

THE STATE

THE EXECUTIVE

The State executive consists of the Governor, the State Council of Ministers and the Advocate General of the State.

THE GOVERNOR

Article 153 provides that, there shall be a Governor for each State. One person can be appointed as the Governor for two or more States.

Article 154 vests the executive power of the State in the Governor. Article 154(1) holds that 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 this Constitution.

Appointment of the Governor

According to **Article 155**, the Governor of a State shall be appointed by the President by warrant under his hand and seal.

Explaining in the Constituent Assembly why a Governor should be nominated by the President and not elected, Jawaharlal Nehru observed that "an elected Governor would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre."

Qualifications (Article 157)

Article 157 holds that No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

According to **Article 158 (3A)**, where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

Conditions of Governor's Office

Article 158 lays down the following conditions for the office of the Governor:

- The Governor must not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- The Governor must not hold any other office of profit.
- The Governor is entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law.
- Where the same person is appointed as

FOCUS ON

Why a nominated and not elected Governor?

The Constituent Assembly discussed at length the various provisions relating to the Governor. The main issue was that whether there should be an elected Governor. It was recognized that the co-existence of an elected Governor and a Chief Minister responsible to the Legislature might lead to friction and consequent weakness in administration. The concept of an elected Governor was therefore given up in favour of a nominated Governor. Such a Governor will not be able to perform the delicate task of harmonizing his responsibility to the Union with his duties as constitutional head of the State. His role as a sentinel of the Constitutional and a vital link between the Union and the State would thus get seriously undermined.



- Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- e. The emoluments and allowances of the Governor shall not be diminished during his term of office.

Term of Office (Article 156)

Article 156(1) provides that the Governor holds office during the pleasure of the President. The Governor may, by writing under his hand addressed to the President, resign his office.

Subject to the above provisions, the Governor shall hold office for a term of five years from the date on which he enters upon his office. However, he shall continue to hold office, even on the expiry of his term, until his successor enters upon his office.

Article 160 provides that the President shall make such provisions as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for.

Privileges of the Governor (Article 361)

Article 361 provides for the following privileges for the Governor-

- The Governor of a State, is not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:
- No criminal proceedings whatsoever shall be instituted or continued against the Governor of a State, in any court during his term of office.
- No process for the arrest or imprisonment of the Governor of a State, shall issue from any court during his term of office.
- No civil proceedings in which relief is claimed against the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as Governor of

such State, until the expiration of two months next after notice in writing has been delivered to the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Powers and Functions of the Governor

Executive powers

Article 154(1) vests the executive power of the State with the Governor. He may exercise this power either directly or through officers subordinate to him

Article 162 provides that the executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws.

Article 166(1) requires that all executive action of the Government of the State is expressed to be taken in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State.

In the exercise of his executive power, the Governor appoints the Chief Minister and the other Ministers are appointed by him on the recommendation of the Chief Minister. All Ministers hold office during the pleasure of the Governor. The Governor also makes certain appointments in the exercise of his executive powers.

Legislative powers

Article 168(1) declares the Governor to be a component part of the Legislature of the State. According to Article 333, the Governor can nominate one person from the Anglo-Indian Community to the Legislative Assembly of the State, if in his opinion, the community has not been well represented in the Assembly. In case the Legislature of the State has Legislative Council, the Governor is empowered to nominate not more than One-Sixth of the total members of the Council.

The Governor gives assent to a bill after it is passed by the State Legislature. Under **Article 200**, he can



reserve a bill passed by the state Legislature for the reconsideration of the President

The Governor may from time to time—(a) prorogue the House or either House; (b) dissolve the Legislative Assembly.

The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

No Money Bill or Financial Bill can be introduced in the legislative Assembly without the prior recommendations of the Governor. It is the Governor, who causes to be laid before the House or Houses of the Legislature, the Annual Financial Statement.

Article 213 confers on the Governor, power to promulgate Ordinances during the recess of Legislature. An Ordinance promulgated under this Article shall have the same force and effect as an Act of the State Legislature.

Judicial Powers

Article 161 deals with the power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. According to Article 161, the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The expressions "pardon", "respite", "reprieve", "remission", "remittance" or "commutation", carry the same meanings as under Article 72.

Discretionary Powers

However, in certain respects, the position of the Governor of a State differs from that of the

President. While the term "discretion" is not used anywhere in the provisions relating to the President, the Constitution expressly confers powers on the Governor to be exercised in his discretion.

Article 163(1) provides that the Governor is to act in accordance with the advice of the Council of Ministers "except in so far as he is by or under this Constitution, required to exercise his functions or any of them in his discretion."

Article 163(2) clarifies that if any question arises whether any matter is or is not a matter of discretion of the Governor, the decision of the Governor is final and the validity of anything done by the Governor shall not be called in question on the ground.

Article 200 empowers the Governor to reserve bills, having been passed by the house or the houses of the state legislature, as the case may be, for the consideration of the President. The Governor exercises his discretion as to whether he should reserve any or all bills, passed by the Houses of the state legislature, for the consideration of the president.

It thus follows that the constitution vests the governor with discretionary powers, both in respective of the executive as well as legislative activities of the state.

This departure from the strict principle of parliamentary system was justified in the Constituent Assembly because the governor is conferred with dual capacity. He is not merely the head of the State government but is also an agent of the central government in the state. He is said to serve as the eyes and ears of the Centre and so far to act in his discretion.

Article 167, like Article 78, enables the Governor to keep himself informed of the decisions relating to the administration of the affairs of the State. Article 167 empowers him to ask the Chief Minister to submit for Council's consideration, any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers. It is to strengthen the principle of collective responsibility, which is the very basis of a representative democracy. Article 163 unlike Article 74 says that the Governor may exercise his discretion in matters in which he is by or under the Constitution, required to do so.



The Constituent Assembly justified these provisions and accepted that States were to work in subordination to the Central Government. The Governors will reserve certain things in order to give the President opportunity to see that the States obey the Centre and the State.

Each Governor sends to the President every fortnight a report on important developments that have taken place in the administration of the State. Under article 356, a Governor can invite the President to take over the administration of the State in case of failure of Constitutional machinery in the State.

SPECIFIC FUNCTIONS ENTRUSTED TO GOVERNORS OF CERTAIN STATES

Specific functions have been entrusted to Governors of certain States to be exercised by them in their discretion. These are listed below:

1. Governor of Maharashtra and Gujarat

The President may by order made with respect to the State of Maharashtra or Gujarat, provide for any special responsibility of the Governor for—

- (a) the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;
- (b) The equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and
- (c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole. [Article 371(2)]

2. Governor of Nagaland

- (a) Deciding whether a matter does or does not relate to the special responsibility for law and order in the State entrusted to him under

Article 371A(1) (b) [First Proviso to Article 371A(1)(b)].

- (b) Framing of rules for a regional council for the Tuensang district [Article 371A(a)(d)].
- (c) Arranging for an equitable allocation of any money, provided by the Government of India to the Government of Nagaland to meet the requirements of the State as a whole, between the Tuensang district and the rest of the State [Article 371A(2) (b)].
- (d) Deciding all matters relating to Tuensang District (Article 371A (2)(f)].

3. Governor of Sikkim

Discharge of the special responsibility entrusted to him for peace and for equitable arrangements for ensuring the social and economic advancement of different sections of the population of Sikkim. This power is subject to such directions as the President may issue. [Article 371F(g)].

4 Governor of Arunachal Pradesh

Deciding whether a matter does or does not relate to the special responsibility for law and order in the State entrusted to him under Article 371 H(a) [First proviso to Article 371 H(a)].

5. Governors of Assam, Meghalaya, Tripura and Mizoram.

Any dispute, in regard to the share of royalties payable to a District Council in Assam or Meghalaya or Tripura or Mizoram by the State Government, shall be referred to the Governor for determining such share, in his discretion [para 9(2) of the Sixth Schedule].

ROLE OF THE GOVERNOR

From time to time, the role of Governor has made Indian citizens feel that they are living in a very fragile democratic realm which can be shaken effortlessly by the Governor. It is a well known fact that the Governors have played a dictatorial role many a time and transcended all the democratic limits. Different political parties have misused the role of the Governor at different times for their partisan interests, thus proving that Indian society has yet to achieve the state of political modernization and political culture.



The important facets of the Governor's role arising out of the Constitutional provisions are:-

- (a) As the constitutional head of the State operating normally under a system of Parliamentary democracy;
- (b) As a vital link between the Union Government and the State Government; and
- (c) As an agent of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)].

The institution of the Governor was misused to a great extent especially after 1967 to gain political mileage because of two reasons: (a) there was one-party dominance at the Centre, and (b) the lack of political power and awareness on the part of the Opposition.

The contemporary period has witnessed a shift in the political party system. It has moved from one-party dominance to multiparty system, thanks to the growth of regional parties. The trend of the multiparty system, which we have been noticing today in Indian society, is making political institutions more and more democratized. This process of democratization is also making its impact upon the role of the Governor. The multiparty system has replaced one-party dominance; as a result the party, which is in the power, cannot afford to use the Governor as its instrument. If any party tries to misuse the institution of the Governor, the Opposition parties put pressure upon the government to reverse the undemocratic and dictatorial decision. Let us examine the role of the Governor from the following perspective.

Historical Background

Before the fourth general elections in 1967, the Congress was having a clear majority at the Centre and in most of the States. Ministries in the States enjoyed great stability because the governments, namely, at the Centre and in the States, were run by the same party. Hence the Governor's role was not a matter of public controversy and least attention was paid to it. Sarojini Naidu, one-time Governor of Uttar Pradesh, said that she considered herself "a bird in a golden cage". B.

Pattabhi Sitaramayya, a former Governor of Madhya Pradesh, also observed that he had no public function to perform except making the fortnightly report to the President.

The 1967 general elections witnessed a drastic change in the political state of affairs. Although Congress retained power at the Centre, it lost its base in eight States [that is, West Bengal, Bihar, Uttar Pradesh, Orissa, Kerala, Punjab, Haryana and Madhya Pradesh] where non-Congress and coalition governments came to power. The reason for the unity among allies of the coalition Ministries was their bitter opposition to the Congress regime and a desire to achieve power but they could not maintain their unity for a long time. The period between 1967 and 1972 saw the downfall of more than two dozen Ministries in different States giving birth to political defections and opportunistic tendencies, and as a result, the Governors started facing complexities, pressures and strain in exercising their powers. The office of the Governor suddenly became significant and controversial and the role of the Governor was questioned for the first time. As a result, many political debates took place to restructure the constitutional framework concerning the office and role of the Governor in a federal set-up. When the Chief Ministers belonged to the Opposition, the Governor was considered as the Centre's agent and when there was a coalition government, the Chief Minister's position was rendered ineffectual. As a result the Governor started playing a stubborn role, which gave birth to debatable issues concerning the constitutional powers of the Governor. So, the question arises: from where does the Governor derive so much power? The answer is the Act of 1935. The Government of India Act., 1935 provided the powers to provinces by giving them an autonomous status but the position of the Governor remained supreme as the executive authority was vested in him. Under the Act, the Governor had to exercise his executive authority in the name of the Crown with the aid and advice of the Ministers of the Council except in the case of discretionary powers.

In some cases the Governor had discretionary powers where he did not need to consult his Ministers, whereas while exercising powers in his individual judgment he could consult his



Ministers but was not bound by their advice. In normal times the Governor was to act on the advice of his Council of Ministers. Thus under the Act of 1935 the Governor had to play a dual role, that is, he was the constitutional head of an autonomous province on the one hand, and an agent of the Central Government on the other. This came out sharply particularly when he had to act either at his discretion or according to his individual judgment.

The Governor of a province was also given a wide range of powers in the area of legislation. He could summon, prorogue and dissolve the provincial legislature at his discretion. He had the power to address and send messages to legislatures if it was bicameral. No Bill passed by the Legislative council became the law of the province without the consent of the Governor. He could give his assent to a Bill, withhold it, or return it for reconsideration or reserve it for the sanction of the Governor General. He could reject a discussion on any issue if, in his view, it would affect his special responsibilities.

In addition to this, the Governor had the power to promulgate an ordinance in his name. This ordinance was to be approved by the legislature and it had the same force and effect as an Act of the provincial legislature assented to by the Governor. He also had the power to issue a proclamation at his discretion if he was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Act of 1935.

Under the Act of 1935 the position of the Governor remained supreme as the Act made him the central and directing authority. Discretionary powers and special responsibilities provided ample scope for the Governor to play a supreme role in the provincial administration and thus the Governor stopped being a constitutional head; instead he became the real ruler of the provincial administration.

Spirit of the Framers of the Constitution

There were many debates about the election of the Governor. Some people wanted popularly elected Governors but some were dead against this proposal. Ultimately the drafting committee of the Constitution decided that the Governor would be

appointed by the President. As a result, different parties manipulated the appointment of the Governor on the one hand, and on the other, Governors started following the command from the Central Government in order to make the Ministers happy at the Centre in anticipation of gaining higher political positions.

In addition to appointment, the makers of the Constitution also decided to keep the discretionary powers intact despite many objections. Though the framers of the Constitution speculated that the Governor would use his or her rational capacity while using the discretionary powers, instead of performing the constitutional obligations the Governors started playing a dictatorial role to keep their political bosses at the Centre.

Thus, we see that the framers of the Constitution endowed the Governor with certain powers with the hope that the Governor would use these powers to keep India united, but the Governors and Central governments misused the institution of the Governor to fulfill their political interests.

Totalitarianism and Democratic Battle

August 15, 1947 marked a watershed in the history of India because the country got its independence. But this independence was not free from difficulties. The role of the Governor was one of them. There was a long-drawn-debate in the Constituent Assembly regarding the role of the Governor. Ultimately, the Constituent Assembly decided to give much power to the Governor to maintain the unity of India. Perhaps, the framers of the Indian Constitution could not anticipate the misuse of the role of the Governor. Although there was a period of stability till 1967, it was an extravaganza in the Indian political state of affairs. As far as the role of Governor is concerned, the year of 1967 was a landmark in the history of the Indian political system.

The dominance of one party, that is to say, the dominance of Congress was evanescing. Opposition parties in different States came on the political map of India which led to various disputes and controversies between the Centre and the States regarding the appointment of the Governor by the Central Government, the powers of the Governor to appoint and dismiss the Chief



Ministers, and the misuse of Article 356. As a result, the Central Government made the Governor a string-puppet to fulfil their partisan interest by getting unwanted Chief Ministers dismissed at their will. That is how the power of a Governor to appoint and dismiss any Chief Minister was abused by the government.

The basic problem lies in Article 164 (1) of the Indian Constitution, which reads as follows:

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

Actually, the expression "holding an office during the pleasure of the Governor" is vague. Dr. Ambedkar was of the opinion that as long as the Ministry enjoyed the confidence of the House the head of the State would not be able to dismiss his Council of Ministers. But, as we have seen in the post-independence era, under the doctrine of "pleasure" the Governor can dismiss a Ministry even without giving any reason. Initially, a Ministry so dismissed had no remedy in law because the courts paid more attention to the language of the Constitution rather than its spirit and the intention of framers.

The appointment of Dr P.C. Ghosh as the West Bengal Chief Minister in 1967 was challenged in the High Court of Calcutta on two grounds: (i) the Governor was under the obligation to act under the advice of his Ministers under Article 163 (1) and the Ministry had been dismissed without such advice and therefore, the appointment of a fresh Ministry was unlawful; and (ii) the Governor could not dismiss the Ministry until it had been defeated on the floor of the House, for under Article 164, the Ministry was collectively responsible to the Assembly.

Justice Mitra rejected both of the bases and held that Article 164 (1) did not impose any restriction or condition upon the power of the Governor to appoint a Chief Minister. Further, the Ministry held the office at the Governor's pleasure under Article 164 (1). No limits were placed on the Governor exercising his pleasure. Moreover, under Article 163 (2) the Governor was made the sole judge whether any power was required by the Constitution to be exercised in his discretion.

Besides, the Constitution had not conferred any power on the Legislative Assembly of the State to dismiss or remove from office the Council of Ministers. Therefore, the Governor had absolute, exclusive and unquestionable discretionary powers to dismiss and the courts were precluded from deciding that question.

It is not the Congress which misused the institution of the Governor. Whenever the Opposition parties came to the power, they never missed the opportunity to hit back at the Congress. The Janata Party came to power in 1977 and started playing political gimmicks to topple the Opposition governments in different States. As a result the Janata Government dismissed the Congress governments in nine States which led to a nationwide controversy. In 1980 Mrs Indira Gandhi came back to power and showed a vindictive attitude by imposing President's Rule in nine States governed by the Janata Party. This showed that the Ministry can be dismissed not only under Article 164(1) but also under Article 356 by imposing President's Rule.

In addition to this, in 1984, there were two more cases of dismissal of Chief Ministers. Ram Lal, the Governor of Andhra Pradesh, flouted constitutional norms by dismissing N.T. Rama Rao, who came to power with a landslide victory and was ready to prove his majority in the House within 48 hours, but he was not given a chance to do so. Instead Bhaskar Rao, who did not have the majority was invited to form the government. Ultimately, Rama Rao had to prove the majority in front of the President and was restored to his position.

The same unfortunate chapter was written by Jagmohan, Governor of J & K, who dismissed the then Chief Minister of J & K, Farooq Abdullah, who had substantial majority. These two examples show very clearly how the Central Government can act in such cases and to what extent it can use the Governor as an instrument to fulfil its political interest.

In the final analysis we find that, although the framers of Indian Constitution made the Governor very powerful by providing discretionary powers to him to maintain the unity and integrity of the nation, in post-independence era Governors have been used as an instrument by the Central Government to fulfil narrow political interests.



The founders of the Indian Constitution added Article 356 to the Constitution to make the Centre exceedingly powerful so that its will could be imposed upon the ill will of any regional leader, but this too, has been used to fulfil political purposes, which has given birth to many disputes between the Centre and the States. As a result, a number of efforts were made to seek a solution to the problem, the Sarkaria Commission being a case in point.

Sarkaria Commission's Recommendations on the Office of the Governor

The Sarkaria Commission focused upon the role of the Governor and gave the following recommendations regarding the Governor:

□ The appointment of the Governor

1. He should be a man of some eminence in some field.
2. He should not belong to the State where he has to serve as the Governor.
3. He should be a detached figure with little record of participation in the local politics of the State.
4. He should be a person who has not taken too great a part in politics generally, particularly in the recent past.
5. Preference should continue to be given to the minority groups as hitherto.
6. It is desirable that a politician from the ruling party at the Centre should not be made the Governor of a State run by another party or a coalition of parties.
7. Article 155 of the Constitution should be suitably amended to ensure effective consultation with the Chief Minister of a State while appointing a Governor in that State.
8. The Vice-President of India and the Speaker of the Lok Sabha should also be consulted while making this appointment though this consultation should be 'confidential', 'informal' and not a matter of constitutional obligations.

The above-mentioned recommendations show that the Sarkaria Commission has made many suggestions regarding the appointment of the Governor but it has failed to show how these recommendations can be implemented. The

Sarkaria Commission seems to be interested in giving much power to the Centre; therefore, the matter regarding the appointment of the Governor still lies in the hands of Central Government.

□ SARKARIA COMMISSION ON DISCRETIONARY POWERS OF THE GOVERNOR

Article 163 (1) reads as follows:

There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

Article 163 (2) 1 as:

If any question arises whether any matter is or is not a matter as respect which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Therefore we see that this Article provides the Governor with wide-ranging powers. Since the Governor decides everything, sometime he plays a dictatorial role to fulfil partisan interests. As a result, some of the States demanded the deletion of the discretionary powers of the Governor but the Commission rejected it. Instead, it suggested that Article 163 should be left untouched. Hence, it proposed the continuance of this power but it also said that it should be used only as a last resort.

It made clear that the Governor can still misuse the discretionary powers for partisan interests and; Sarkaria Commission at least succeeded in putting a check upon them.

It points out that Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify the breakdown of the constitutional machinery.

In conclusion, we can say that Sarkaria Commission has taken many initiatives to stabilise Center-State relations regarding the role of the



Governor. In the final analysis, as far as the role of the Governor is concerned, the Sarkaria Commission did not suggest much change.

Multiparty System and the Institution of the Governor

In the recent past Indian society has seen a sea-change in the nature of the party system. It has shifted from one-party dominance to a multiparty system. The year 1989 was a landmark in the Indian political system because the people of India witnessed for the first time the introduction of a multi-party system. The Indian citizens kept this trend alive in 1996 when the United Front assumed power at the Centre. Thereafter the BJP formed the government at the Centre with the help of its regional allies in 1998 and in 1999 thereby giving the Indian federal model a new shape. It manifested a substantive degree of cooperation between the Central Government and regional parties. The 2004 elections have also compelled leaders of different parties to form a coalition government at the Centre. The political environment which India has developed in the last 17 years proves the point that now India is probably taking steps towards cooperative federalism. Earlier there were conflicts between the party at the Centre and regional parties in the States. But it was felt after 1996 that Indian politics was shifting towards consensus politics. This shift has also affected the position of the Governor. The role of the Governor has been one of the important reasons of conflict between different political parties. With the change in the nature of the political party system, there are changes in the institution of the Governor. Earlier there was one-party dominance; as a result, the Congress was in a position of making political use of the institution of the Governor. In the post-1967 period the Congress had to face a difficult time because it lost power in eight States and immediately the Congress started using the Governor for its political interests. But democracy did not succumb to the tendencies of totalitarianism. The Opposition parties put pressure upon the Congress not to use the Governors for political benefit. Besides, the Opposition parties also hit back at the Congress in 1977 by suspending Congress Ministries in eight States. After 1980 the politics of pressure

increased as we have seen in cases of Andhra Pradesh and J & K.

The more political parties we have, the more political pressure upon the party in power to reverse its undemocratic decisions. We also noticed tactics of pressure in Bihar and Jharkhand in the beginning of 2006. Pressure politics forces politicians to reach the politics of consensus.

We ultimately reach the conclusion that while initially there was the politics of confrontation between the Congress and Opposition parties, after 1980 the politics of pressure came into existence. Now we see that pressure politics and tendency of consensus go hand-in-hand and this has become possible because of the existence of many political parties which can put considerable amount of pressure to get undemocratic decisions reversed.

The multiparty system in the recent past has helped evolve the politics of consensus regarding the role of the Governor and this system will put a check upon undesirable misuse of the institution of the Governor. Absence of one-party dominance will lead to more democratic values concerning the role of the Governor and inspire the governments in power to make the Governor the protector of the Constitution and the Governors will work in the same way as the Constitution-makers wanted.

COUNCIL OF MINISTERS

Article 163 provides for a Council of Ministers to aid and advise the Governor. According to **Article 163(1)** there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

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



The Chief Minister is appointed by the Governor. The other Ministers are appointed by the Governor on the advice of the Chief Minister. It is sole prerogative of the Chief Minister to form Ministry by choosing such Ministers as he may deem fit.

OTHER PROVISIONS AS TO MINISTERS

Article 164(1) holds that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Article 164 (1A) states that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen percent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

According to **Article 164 (2)** The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

According to **Article 164 (4)** A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Supreme Court has consistently taken the view on the interpretation of Article 163, Article 164(1) and 164(4) that a person who is not a member of the Legislature of the State, may be appointed a Minister for a short period i.e., Six consecutive months, and that he would cease to be a Minister at the expiry of that period if he is not elected to the Legislature during that period.

A five judge bench in B.R. Kapur v/s State of Tamil Nadu Case, 2001, ruled that the Governor's power under Article 164(4) to appoint a non-legislator as Minister or Chief Minister for six months was subject to implied limitations, i.e.,

he must be one who satisfied qualifications for membership of the Legislature contained in the Constitution and must not be disqualified from seeking that membership by reason of any of the provisions therein, on the date of his appointment. So ruled, the apex Court quashed the appointment of Ms. Jayalalitha as the Chief Minister of Tamil Nadu, who had been convicted to three years rigorous imprisonment in a case and so stood disqualified for being a Member of the Legislature.

The Constitution (Ninety-first Amendment) Act, 2003 has inserted Clauses (1A) and (1B) in Article 164. The new Clause (1A) has done away with jumbo-size Ministries. It provides that the size of the Council of Ministers in the State shall not exceed fifteen percent of the Assembly's total strength, but not less than twelve members. The new Clause (1B) provides that a member disqualified under the anti-defection law, shall not be appointed a Minister for the duration of the remaining term of the existing Legislature or until his next fresh election, whichever is earlier.

THE ADVOCATE-GENERAL FOR THE STATE

Article 165 provides for Advocate-General for the State.

According to **Article 165(1)**, the Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

Article 165(2) holds that it shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

Article 165 (3) holds that the Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

The Advocate- general performs the following duties:

1. It is his duty to render advice to the Government of the State upon such legal



- matters as may be referred to him by the Governor.
2. He is to perform such other duties of a legal character as may be assigned to him by the Governor.
 3. He is to discharge the functions conferred on him by or under this Constitution or any other law, for the time being in force.

The Advocate general has the right to speak and otherwise participate in the proceedings of the Houses of the State Legislature or any Committee of the Legislature of which he may be named as member but he does not enjoy the right to vote.

THE STATE LEGISLATURE

The Constitution provides for a Legislature for every State. However, the question as to whether the State Legislature shall be unicameral (having one House only) or bicameral (having two Houses), is left for each State to decide for itself. The Constitution does not provide for bicameral legislature for all states. It provides bicameral legislature for UP, Bihar, Maharashtra, Karnataka and Andhra Pradesh. J & K has bicameral legislature but under its own Constitution.

Legislative Council

The legislative Council, commonly known as Vidhan Parishad, is the upper House of the State Legislature. It is constituted as a permanent House. Article 171(1) provides that the total number of members in the Legislative Council of a State shall not exceed one-third of the total number of members in the Legislative Assembly of that State, but not less than 40 members in any case.

Abolition or Creation of Legislative Councils

Article 169 deals with the creation or abolition of Legislative Council in a State. Article 169 holds that if the state Legislative Assembly passes a resolution by a majority of not less than 2/3rd of the members present and voting and by the majority of total strength of the House, requesting the Parliament to create or abolish the state Legislative council then the Parliament may by law provide for the abolition and creation of the Legislative Council.

The initiative must come from the state Legislative Assembly. It is not binding on the Parliament. The Parliament passes the law by a simple majority. According to **Article 169(2)**, a law enacted by the Parliament under Article 169(1) shall not be deemed to be an amendment of the Constitution for the purpose of Article 368.

Composition of the House

The Council shall be constituted as provided in Clause (3) of Article 171. **Article 171(3)** states that of the total number of members of the Legislative Council of a State—

- (a) as nearly as, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
- (b) as nearly as, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
- (c) as nearly as, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
- (d) as nearly as one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause.

According to **Article 171(5)**, the members to be nominated by the Governor shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely—Literature, science, art, co-operative movement and social service.



The members of a Legislative Council are elected in accordance with the system of proportional representation by means of the single transferable vote.

Legislative Assembly

The Constitution says that the Governor may appoint one member from the Anglo-Indian community if it is not adequately represented in the house. Rests of the members are elected directly by the people from the territorial constituencies.

Article 170 (1) holds that the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

According to **Article 172 (1)**, Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Qualification for Membership of the State Legislature

According to **Article 173**, a person shall be qualified to be chosen to fill a seat in the Legislature of a State if he—

- is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

VACATION OF SEATS

Article 190 deals with Vacation of Seats.

According to **Article 190(1)**, no person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one house or the other.

Clause (2) of Article 190 states that no person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

According to **Article 190(3)**, if a member of a House of the Legislature of a State—

- becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or
- resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Article 190(4) holds that if for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Article 191 contains the provisions regarding **disqualifications for membership**.

Clause (1) of Article 191 holds that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

- if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the



- Legislature of the State by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
 - (c) if he is an undischarged insolvent;
 - (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
 - (e) if he is so disqualified by or under any law made by Parliament.

Explanation: For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

According to **Article 191 (2)**, a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Decision on questions as to disqualifications of members

According to **Article 192(1)**, if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

Article 192 (2) holds that, before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

LEGISLATIVE PROCEDURE

Article 196 consists of the provisions as to introduction and passing of Bills in a State Legislature.

According to Article 196(1) an Ordinary Bill may originate in either House of the Legislature of a State which has a Legislative Council.

Clause (2) of Article 196 holds that an Ordinary Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to

by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

Clause(3) of Article 196 holds that an ordinary Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

Clause(4) of Article 196 holds that an Ordinary Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

Clause (5) of Article 196 holds that an ordinary Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

According to **Article 197 (1)**, If after an Ordinary Bill or a Financial Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

- (a) The Bill is rejected by the Council; or
- (b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) The Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

Article 197 (2) holds that if after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or
- (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or



(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

Article 198 deals with procedure in respect of Money Bills

According to **Article 198(1)**, a Money Bill shall be introduced only in the Legislative Assembly

According to **Article 198(2)**, after a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

According to **Article 198 (3)**, If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

According to **Article 198 (4)**, If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

According to **Article 198 (5)**, If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Thus on the basis of an analysis of the Constitutional provisions we find that the passage of money bill is similar to the procedure followed at the centre. An ordinary bill can originate in either house. If it originates in the upper house and is duly passed and transmitted to the lower house. If the lower house rejects it, then the bill comes to an end. If a financial bill or an ordinary bill, originates in the lower house and after its passage it is transmitted to the upper house, the upper house has 3 options.

It can pass it, it can reject it or it may not take any action for 3 months.

After the lapse of 3 months, the bill goes to the lower house, if the lower house passes the bill for the second time, it is again transmitted to the Upper house and on the expiry of one month after the bill has been received for the second time, the bill is deemed to have been passed by the state legislature. After that it goes to the Governor for his assent.

ASSENT TO BILLS

Article 200 deals with the procedures regarding the assent to the bills passed by the State legislature. It holds that, when a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

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



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

According to **Article 201**, When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Special Provisions as regards to Jammu and Kashmir

Separate Constitution

J & K is the only state in India which has a Constitution of its own. The Constitution of J & K was enacted by a separate Constituent Assembly set up by the State and it came into force on 26th January 1957.

Jurisdiction of Parliament

Parliament or the Union Legislature has very limited jurisdiction in case of J & K as compared to other states. Till 1963, Parliament could legislate on subjects contained in the Union List, and had no jurisdiction in case of Concurrent List under 7th Schedule of the Constitution. But now, the Parliament has power to legislate not just on subjects contained in the Union List but also on some of the subjects of Concurrent List. Residuary powers, unlike other states, rest with J & K. The Parliament has no power to legislate Preventive Detention laws for the state; only the state legislature has the power to do so.

Autonomy in certain matters

Any action of the Union Legislature or Union Executive which results in alteration of the name or territories or an international treaty or agreement affecting the disposition of any part of the territory of the state requires the consent of the State Legislature or the State Executive (as the case may be) to be effective. The Union has no power to suspend the Constitution of J & K.

Emergency Provisions

The Union of India has no power to declare Financial Emergency under Article 360 in the state. The Union can declare emergency in the state only in case of War or External Aggression. No proclamation of emergency made on the grounds of internal disturbance or imminent danger thereof shall have effect in relation to the state unless (a) it is made at the request or with the concurrence of the government of the state; or (b) where it has not been so made, it is applied subsequently by the President to that state at the request or with the concurrence of the government of that state. In December 1964, Articles 356 and 357 were extended to the state.

Fundamental Duties, Directive Principles & Fundamental Rights

Part IV (Directive Principles of the State Policy) and Part IVA (Fundamental Duties) of the Constitution are not applicable to J & K. In addition to other fundamental rights, Articles 19(1) (f) and 31(2) of the Constitution are still applicable to J & K; hence the Fundamental Right to property is still guaranteed in this state.

High Court of J & K

The High Court of J & K has limited powers as compared to other High Courts within India. It can't declare any law unconstitutional. Unlike High Courts in other states, under Article 226 of the Constitution, it can't issue writs except for enforcement of Fundamental Rights.

Official Languages

Provisions of Part XVII of the Constitution apply to J & K only insofar as they relate to (i) the official language of the Union; (ii) the official language for communication between



one state and another; or between a state and the Union; and (iii) language of the proceedings in the Supreme Court. Urdu is the official language of the state but use of English is permitted for official purposes unless the state legislature provides otherwise.

Miscellaneous

- Certain special rights have been granted to the permanent residents of J & K with regard to employment under the state, acquisition of immovable property in the state, settlement in the state, and scholarship and other forms of aid as the state government may provide.
- The 5th Schedule pertaining to the administration and control of Schedule Areas and Scheduled Tribes and the 6th Schedule pertaining to administration of tribal areas are not applicable to the state of J & K.

Procedure for Amendment of State Constitution

The Provisions of the State Constitution (except those relating to the relationship of the state with the Union) may be amended by an Act of the Legislative Assembly of the state passed by not less than two-thirds of its membership. If such amendment seeks to affect Governor or Election Commission, it needs President's assent to come into effect. No amendment of the Constitution of India shall extend to J & K unless so extended by an order of the President under Article 370(1).

Amendment of Article 370

Under Article 370(3), consent of state legislature and the constituent assembly of the state are also required to amend Article 370. Now the question

arises, how can we amend Article 370 when the Constituent Assembly of the state no longer exists? Or whether it can be amended at all? Some jurists say it can be amended by an amendment Act under Article 368 of the Constitution and the amendment extended under Article 370(1). But it is still a mooted question.

Demand for Abrogation of Article 370

Equally valid arguments are forwarded by those in favour of and those against its abrogation. Those in favour argue that it has created certain psychological barriers. They say that it is the root cause of all the problems in J & K. They further believe that it is this Article 370 which encourages secessionist activities within J & K and other parts of the country. They say, at the time of enactment, it was a temporary arrangement which was supposed to erode gradually. They also argue that it acts as a constant reminder to the Muslims of J & K that they have still to merge with the country.

Those against its abrogation forward the following arguments. They contend that that Abrogation will have serious consequences. It will encourage secessionists to demand plebiscite which will lead to internationalization of the issue of J & K. They further argue that the contention of Article giving rise to secessionist activities is baseless as states like Assam and Punjab, which don't have any special status have experienced such problems. It would not only constitute a violation of the solemn undertaking given by India through the instrument of accession, but would also give unnecessary misgivings in the minds of the people of J&K, making the issue more sensitive.

