to act without ministerial advice in certain other situations depending upon the circumstances therein even though they may not be specifically mentioned in the Constitution as discretionary functions. Article 163 (2), the Governor is himself a final authority to decide upon the issue whether he has to act in his discretion. There may even be circumstances where ministerial advice may not be available at all. The Governor is also not required to act on the advice of the Council of ministers where some other body has been referred for the purpose of consultation e.g. Article 192 (2) i.e., the decision on the question related to the disqualification of members of the State legislature. The Governor is bound to act on the aid and advice of the Council of ministers unless he acts as a “persona designate” i.e., “co-nominee” under a particular statute, or acts in his own discretion under the exceptions carved out by the Constitution itself.

The question before the Supreme Court was the appointment of Lokayukta in Gujarat, in which the Governor, as per relevant statute, gave primacy of opinion to the Chief Justice of Gujarat High Court. The writ filed by the State Government challenging the appointment of Lokayukta was dismissed by the High Court, against it, the appeal was dismissed by the Supreme Court. The Supreme Court interpreting Articles 154 and 361 of the Constitution held- The Governor enjoys complete immunity under
Article 361 (I) and his actions cannot be challenged because he acts only on the aid and advice of the Council of ministers. If this was not the case, the democracy itself would be in peril. The Governor is not answerable to either house of State or to the Parliament of even to the Council of Ministers. His acts cannot be subjected to judicial review. In such a situation, unless he acts upon the aid and advice of the Council of ministers, he will become all powerful and this is an anti thesis to the concept of democracy. His actions, including those which can be challenged on the ground of mala fide, are required to be defended by the Union/State. He is immune from only liability but it is open to him to file an affidavit if anyone seeks review of his opinion despite the fact that there is a bar against any action of the Court as regards issuing notice to, or for the purpose of impleading, at the instance of a party, the President or the Governor in a case making him answerable.

23. **K.K. Aboo Vs Union of India**\(^{81}\)– In this case the first case challenged in the Kerala High Court on the point of proclamation issued by the President under Article 356 the Court refused to get into the Constitutionality of the proclamation and held that the remedy lay with the parliament to withhold approval in its Supreme wisdom. The Court observed that the President while acting under Article 356 exercised the power in his own right and the only sanction against him was the impeachment it requires no exposition by the court.

24. **Rao Birinder Singh Vs Union of India**\(^{82}\)– In this case the Court held that the Constitutional power of the President under Article

---

\(^{81}\) AIR 1965 Ker 229
\(^{82}\) AIR 1968 P & H 441

236
356 is independent of the executive power of the Union in exercising this power he acts in a Constitutional capacity.

25. **In Bijayananda Patnaik Vs President of India**\(^{83}\) - In this case the Constitutionality and legality of the Presidential proclamation under Article 356 was examined by the Orissa High Court. The Court with an instructive attitude criticized the conduct of the Governor for recommending the Presidents rule in the State without calling the leader of the opposition to form the Government on fall of the Ministry. The Court suggested that when the Chief Minister tendered resignation of his Council of ministers the Governor should automatically ask the leader of the opposition to form the Government and to prove the majority on the floor of the House. The court further Stated it is now well settled that the conventions prevalent in England at the time of framing of the Constitution are to be honored by different functionaries in working out of the Constitution though they are not put into.

26. **A Sreeramula, in re**\(^{84}\) In this case the scope of Article 356 is considered in greater detail and depth by the Andhra Pradesh High Court. The Court held that the Presidential proclamation issued under Article 356 imposing the President’s rule in a State is basically a political issue and beyond the reach of the Courts. It is the people of the country that should resist despotic tendencies on the part of the President or the majority party in the parliament. The only limitation on the exercise of the power under Article 356 is the political limitation. It is the Head of the State that is entrusted with the discharge of this duty and the parliament ultimately to test the

---

\(^{83}\) AIR 1974 Orissa 52

\(^{84}\) AIR 1974 A.P. 106

237
Constitutionality and legality of the proclamation and to approve or disapprove it.

27. **Wadhwa Vs State of Bihar**\(^{85}\) - In this case a writ petition moved before the Supreme Court under Article 32 by Dr. D.C. Wadhwa deals with the practice of large scale re-promulgation of the same ordinances repeatedly in a routine manner by the Government of Bihar, the Supreme Court held that the power to promulgate an ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends. A Constitutional authority cannot do indirectly what it is not permitted to do directly this would be a fraud on the Constitutional provisions. The Governor has no power to repromulgate the same ordinance successively without bringing it before the legislature and if the Government wishes to continue its provisions a bill should be brought before the assembly for enacting these provisions into an act.

28. **In M Karuna Nidhi Vs Union of India**\(^{86}\) In this case the Supreme Court held that a Minister is appointed and dismissed by the Governor and is therefore subordinate to him whatever be the nature and status of his Constitutional functions.

29. **B. R. Kapoor Vs State of Tamil Nadu & others**\(^{87}\) – In a landmark Judgement a five Judge Constitution Bench comprising S.P. Bharucha, B. Pattanaik, Y.K. Sabharwal, Ruma Pal and Brijesh Kumar, JJ, has held that a person convicted of criminal offence and sentenced to more than two years of imprisonment cannot be appointed as Chief Minister. In 2001 legislative assembly elections

---

\(^{85}\) 1987 SCC 378  
\(^{86}\) AIR 1979 SC 899  
\(^{87}\) (2001) 7 SCC -231
Aiadmk party Headed by Jayalalitha won the election with thumping majority, prior to election, a number of charges were levelled against her under the Prevention of Corruption Act for committing certain offences during her previous tenure as a Chief Minister. She was convicted and sentenced to imprisonment for more than 2 years; as a result of this she was disqualified to contest election by the election commission, but her party elected her its leader. The Governor Smt. Fatima Bibi appointed her Chief Minister for the period of six months under Article 164(4) of Constitution delivering the majority Judgement of the Supreme Court the Chief Justice S.P. Bharucha held that the appointment of Jayalitha as Chief Minister of Tamil Nadu was not made in accordance with the provisions of the Constitution and therefore, was unconstitutional and invalid. The Court held that a person who had been convicted of criminal offence and sentenced to more than two years can not be appointed as a Chief Minister. A non-member can be appointed as a Chief Minister only when he/she possesses the qualifications prescribed under Article 173 and has not been disqualified under Article 191 of the Constitution. The Court however held that the privilege of the Governor to appoint any person as a Chief Minister under Article 164 (4) is justified.

30. **Surya Narayan Vs Union of India**\(^8\) In this case the Court held that it lies within the power of the President to terminate in his discretion the term of the office of the Governor at his pleasure. The Presidential pleasure is unjustifiable. It is not regulated or controlled by the procedure laid down in Article 311. The Governor has no security of tenure and no fixed term of office. He may be

---

\(^8\) AIR 1982 Raj. 1
removed by an expression of Presidential displeasure.

31. **Aziz Quereshi Vs Union of India**\(^9^9\) In a recent development the Governor of Uttarchanal filed a petition in the Supreme Court regarding his transfer to Mizoram, that whether the Governor can be transferred from one State to another on the basis of a telephone call by an officer of home secretory level of the Central Government without any valid reason. The Supreme Court issued a notice to the Central Government to answer in the matter.

32. **Ramnaresh Yadav Vs State of Madhya Pradesh and others**\(^9^0\) The Court held in a petition that Governor of Madhya Pradesh is not subject to FIR and cannot be arrested on the charge of corruption concerning the vypam scandal. The privilages in favor of him protect him against it as enshrined in the constitution.

33. **Arunachal Pradesh Congress Committee and Others Vs Union of India and Others**\(^9^1\) In a Controversy regarding President’s rule in Arunachal Pradesh the Apex Court has raised a Question on the role of the Governor. The Court said that Governor has to function according to the Constitution, how the Governor sent a message to the speaker to call the session of the assembly earlier, also the Governor has nothing to do whether who will get the majority. The Governor can not take any step on basis of doubt. He cannot excercise the power of the Chief Minister and Council of ministers. He must excercise the power to preserve democracy.

---

\(^9^9\) Writ Petition 2014
\(^9^0\) Writ Petiton No 3346/2015 High Court of Madhya Pradesh
\(^9^1\) Writ Petition 2016