

**CHAPTER IV**  
**ROLE OF THE GOVERNOR**

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CHAPTER IV  
ROLE OF THE GOVERNOR

## 1. INTRODUCTION

4.1.01— The role of the Governor has emerged as one of the key issues in Union-State relations. The Indian political scene was dominated by a single party for a number of years after Independence. Problems which arose in the working of Union-State relations were mostly matters for adjustment in the intra-party forum and the Governor had very little occasion for using his discretionary powers. The institution of Governor remained largely latent. Events in Kerala in 1959 when President's rule was imposed, brought into some prominence the role of the Governor, but thereafter it did not attract much attention for some years. A major change occurred after the Fourth General Elections in 1967. In a number of States, the party in power was different from that in the Union. The subsequent decades saw the fragmentation of political parties and emergence of new regional parties. Frequent, sometimes unpredictable realignments of political parties and groups took place for the purpose of forming governments. These developments gave rise to chronic instability in several State Governments. As a consequence, the Governors were called upon to exercise their discretionary powers more frequently. The manner in which they exercised these functions has had a direct impact on Union-State relations. Points of friction between the Union and the States began to multiply.

4.1.02 The role of the Governor has come in for attack on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them. It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a vital link between the Union and the States. Many have traced this mainly to the fact that the Governor is appointed by, and holds office during the pleasure of the President, (in effect, the Union Council of Ministers). The part played by some Governors, particularly in recommending President's rule and in reserving State Bills for the consideration of the President, has evoked strong resentment. Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office. Criticism has also been levelled that the Union Government utilises the Governors for its own political ends. Many Governors, looking forward to further office under the Union or active role in politics after their tenure, came to regard themselves as agents of the Union.

## 2. HISTORICAL BACKGROUND

4.2.01— The Government of India Act, 1858 transferred the responsibility for administration of India from the East India Company to the British Crown. The Governor then became an agent of the Crown, functioning under the general supervision of the Governor-General. The Montagu-Chelmsford Reforms (1919) ushered in responsible Government, albeit in a rudimentary form. However, the Governor continued to be the pivot of the Provincial administration.

4.2.02 The Government of India Act, 1935 introduced provincial autonomy. The Governor was now required to act on the advice of Ministers responsible to the legislature. Even so, it placed certain special responsibilities on the Governor, such as prevention of grave menace to the peace or tranquility of the Province, safeguarding the legitimate interests of minorities and so on. The Governor could also act in his discretion in specified matters. He functioned under the general superintendence and control of the Governor-General, whenever he acted in his individual judgement or discretion.

4.2.03 In 1937, when the Government of India Act, 1935 came into force, the Congress Party commanded a majority in six provincial legislatures. They foresaw certain difficulties in functioning under the new system which expected Ministers to accept, without demur, the censure implied, if the Governor exercised his individual judgement for the discharge of his special responsibilities. The Congress Party agreed to assume office in these Provinces only after it received an assurance from the Viceroy that the Governors would not provoke a conflict with the elected Government.<sup>1</sup>

4.2.04 Independence inevitably brought about a change in the role of the Governor. Until the Constitution came into force, the provisions of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 were applicable. This Order omitted the expressions 'in his discretion', 'acting in his discretion' and 'exercising his individual judgement', wherever they occurred in the Act. Whereas, earlier, certain functions were to be exercised by the Governor either in his discretion or in his individual judgement, the Adaptation Order made it incumbent on the Governor to exercise these as well as all other functions only on the advice of his Council of Ministers.

4.2.05 The framers of the Constitution accepted, in principle, the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. While the pattern of the two levels of government with demarcated powers remained broadly similar to the pre-Independence arrangements, their roles and inter-relationships were given a major re-orientation.

4.2.06 The Constituent Assembly discussed at length the various provisions relating to the Governor. Two important issues were considered. The first issue was whether there should be an elected Governor. It was recognised 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. 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.”<sup>2</sup>

4.2.07 The second issue related to the extent of discretionary powers to be allowed to the Governor. Following the decision to have a nominated Governor, references in the various articles of the Draft Constitution relating to the exercise of specified functions by the Governor 'in his discretion' were deleted. The only explicit provisions retained were those relating to Tribal Areas in Assam where the administration was made a Central responsibility. The Governor as agent of the Central Government during the transitional period could act independently of his Council of Ministers. Nonetheless, no change was made in Draft Article 143, which referred to the discretionary powers of the Governor. This provision in Draft Article 143 (now Article 163) generated considerable discussion. Replying to it, Dr. Ambedkar maintained<sup>3</sup> that vesting the Governor with certain discretionary powers was not contrary to responsible Government.

### 3. CONSTITUTIONAL PROVISIONS AND THEIR SCOPE

4.3.01— The Constitution as it finally emerged, envisages that normally there shall be a Governor for each State (Article 153). The Governor is appointed by the President and holds office during his pleasure [Articles 155 & 156(1)]. Article 154 vests the executive power of the State in the Governor who exercises it either directly or through officers<sup>4</sup> subordinate to him in accordance with the Constitution. Under Article 163(1), he exercises almost all his executive and legislative functions with the aid and advice of his Council of Ministers. Thus, executive power vests theoretically in the Governor but is really exercised by his Council of Ministers, except in the limited sphere of his discretionary action.

4.3.02 Article 167 of the Constitution imposes duties on the Chief Minister to communicate to the Governor all decisions of the Council of Ministers and proposals for legislation and such other information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and “if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council'. The information which the Governor is entitled to receive under clause (b) of the Article, must not only be related to the affairs of the State administration, but also have a nexus with the discharge of his Constitutional responsibilities.

4.3.03. The nature and scope of these duties of the Chief Minister and the corresponding rights and powers of the Governor are to be understood in the context of their respective roles and responsibilities under a Cabinet system of government *as*

*adopted in our Constitution.* Under this system, the Governor as Constitutional head of the State has “a right to be consulted, to warn and encourage” and his role is overwhelmingly that of “a friend, philosopher and guide” to his Council of Ministers. Harmoniously with this role, the Governor also functions as a sentinel of the Constitution and a live link with the Union. The rationale of Article 167 is that by affording access to necessary information relating to the administration of the affairs of the State and the legislative proposals, it enables the Governor to discharge effectively this multi-faceted role.

4.3.04 The options available to the Governor under Article 167 give him persuasive and not dictatorial powers to override or veto the decisions or proposals of his Council of Ministers relating to the administration of the affairs of the State. At best, “they are powers of giving advice or counselling delay or the need for caution and they are powers which may be used to build bridges between the Government and opposition”.<sup>5</sup> The efficacy of this advisory role of the Governor depends, in no small measure, on the respect which the incumbent of the office inspires for his wisdom and integrity in the mind of his Chief Minister and Ministers, in particular, and the legislature and the public, in general.

4.3.05 The Governor does not exercise the executive functions individually or personally. The State Government at various levels takes executive action in the name of the Governor in accordance with the rules of business framed under Article 166(3). Hence, it is the State Government and not the Governor who may use or be sued in respect of any action taken in the exercise and performance of the powers and duties of his office [Articles 361, 299(2) and 300].

4.3.06 In a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in Article 163(1), which reads as follows:

- (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.
- (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.
- (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

4.3.07 The first part of Article 163(1) requires the Governor to act on the advice of his Council of Ministers. There is, however, an exception in the latter part of the clause in regard to matters where he is *by or under* the Constitution required to function in his discretion. The expression “required” signifies that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been held<sup>6</sup> that the expression “by or under the Constitution” means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication. We would like to add that such necessity may also arise from rules and orders made “under” the Constitution.

4.3.08 Thus, the scope of discretionary powers as provided in the exception in clause (1) and in clause (2) of Article 163 has been limited by the clear language of the two clauses. It is an accepted principle that in a parliamentary democracy with a responsible form of government, the powers of the Governor as Constitutional or formal head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers. The scope of discretionary powers has to be strictly construed, effectively dispelling the apprehension, if any, that the area for the exercise of discretion covers all or any of the functions to be exercised by the Governor under the Constitution. In other words, Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of his discretion is limited. Even this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.

4.3.09 The Constitution contains certain provisions expressly providing for the Governor to act—

(A) in his discretion; or

(B) in his individual judgement; or

(C) independently of the State Council of Ministers; viz.

(i) *Governors of all the States*— Reservation for the Consideration of the President of 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 the Constitution designed to fill [second Proviso to Article 200].

(ii) The Governors of Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura have been entrusted with some specific functions to be exercised by them in their discretion (*vide* Articles 371A, 371F and 371H and paragraph 9 of the Sixth Schedule). These have been dealt with in detail in Section 14 of this Chapter.

(b) The Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect of law and order in their respective States. In the discharge of this responsibility, they are required to exercise their “individual judgement” after consulting their Council of Ministers. This aspect also has been discussed in Section 14 of this Chapter.

(c) *Governors as Administrator of U.T.*— Any Governor, on being appointed by the President as the administrator of an adjoining Union Territory, has to exercise his functions *as administrator*, independently of the State Council of Ministers [Article 239(2)]. In fact, as administrator of the Union Territory, the Governor is in the position of an agent of the President.

4.3.10 Articles 371(2) and 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively. Article 371(1), which has since been deleted, made a similar provision in respect of the Governors of Andhra Pradesh and the erstwhile composite State of Punjab. The Presidential Orders so far issued under these Articles have provided that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion. (All these Orders, except the one issued under Article 371C, have since been rescinded). It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors. Thus, these Presidential Orders are instances of a Governor being required to act in his discretion “under” the Constitution. These Orders are discussed in some detail in Section 14 of this Chapter.

4.3.11 The obligation of the Governor to discharge a function under the Constitution in the exercise of his discretion may also arise by implication from the tenor of the constitutional provision, the very nature of the function or the exigencies of a particular situation where it is not possible or practicable for the Governor to seek or act on Ministerial advice. Some typical situations are given below:—

- (a) Governor has necessarily to act in his discretion where the advice of his Council of Ministers is not available, e.g. in the appointment of a Chief Minister soon after an election, or where the Council of Ministers has resigned or where it has been dismissed [Article 164(1)].
- (b) A Governor may have to act against the advice of the Council of Ministers, e.g. dismissal of a Ministry following its refusal to resign on being defeated in the Legislative Assembly on a vote of no-confidence [Article 164(1) &(2)].
- (c) A Governor may require that any matter decided by a Minister may be considered by the Council of Ministers (Article 167).
- (d) A Governor may have to make a report to the President under Article 356 that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Obviously, in such a situation he may have to act against the aid and advice of the Council of Ministers as the situation may be due to the various acts of omission or commission on the part of the Council of Ministers (Article 356).

- (e) A Governor may have to exercise his discretion in reserving a Bill for the consideration of the President (Article 200).

4.3.12 The Governor must discharge his discretionary functions to the best of his judgement and not at the dictation of any outside authority, unless such authority is authorised by or under the Constitution to issue directions in that matter. An instance of such authorisation is furnished by Article 371F(g) which makes the discharge by the Governor of Sikkim of his special responsibility subject to such directions as the President may issue.

4.3.13 Article 355 of the Constitution imposes a duty on the Union (i) to protect every State against external aggression and internal disturbance; and (ii) to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. If a situation arises when the Government of a State cannot be so carried on in accordance with the Constitution. Article 356 provides for a report from the Governor of the State to the President. It is implicit in these two Articles that for the proper discharge of its paramount responsibilities, the Union has a right to expect and the Governor an obligation to send reports on important developments in the State as and when they take place, which appear to the Governor to contribute towards a potential or actual situation of external aggression or internal disturbance or failure of the constitutional machinery in the state.

4.3.14 The Constitution thus assigns to the Governor the role of a Constitutional sentinel and that of a vital link between the Union and the State. The Governor, on occasions, could also play a useful role as a channel of communication between the Union and the State in regard to matters of mutual interest and responsibility. If any directions are issued by the Union in the exercise of its executive power to the State Government under any provision of the Constitution, such as, Articles 256 and/or 257, it will be the duty of the Governor to keep the Union informed as to how such directions are being implemented by the State Government. Being the holder of an independent Constitutional office, the Governor is not a subordinate or a subservient agent of the Union Government. However in respect of those specified functions which the Constitution requires him to perform as agent of the Union, he is accountable to the President.

4.3.15 We have indicated in the preceding paragraphs the duties of the Governor as the Constitutional head of the State, his responsibility to the Union and his role as a link between the Union and the State. In the discharge of these responsibilities he should have due regard to his oath of office, vide Article 159 which binds him to preserve, protect and defend the Constitution and the law and also to devote himself to the service and well being of the people of the State concerned.

4.3.16 The Administrative Reforms Commission (ARC) considered certain aspects of Union-State relations. The Study Team constituted by the ARC, explaining the nature of the Governor's role, observed<sup>7</sup> that the "office of the Governor is not meant to be an ornamental sinecure." It pointed out that his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibility towards the Union and the State of which he is the constitutional head. According to the Study Team, this duality is perhaps its most important and certainly its most unusual feature. It stated that "it is vitally important therefore that what the Governor is required to do should be clearly understood by

him, by the State Government and by the Centre. And it is equally important that the Governor should discharge his functions judiciously, impartially and efficiently.”

4.3.17 The Administrative Reforms Commission in its Report (1969), observed<sup>8</sup> that the Governor as head of the state should by his impartiality and sense of fair-play, command the respect of all parties in his State. Much has happened since then. Nonetheless, these observations remain as valid today as they were then.

#### 4. MAIN FACETS OF THE GOVERNOR'S ROLE

4.4.01— The three 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)].

#### **Criticism of the role of the Governor as to—**

4.4.02 There is little controversy about (c) above. But the manner in which he has performed the dual role, as envisaged in (a) and (b) above has attracted much criticism. The burden of the complaints against the behaviour of Governors, in general, is that they are unable to shed their political inclinations, predilections and prejudices while dealing with different political parties within the State. As a result, sometimes the decisions they take in their discretion appear as partisan and intended to promote the interests of the ruling party in the Union Government, particularly if the Governor was earlier in active politics or intends to enter politics at the end of his term. Such a behaviour, it is said, tends to impair the system of Parliamentary democracy, detracts from the autonomy of the States, and generates strain in Union-State relations.

#### **Use of Discretion—**

##### **(i) In Choosing Chief Minister**

4.4.03 (a) Soon after an election when a single party or a coalition emerges as the largest single party or group, there is no difficulty in the selection and appointment of a Chief Minister. However, where no single party or group command absolute majority, the Governor has to exercise his discretion in the selection of Chief Minister. In such a situation, the leader of the party or group which, in so far as the Governor is able to ascertain, has the largest support in the legislative Assembly, may be called upon to form the Government, leaving it to the Assembly to determine the question of confidence. This procedure leaves little scope for any allegation of unfairness or partisanship on the part of the Governor in the use of his discretion. Such a situation may also arise when a Ministry resigns after being defeated in the Assembly or because it finds itself in a minority. The above principle was followed in Madras (1952) when the Congress Party was called upon to form the Government. It was also followed in Bihar (June 1968). When the Government resigned, the leader of the Congress Party was invited to form the government and appointed Chief Minister. However, this method was not followed in the case of Andhra (1954). Even though the Communist Party was the largest single party, its leader was not called upon to form the Government.

##### **(ii) In Testing Majority**

(b) Governors have employed various ways to determine which party or group is likely to command a majority in the Legislative Assembly. Some have relied only on lists of supporters of rival claimants produced before them, as in Bihar (June 1968) when the Congress Party was called upon to form a government. In some cases, physical verification by counting heads was carried out as in the case of Gujarat (1971), when the leader of the newly formed Congress (C) Party was called upon to form the government. Similarly, in Uttar Pradesh (1967), the leader of the Congress Party was appointed Chief Minister after the Governor had physically counted his supporters. In the case of Rajasthan (1967), physical verification was resorted to and the leader of the Congress Party was called upon to form the Government; but, in determining the relative strengths of the Congress Party and Samyukta Dal, the Independents were

ignored. If they had been taken into account, the result might well have been different. Further, when the leader of the Congress Party did not form the government, the leader of the opposition group was not called upon to do so; instead, President's rule was imposed.

### **(iii) In Dismissal of Chief Minister**

(c) There has been no uniformity in regard to the criteria adopted for dismissal of a Chief Minister. Obviously, a Chief Minister cannot continue in office after he ceases to command a majority in the Legislative Assembly. It is normal for a Chief Minister to resign immediately or face the Legislative Assembly to prove that he continues to enjoy majority support. The Chief Minister of West Bengal (1967) neither resigned nor faced the assembly within the time indicated by the governor. The Governor first gave a fortnight's time and later extended it by a week, giving time till the end of November, 1967 to summon the Assembly. As the Ministry would not agree to summon the Assembly earlier than on 18th December, 1967, the Governor dismissed the Ministry on 21st November, 1967. In the case of Uttar Pradesh (1970), the Chief Minister was asked to resign, even though he was prepared to face the Assembly within two days.

### **(iv) In Dissolving the Legislative Assembly**

(d) Various Governors have adopted different approaches in similar situations in regard to dissolution of the Legislative Assembly. The advice of a Chief Minister, enjoying majority support in the Assembly, is normally binding on the Governor. However, where the Chief Minister had lost such support, some Governors refused to dissolve the Legislative Assembly on his advice, while others in similar situations, accepted his advice, and dissolved the Assembly. The Assembly was dissolved in Kerala (1970) and in Punjab (1971) on the advice of the Chief Minister whose claim to majority support was doubtful. However, in more or less similar circumstances in Punjab (1967), Uttar Pradesh (1968), Madhya Pradesh (1969) and Orissa (1971) the Legislative Assembly was not dissolved. Attempts were made to instal alternative Ministries.

### **(v) In Recommending Presidents's Rule**

(e) In a number of situations of political instability in the States, the Governors recommended President's rule under Article 356 without exhausting all possible steps under the Constitution to induct or maintain a stable government. The Governors concerned neither gave a fair chance to contending parties to form a Ministry, nor allowed a fresh appeal to the electorate after dissolving the Legislative Assembly. Almost all these cases have been criticised on the ground that the Governors, while making their recommendations to the President, behaved in a partisan manner. Further, there has been no uniformity of approach in such situations. We have dealt with these aspects in Chapter VI, "Emergency Provisions".

### **(vi) In Reserving Bills for President's Consideration**

(f) Governors have generally gone by the advice of their Council of Ministers in reserving State Bills passed by the Legislature for the consideration of the President. There have been, however, some instances when Governors reserved State Bills in the exercise of their discretion, creating a controversy in some cases. We have dealt with the various aspects of reservation of Bills for the consideration of the President, in Chapter V.

## **Other Criticisms Regarding Nominations to Legislative Council**

4.4.04 The use of discretion by Governors in the nomination of members to the Legislative Council has been criticised.

The first case of exercise of discretion in regard to such nomination arose as early as in 1952, in Madras, when

Shri C. Rajagopalachari was nominated to the Legislative Council and was then appointed as Chief Minister. This issue apparently cropped up again in Maharashtra in the recent past. The action has been criticised on the ground that the governor has no discretion in such matters.

### **Regarding exercise of discretion as Chancellor of University**

4.4.05 The use of discretion by Governor, in nominating members of a University Council or University functionary, in his capacity as Chancellor of a University in the State, has also come in for criticism. In

several State Universities, the concerned legislations specifically provide that the Governor by virtue of his office shall be Chancellor or head of the University and by these legislations certain powers have been conferred on the Chancellor. Governors have exercised their powers as Chancellor under the statute and not as Governor. Actions of the Governors have again been questioned on the premise that they have to abide by the advice of the Council of Ministers even in such cases.

4.4.06 Perceptions of Governors of their own role have varied. In one case a Governor wrote that “a Governor's *first* duty is to know that he is the representative of the Centre. The Governor's *second* duty is to look after the interests of the State to which he is assigned”. Some Governors could not resist the temptation to take active part in politics, e.g. in the election of the Leader of the ruling party in the Union: influencing voters to return to power the person holding the office of the Prime Minister: and in the distribution of party tickets for Lok Sabha elections. In some cases, even where they were expected to abide by the advice of the Council of Ministers, either the approvals were delayed or not given.

#### 5. SUGGESTIONS IN REGARD TO INSTITUTION AND ROLE OF GOVERNOR

4.5.01— A wide spectrum of suggestions in regard to various aspects of the institution and role of the Governor have been placed before us by the State Governments and other knowledgeable persons. A majority of the State Governments do not find anything wrong with the institution of the Governor. However, a few of them have demanded abolition of the post of the Governor. But their demand on this point is not rigid. They (with the exception of one) have given alternative suggestions with regard to selection, appointment, powers and role of the Governor.

#### **Need for Governor's office—Vital Importance of his Multi-Faceted Role**

4.5.02 The Parliamentary system of the Cabinet type, which the Constitution has adopted at the State level, is not on all fours with that of the United Kingdom. It is a case *suigeneris*. The Governor in our system does not function as constitutional head for the whole gamut of his responsibilities. There is an important area, though limited and subject to Constitutional constraints, within which he acts in the exercise of his discretion. It will bear reiteration that there are more than one facet of his role. As a 'bridge' between the union and the State, he can foster better understanding between them and remove such misapprehensions as may be souring their relations. He is sentinel of the Constitution. He is a live link of channel between the Union and the State. As such link, it is his duty to keep the Union informed of the affairs of the State Administration, whenever he feels that matters are not going in accordance with the Constitution, or there are developments endangering the security or integrity of the country. The Governor thus assists the Union in discharging its responsibilities towards the States. The part which the Governor plays to help maintain the democratic form of Government in accordance with the Constitution is of vital importance. In the ultimate analysis, due observance of the Constitutional provisions is the soundest guarantee of enduring unity and integrity of the nation.

#### **Governor is Linchpin of Constitutional Apparatus**

4.5.03 The Governor whether acting with or without the advice of the Council of Ministers, plays a pivotal role in our constitutional system and in its working. He is the Linchpin of the constitutional apparatus of the State. All executive action of the State Government is expressed to be taken in his name. He chooses and appoints the Chief Minister in his discretion, on the criterion that the latter should be able to form a Ministry commanding majority support in the Assembly without his assent, no Bill can become law. Without his prior authorisation no Money Bill can be introduced in the State legislature. Without his orders, the House or Houses of State legislature cannot be summoned or prerogued. It is he who orders dissolution of Legislative Assembly, sometimes in his discretion when satisfied after exploring all alternatives that there is no person commanding majority support in the Assembly to form a Council of Ministers. A large number of other important functions have also been entrusted by the Constitution to the Governor. It is not necessary to recapitulate all of them here.

#### **Governor's Office assures continuity of Government**

4.5.04 The tenure of the Governor, unlike that of the Chief Ministers does not depend on majority support in the Legislative Assembly. Chief Ministers change from time to time depending on their enjoyment of loss of such support. But the Governor continues irrespective of change of Ministries or even dissolution of the Legislative Assembly. The Governor continues even on the expiry of his 5 year term till his successor takes over. Thus, the institution of Governor assures continuity of the process of Government. He fills the political vacuum as and when there is a breakdown of the constitutional machinery in the State. Even in the normal working of the system, there may be some situations under the Constitution where the advice of Council of Ministers is not available to him for a short period. An instance of such a situation would be where a Ministry resigns and refuses to stay in office as care-taker till another Ministry is formed or till President's rule is imposed. During a short interregnum of this nature, the Governor would be within his power to carry on the executive affairs of the State through his subordinates, as the Constitution does not intend that there should be a break or paralysis of the executive government in such situations.<sup>9</sup>

4.5.05 A suggestion has been made that the Chief Justice of the High Court or the Speaker of the Legislative Assembly can be entrusted, in addition to his normal duties, with the functions of the Governor. Governors have a multi-faceted role and there will be an undue mixing of responsibilities and power leading to complications. We are, therefore, unable to agree with this suggestion.

#### **Indispensability of Governor's Office**

4.5.06 In sum, the functions of the Governor are at once diverse and important. Functioning in normal times as the constitutional head of the State and as a vital link between the Union and the State, he becomes an agent of the Union in certain special circumstances, *e.g.*, when a proclamation under Article 356 is in operation. He fills the vacuum and ensures continuity in executive government for short periods during which no Council of Ministers is available to aid and advise him. The Governor is the key functionary of the system envisaged by the Constitution. No other constitutional functionary can discharge these responsibilities in addition to his own duties. We are, therefore, of the firm view that it is an office which cannot be dispensed with.

4.5.07 In para 4.1.02, we referred to the criticism levelled against the manner in which some Governors have exercised their functions as also against the role of the Union Government in relation to this office. It has been suggested to us that effective constitutional safeguards should be provided to ensure that the office of the Governor is free from controversy. While we agree that effective safeguards for this purpose should be evolved, we are of the view that not all these safeguards can be written into the Constitution. As we shall see in the succeeding paras, most of the safeguards will be such as cannot be reduced to a set of precise rules of procedure or practice. This is so because of the very nature of the office and the role of the Governor. The safeguards have mostly to be in the nature of conventions and practices, to be understood in their proper perspective and faithfully adhered to, not only by the Union and the State Governments but also by the political parties.

### **6. SELECTION OF GOVERNORS**

4.6.01— In all the evidence before us, a common thread is that much of the criticism against the Governors could have been avoided if their selection had been made on correct principles to ensure appointment of right type of persons as Governors. Even the most critical of the witnesses agree that if proper persons are chosen there will be little cause of complaint.

4.6.02 Most of the replies to our questionnaire received from a cross-section of the public, are critical of the quality and standard of some of the persons appointed as Governors. To summarise their comments:—

- Discarded and disgruntled politicians from the party in power in the Union, who cannot be accommodated elsewhere, get appointed. Such persons, while in office, tend to function as agents of the Union Government rather than as impartial constitutional functionaries.
- The number of Governors who have displayed the qualities of ability, integrity, impartiality and statesmanship has been on the declining side.

A State Government has cited recent instances of persons who had to resign from office as Ministers following judicial strictures, being subsequently appointed as Governors. It has also quoted instances of Governors who returned to active politics. Another State Government, however, is of the view that persons

who have been in active politics need not be debarred from being considered for appointment as Governor if they are of high public stature and are capable of rising above party and political affiliations.

4.6.03 Speaking in the Constituent Assembly on the choice of Governors, Jawaharlal Nehru observed:<sup>10</sup>

“I think it would be infinitely better if he was not so intimately connected with the local politics of the province..... And would it not be better to have a more detached figure, obviously a figure that ..... must be acceptable to the Government of the province and yet he must not be known to be a part of the party machine of that province ..... But on the whole it probably would be desirable to have people from outside—eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or persons eminent in other walks of life, who would naturally while cooperating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that that policy might be carried out, be would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine.

.....

But it is obviously desirable that eminent leaders of minorities.....eminent leaders of groups should have a chance. I think they will have a far better chance in the process of nomination than in election.”

4.6.04 The ARC Study Team on Centre-State Relations<sup>11</sup> found that many Governors had fallen short of the standards expected. It suggested that a systematic and careful search should be made to locate the best men for this office.

4.6.05 The ARC observed<sup>12</sup> that there was a wide-spread feeling that, in some cases, Governors were appointed on considerations extraneous to merit. The dignity of the office suffered when persons defeated in elections were appointed. It recommended that the person to be appointed as Governor should be one who has had long experience in public life and administration and can be trusted to rise above party prejudices and predilections. The Government of India accepted this recommendation.

4.6.06 Our survey of the appointments of Governors made since Independence till October 1984 shows that over 60 per cent of the Governors had taken active part in politics, many of them immediately prior to their appointment. Persons who were eminent in some walk of life constituted less than 50 per cent. This percentage shows a steep fall when the figures for the period from 1980 onwards are compared with those for Nehru period (August 1947 to May 1964), notwithstanding the fact that the Government of India accepted the recommendation of the Administrative Reforms Commission in this regard.

4.6.07 Political turbulence and party rivalries at the State level, often create problems for the Governor in the discharge of his delicate functions. These problems for their resolution demand exercise of more than ordinary skill, tact and wit by the Governor. Only a person of calibre, statesmanship and integrity can be fit this role. Where the Governor is required to exercise his discretion, he should not only act in a fair, just and impartial manner but also seen to be acting as such.

#### **Criteria recommended for Selection**

4.6.08 The conditions prevailing today are, if anything, far more complex than those prevailing at the time the Constitution was framed. Consequently, the demands on the Governor have become much more exacting, making it all the more important that the right type of persons are selected for the office. In order to ensure proper selection of Governors, we cannot do better than re-iterate the criteria laid down in this regard by Jawaharlal Nehru.

4.6.09 We recommend that a person to be appointed as a Governor should satisfy the following criteria:—

- (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 connected with the local politics of the State; and
- (iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

#### **Mode of Selection**

4.6.10 We have received various suggestions in regard to the mode of selection of persons for appointment as Governors. These may be broadly grouped under two categories. Firstly, there are those which are aimed at making involvement of the State Government in the selection of the Governor more meaningful. Secondly, there are those which seek to lay down consultation with, or concurrence of, a constitutional authority or body in the selection of a Governor. Consultation or concurrence, it is claimed, would make the selection more objective; it would also enable the Governor to function in a non-partisan manner, without being influenced by the Union Executive.

#### **Role of State Government in Selection of Governor**

4.6.11 We proceed to consider the following suggestions made in the matter involving the State Government *viz.* appointment of the Governor should be made:

- (i) from a panel to be prepared by the State Legislature; or
- (ii) from a panel to be prepared by the State Government (in effect the State Chief Minister) or invariably with the concurrence of the State Chief Minister; or
- (iii) invariably in consultation with the State Chief Minister.

4.6.12 Preparing a panel of names in accordance with the suggestion at (i) above will, in fact, mean a process of direct or indirect election by the State Legislature. A Governor so 'selected' may well seek to override the powers of his Chief Minister, leading to friction between them and distortion of the system of responsible government. Such a Governor can hardly be expected to function as a constitutional head of the State. This was the reason why the Constitution-framers gave up the proposal to have an elected Governor. There is the other possibility that an elected Governor may labour under a sense of obligation to the Chief Minister but for whose support his name might not have appeared in the panel prepared by the State Legislature. Such a Governor will not be able to perform the delicate task of harmonising 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. For these reasons, we cannot support the suggestion at (i), above.

4.6.13 The two suggestions made in sub-para (ii) of para 4.6.11 above, are that the Governor should be appointed either from a panel to be prepared by the State Government (in effect, the State Chief Minister), or with the concurrence of the State Chief Minister. Firstly, neither suggestion is a workable proposition. If the Prime Minister and the Chief Minister belong to different political parties, the process or selection will frequently end in deadlock, instead of concurrence. Secondly, if in the process, a Chief Minister succeeds in securing the Prime Minister's concurrence for appointment of an 'insider' backed by his party in the Legislative Assembly, the selection will be vulnerable on the same grounds on which framers of the Constitution ejected the proposal to have a Governor directly or indirectly elected by the State. Besides this, there is a real danger that regional chauvinism might dictate the preference for a person of parochial views as Governor. The primary responsibility for appointing persons of merit as Governors is that of the Union Council of Ministers headed by the Prime Minister. Choice of a Governor is an executive function for which the Prime Minister/the Union Cabinet is answerable to Parliament. The Union Cabinet has the sole responsibility for the due discharge of this function. It will be against the basic principle of responsible government if the Union Cabinet is made to share it with a State functionary not answerable to Parliament for its action.

4.6.14 We cannot, therefore, subscribe to the suggestion that the governor of a State should be appointed either from a panel to be prepared by the State Government or with the *concurrence* of the Chief Minister.

4.6.15 We now turn to the suggestion made in sub-para (iii) of para 4.6.11 above, that the Governor should always be appointed after *consultation* with the Chief Minister of a State. There has never been any difference of opinion in political or public circles as to the desirability of such consultation.

4.6.16 The framers of the Constitution were of the view that the person to be nominated as Governor should be acceptable to the State Government and the Chief Minister should be consulted. To quote Pandit

Jawaharlal Nehru, the Governor “must be acceptable to the Government of the Province”.<sup>13</sup> The ARC study team on Centre-State Relationships (1967) recommended<sup>14</sup> that the practice of consulting the Chief Minister should remain but this should not dilute the primary responsibility of the Union to appoint competent and suitable persons as Governors. The ARC also recommended<sup>15</sup> that the convention of consulting the Chief Minister should continue. The Government of India accepted this recommendation of the ARC in the early seventies.

4.6.17 It is necessary to be quite clear as to the precise reasons why such consultation is essential. For proper working of the Parliamentary system, there has to be a personal rapport between the governor and the Chief Minister. The importance of such rapport will be easily comprehended when it is remembered that the Governor, as the constitutional head, has to act as 'friend, philosopher and guide' of his council of Ministers. (Cf. para 4.3.03 above). It is from this aspect of personal relationship that consultation with the Chief Minister at the initiation itself, may help prevent the choice of a person with whom the Chief Minister for personal reasons may not be able to work satisfactorily. Further, from the stand-point of local socio-political environment, the Chief Minister may be harbouring certain mental reservations against a particular choice being made for the office of Governor of the State. Consultation would enable the Chief Minister to advise the selectors about this at the very beginning.

4.6.18 It follows that, where two or more States are to have a common Governor (*vide* Proviso to Article 153), the Chief Minister of each of them will have to be consulted. Only two State Governments consider the system of a common Governor inappropriate. We do not see any drawback in it. On the contrary, a common Governor could promote greater understanding and cooperation between his Chief Ministers.

4.6.19 As senior politicians are among those who are eligible for selection, 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 a combination of other parties. Any error in this respect can be pointed out by the Chief Minister during consultation at the pre-appointment stage.

4.6.20 Thus, the main purpose of consulting the Chief Minister is to ascertain his objections, if any, to the proposed appointment. If the Union Government considers that the objections of the Chief Minister are not groundless, it may suggest an alternative name. However, if it finds that the objections are frivolous or manifestly untenable, it may inform the Chief Minister accordingly and proceed to make the appointment.

4.6.21 All the State Governments (with one solitary exception), political parties and eminent persons who have responded to our questionnaire, are of the view that appointment of the Governors should always be made after consultation with the Chief Minister of the State. Quite a number of them insist that such consultation should be made a constitutional requirement, and not left to convention which, it is pointed out, is not being regularly and properly followed for sometime past. The stand of the Union Government is that appointments of the Governors are being made after consultation with the Chief Minister concerned.

4.6.22 However, so far as we have been able to ascertain, consultation with the Chief Minister has not invariably been taking place in recent years. Some Chief Ministers have informed us that the Union Government did not ascertain their views before appointing Governors in their respective States. The general practice, as far as we have been able to ascertain, seems to be that the Union Government merely informs the Chief Minister that a certain person is being appointed as Governor of the State. Sometimes, even such prior intimation is not given.

4.6.23 It is well established that 'consultation' in the context means ascertainment of the views of the person consulted as to the suitability of the person proposed for the appointment. A mere intimation that a certain person is being appointed as Governor is not 'consultation', as it reduces it to an empty formality. The reason why the procedure of effective consultation with the Chief Minister has been given up is not clear. We have given anxious thought to the question whether such consultation should not be made mandatory by writing it into the Constitution.

4.6.24 The framers of the Constitution refrained from incorporating, in specific terms, procedures aimed at securing political accountability which could best be evolved over a period of time through experience gained in working the Constitution. Consultation with the chief Minister is one such procedure which by now should have got assimilated into the system of Union-State relations, but that unfortunately has not happened.

4.6.25 In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, we recommend that this procedure should be prescribed in the Constitution, itself. Article 155 should be suitably amended to give effect to this recommendation.

4.6.26 We next consider the second category of suggestions referred to in para 4.6.10 above:—

- (a) A National Presidential Council should be set up to advise the President on matters of national interest, *inter alia*, for selection of persons to be appointed as Governors. This Council would be analogous to the Council of State originally proposed at the time of framing of the Constitution. It would be composed of the Prime Minister, Presiding Officers and the Leaders of the Opposition in the two Houses of Parliament, former Presidents, Prime Ministers and Chief Justices of India, the Attorney-General for India, and a certain number of nominees of the President.
- (b) Appointment should be made by the President on the advice of the Inter-Governmental Council. One of the State Governments has further suggested that the Council should maintain a panel of names suitable for appointment as Governors. The Chief Minister of the State where the office of Governor is to be filled should choose three persons from the panel and the Inter-State Council should select one of them for appointment. The advice of the Inter-State Council should be accepted by the Union Executive.
- (c) Leaders of the opposition parties in Parliament should be consulted.

4.6.27 The suggestion at (a) of para 4.6.26 above is that a National Presidential Council should advise the President, *inter alia*, on the appointment of Governors. The Council in its composition and function would be analogous to the Council of State proposed by the Constitutional Adviser at the initial stages of framing the Constitution. The Council of State was conceived as a body consisting of eminent persons whose advice would be available to the President in all matters of national importance in which he was required to act in his discretion. This proposal was not accepted by the Constitution-makers who considered it to be irreconcilable with the parliamentary type of government adopted at the Union level.<sup>16</sup> The National Presidential Council that has been proposed, has to be ruled out for the same reasons.

4.6.28 The suggestion in sub-para (b) of para 4.6.26 above has been discussed in the Chapter on “Inter-Governmental Council—Article 263”.<sup>17</sup> As pointed out there, a procedure for consulting such a Council in the appointment of Governors, will politicise such appointments and dilute the responsibility of the Union Executive to Parliament in this matter. We are, therefore, unable to agree with this suggestion.

4.6.29 The ARC Study Team on Centre-State Relationships observed<sup>18</sup> that consultation with the Leader of the Opposition in the Lok Sabha would not prove workable immediately, but could be considered for adoption in due course. Its success would depend on the health of the working relationship between the Government and the Opposition. As rightly pointed out by M.C. Setalvad,<sup>19</sup> this proposal involves the danger of making the appointment of the Governor a matter of controversy between the party in power and the Opposition. In view of these considerations, we are unable to support the suggestion in sub-para (c) of para 4.6.26 that leaders of Opposition parties in Parliament should be consulted.

4.6.30 There is no gainsaying that a procedure must be devised which can ensure objectivity in selection and adherence to the criteria for selection recommended in para 4.6.09 above, and insulate the system from political pressures. Also, the new procedure must not only be fair but should be seen to be fair. Further, it is important that the flaws, noticed in the different procedures already discussed are avoided.

4.6.31 It is clear that the manner of selection should be such as would inspire the confidence of the people. In this connection the following observations of Dr. Rajendra Prasad<sup>20</sup> are pertinent:

“Now-a-days, because of differences between the various political parties or members of the same party, the people of every State are disgusted and troubled by the political situation and party politics. They do not have the same confidence in politicians as they once had. It is necessary, therefore, that the people of a State should have full confidence in a supreme non-partisan institution like that of Governor”.

4.6.32 We are of the view that both to bring in greater objectivity in the appointment of a governor and to ensure that selections are not only made on principles of suitability but are seen to have been so made, consultation with a group which can give dispassionate advice is desirable. Among the various constitutional

offices at the union level, those of the Vice-President of India and the Speaker of the Lok Sabha give their incumbents a good objective overall view of the political imperatives in the country at any point of time. The manner of their functioning provides an assurance that matters referred to them will be dealt with impartially and with detachment.

4.6.33 We recommend that the Vice-President of India and the Speaker of the Lok Sabha should be consulted by the Prime Minister in selecting a Governor. Such consultation will greatly enhance the credibility of the selection process. The consultation should be confidential so that there is no danger of the type mentioned in para 4.6.28 above which might deter eminent persons from making themselves available for appointment as Governors. The proposed consultation will be informal and not a matter of constitutional obligation.

## *7. GOVERNOR'S TERM OF OFFICE*

4.7.01— A Governor's term of office on appointment to a State is five years. However, he holds that office during the pleasure of the President. He may also resign his office. If a Governor's term expires, he continues to hold office until his successor takes over (Article 156). A Survey of the tenures of Governors from 1947 upto October, 1986 shows that, out of the 154 tenures that ended during this period, 104, i.e. two-thirds of them, were each of duration of less than 5 years.

4.7.02 Many Governors have held office in more than one State successively without a break. During the period upto October, 1986, 31 persons held 63 tenures of Governors. Out of these, 58 tenures were for a period of less than 5 years. The Union Ministry of Home Affairs have clarified that, "normally, the term of a Governor is computed from the date he first assumes charge of office till the expiry of his term of five years irrespective of whether or not he holds charge of the office of Governor in one State or in more than one State. The appointment of a Governor from one State to another State during his tenure of office of five years, in continuity without any break, is not treated as a separate appointment for purpose of computation of tenure". We wish to point out that this method of computation is not envisaged by Article 156 of the Constitution, which prescribes a tenure of 5 years for each appointment. Each appointment to a State constitutes a separate tenure. It is unrelated to any tenure in a preceding or succeeding appointment.

4.7.03 Apart from the fact that the constitutionality of the method of computation adopted by the Union Government appears to be highly doubtful, it is noticed that even in such cases there has been little uniformity. Among the 31 Governors who accounted for the 63 tenures mentioned above, 8 had resigned and 3 were continuing in office as on October, 1986. Of the remaining 20, four served for more than 7 years.

4.7.04 Many Governors served in only one State. Of them, 35 did not complete their full tenure of 5 years. Some Governors were appointed to more than one State. But in their case, there was a time-gap between two successive tenures. The Union Ministry of Home affairs has clarified, in the case of the latter category of Governors, that "their first appointment as Governor in one State has no bearing on the subsequent appointment as Governor in another State and such appointments are treated as separate for all purposes". Here again, there were 11 tenures of less than 5 years, making a total of 46 such cases.

4.7.05 In general, the reasons why certain Governors in the category mentioned in the above para did not complete their normal tenure of 5 years were (a) tendering of resignation, (b) demise in office, or (c) revocation of the pleasure of the President. In the 46 cases referred to above, there were 2 instances in which the Governors had to demit office without completing five years on the withdrawal of pleasure of the President.

4.7.06 Annexure IV. 1 to this Chapter depicts graphically the number of cases in which the tenure of the Governor was terminated before he had completed in office 1, 2, 3, 4, or 5 years, separately, during each of the periods from August, 1947 to March, 1967 and from April 1967 to October, 1986. It will be observed that during the latter period, pre-mature exits from office occurred at a much faster rate and relatively fewer Governors completed their normal term of office, as compared to those during the former period.

4.7.07 A Governor, being a person from outside the State, necessarily needs, after his appointment, sometime to get himself acquainted with the problems of the State, the aspirations of its people, and the working of the State Government. It is only thereafter that he can address himself to the important tasks,

first, as the constitutional head, of helping his Ministry but without interfering in its work, and second, of functioning as an effective constitutional link between the Union and the State. In this way, the Council of Ministers can benefit, of a reasonably long period, from the counsels of Governor who is experienced and a person of eminence.

4.7.08 Further, the ever-present possibility of the tenure being terminated before the full term of 5 years, can create considerable insecurity in the mind of the Governor and impair his capacity to withstand pressures, resist extraneous influences and act impartially in the discharge of his discretionary functions. Repeated shifting of Governors from one State to another can lower the prestige of this office to the detriment of both the Union and the State concerned. As a few State Governments have pointed out. Governors should not be shifted or transferred from one State to another by the Union as if they were civil servants. The five year term of Governor's office prescribed by the Constitution in that case loses much of its significance. We recommend that the Governors tenure of office of five years in a State should not be disturbed except very rarely and that too for some extremely compelling reason. It is indeed very necessary to assure a measure of security of tenure to the Governor's office.

#### 8. SECURITY OF TENURE

4.8.01— The suggestions received by us on the subject of guaranteeing the Governor a full five-year term, can be summarised as under:

- (i) A Governor should have a guaranteed tenure so that he can function impartially. The different procedures suggested for Governor's removal, are—
  - (a) The same procedure as for a Supreme Court Judge.
  - (b) An investigation into the Governor's conduct by a parliamentary Committee.
  - (c) Impeachment by the State Legislature.
  - (d) Inquiry by the Supreme Court.
  - (e) Written request from the Chief Minister, followed by a resolution of the Legislative Assembly.
  - (f) Recommendation of the Inter-State Council.
- (ii) Tenures should not be guaranteed to a Governor because—
  - (a) the nature of his duties and functions and the manner of their performance are fundamentally different from those of a Judge. The former has a multi-faceted role and his duties are mainly non-judicial, while those of a Judge are entirely judicial to be discharged in his own independent judgement;
  - (b) it will be difficult to remove a Governor who is not of the requisite ability and impartiality, or who is not able to function smoothly with the Chief Minister or who does not function in coordination with the Union.

4.8.02 Apart from some eminent persons, one State Government is in favour of prescribing the same procedure for the removal of a Governor which has been laid down for that of a Judge of the Supreme Court. Another State Government has observed that as the functions of these two offices are entirely different, their tenure, manner of appointment and removal cannot be the same.

4.8.03 The question whether a special procedure should be provided in the Constitution for the removal of a Governor and, if so, what that procedure should be, has to be examined by a comparison of the duties and functions of the Governor with those of other constitutional functionaries. The role and functions of the President, who is the constitutional head of the Union, are broadly similar to those of the Governor in so far as the latter has to function as the constitutional head of the State. The functions of both are essentially political and governed by certain conventions of a parliamentary system of government. However, the similarity ends here. Whereas the President acts invariably on the advice of his Council of Ministers, the Governor, as explained earlier, may exercise certain functions in his discretion. The Governor has also certain important responsibilities towards the Union.

4.8.04 In contrast with those of the Governor, the nature of the duties and functions of other constitutional functionaries, such as Judges of the Supreme Court and the Comptroller and Auditor-General, is entirely different. They are bound by the very oath of their office to perform their duties "to the best of their ability, knowledge and judgement, without fear or favour", independently of the Executive.

This is why a Supreme Court Judge or the Comptroller and Auditor-General cannot be removed from his office except by following the very stringent procedure prescribed in the Constitution on the ground of proved misbehaviour or in-capacity.

4.8.05 Because of the Governor's multi-dimensional role and functions which have a heavy political content, it is not possible to lay down a set of concrete standards and norms with reference to which a specific charge against a Governor may be examined. The grounds for removal may not, therefore, be susceptible of investigation and proof by judicial standards. This is particularly true of a charge of being partisan which, according to one view, should be a sufficient ground for the Governor's removal. In our view, it would be neither advisable nor realistic to adopt, for the removal of a Governor, a procedure similar to that laid down for the removal of Judges.

4.8.06 The fact that it will be impossible to lay down a concrete set of standards and norms for the functioning of a Governor will make it difficult for a Parliamentary Committee or the Supreme Court to inquire into a specific charge against a Governor. Further, while discharging his role as a constitutional sentinel and a vital link between the Union and the State, the Governor may have incurred the displeasure of the political executive in the State. Therefore, removal of a Governor through a process of impeachment by the State Legislature or in pursuance of a written request from the Chief Minister, followed by a resolution of the Legislative Assembly, may not ensure objectivity and impartiality. The Inter-State Council, too, being a political forum, there is a danger that investigation by it of a charge against a Governor may not be totally free from political bias. Therefore, it would not be the appropriate body to investigate charges against Governors. Thus, none of the procedure suggested in para 4.8.01— (i) can be supported by us.

4.8.07 While it is not advisable to give the same security of tenure to a Governor as has been assured to a Judge of the Supreme Court, some safeguard has to be devised against arbitrary withdrawal of President's pleasure, putting a premature end to the Governor's tenure. The intention of the Constitution makers in prescribing a five-year term for this office appears to be that the President's pleasure on which the Governor's tenure is dependent, will not be withdrawn without cause shown. Any other inference would render clause (3) of Article 156 largely otiose. It will be but fair that the Governor's removal is based on procedure which affords him an opportunity of explaining his conduct in question and ensures fair consideration of his explanation, if any.

4.8.08 Save where the President is satisfied that, in the interest of the security of the State, is it not expedient to do so, as a matter of healthy practice, whenever it is proposed to terminate the tenure of a Governor before the expiry of the normal terms of five years, he should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (which, in effect, means the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendations of this Group, the President may pass such orders in the case as he may deem fit.

4.8.09 We recommend that when a Governor, before the expiry of the normal term of five years, resigns or is appointed Governor in another State, or his tenure is terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of his tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him in reply. This procedure would strengthen the control of Parliament and the Union Executive's accountability to it.

## 9. ELIGIBILITY FOR FURTHER OFFICES

4.9.01— Our attention has been drawn by some State Governments to the behaviour of a few Governors in actively lobbying for political appointments. This is a matter of grave concern. It is difficult for a Governor with such propensity to function, specially in his discretionary sphere, in an independent and impartial manner if he looks forward to being given other public office or to resuming his political career at the end of his term as Governor.

4.9.02 One of the State Governments has observed that Governorship should be really the last lap on the journey of a politician. If Governors become Ministers or hold other official positions, the dignity of the office is marred. Two State Governments feel that a Governor should not be appointed for a second term whether in the same or in another State. Another State Government is of the view that a person who has served as Governor should be ineligible for further appointment in any capacity under the Union Government or a State Government. He should also not take up any private appointment.

4.9.03 We broadly agree with the above views. However, we see no objection to a person, who has completed a term as Governor, being appointed or elected to an equivalent or higher constitutional office. Also, it is undesirable that a person who has held the high Constitutional office of Governor would take up private employment after completing this tenure.

4.9.04 We recommend that as a matter of convention the Governor, on demitting his office, should not be eligible for any other appointment or office of profit under the Union or a 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.

#### 10. RETIREMENT BENEFITS FOR GOVERNORS

4.10.01— If a Governor after demitting office, is made ineligible for any other appointment or office of profit except as recommended above, and at the same time given reasonable retirement benefits, his capacity to act with due objectivity and impartiality and independence—where such independence is required—in the discharge of his functions, will be strengthened. A Governor on demitting his office should be, therefore, provided sufficient means to enable him to lead a life of reasonable comfort in keeping with the dignity of this high office. We have found that not all former Governors were fortunate enough to have sufficient financial resources of their own. There have, in fact, been a few instances of retired Governors left with inadequate means of livelihood. It is surprising that an incumbent of this high office is not given any pension or post-retirement benefits.

4.10.02 We recommend that a Governor should at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse, if any.

#### 11. SOME AREAS WHERE DISCRETION MAY HAVE TO BE EXERCISED

##### **Choice of Chief Minister**

4.11.01— The leader of the party which has an absolute majority in the Legislative Assembly should invariably be called upon the the Governor to form a government. This is a time-honoured convention of a cabinet form of government. There is no controversy in this regard. However, where no party has a clear majority, there are two views as to the procedure to be adopted for identifying the person who can form a government. According to some others, the Governor, acting on his own, should summon the Assembly for electing a person to be the Chief Minister. Certain other State Governments have suggested that the person to be appointed as Chief Minister should be chosen or elected by the Legislative Assembly, even if he is the leader of a party which has secured absolute majority. Some of the State Governments consider that the Governor should try to ensure that the government to be formed will be stable.

4.11.02 It is important to note that, in appointing the Chief Minister, the Governor is required to ensure that the Council of Ministers is collectively responsible to the Legislative Assembly *vide* Article 164(2). Accordingly, in order to continue in office, the Council of Ministers, and not the Chief Minister alone, should continue to have majority support in the Assembly. Also, it is only against the Council of Ministers that a no-confidence motion may be moved. We are, therefore unable to agree with any suggestion which would require a Chief Minister to be elected or chosen by the Legislative Assembly. To ensure strict adherence to the principle laid down by Article 164(2), and fair-play to all the parties in the Legislative Assembly, we suggest as follows.

4.11.03 In choosing a Chief Minister, the Governor should be guided by the following principles, *viz.*—

- (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
- (ii) The Governor's task is to see that a Government is formed and not to try to form a Government which will pursue policies which he approves.

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

4.11.04 If there is no such party, the Governor should select a Chief Minister from among the following parties or group of parties by sounding them, in turn, in the order of preference indicated below:

1. An alliance of parties that was formed prior to the Elections.
2. The largest single party staking a claim to form the government with the support of others, including "independents."
3. A post-electoral coalition of parties, with all the partners in the coalition joining the Government.
4. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "independents" supporting the Government from outside.

4.11.05 The Governor, while going through the process of selection described above, should select a leader who, in his (Governor's) judgement, is most likely to command a majority in the Assembly. The Governor's subjective judgement will play an important role.

4.11.06 A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be strictly adhered to with the sanctity of a rule of law.

4.11.07 We are firmly of the view that when a number of Members of the Legislative Assembly approach the Governor and contest the claim of the incumbent Chief Minister to continued majority support in the Assembly, the Governor should not risk a determination of this issue, on his own outside the Assembly. The prudent course for him will be to cause the rival claims to be tested on the floor of the House. Such a procedure will be not only fair but also seen to be fair. It will also save the Governor from embarrassment consequent upon any error of judgement on his part.

#### **Dismissal of Chief Minister**

4.11.08 The State Governments are unanimous suggesting that the question whether a Ministry has lost majority support in the Legislative Assembly should be decided on the floor of the House and that the Chief Minister should be given a reasonable opportunity to establish such majority. In order that this principle is invariably followed, one of the State Governments has suggested that Article 164 should lay down that a Chief Minister will hold office so long as he continues as leader of a majority of the members of the Assembly. Another State Government has suggested that Article 164 of the Constitution should specifically provide that if it appears to the Governor that the Ministry has lost the confidence of the Assembly, he should, of his own motion, summon the Assembly to enable the Ministry to secure a vote of confidence. In this connection, it has also been suggested by one of the State Governments that a Minister may be dismissed only on the advice of the Chief Minister.

4.11.09 The Council of Ministers hold office during the pleasure of the Governor. The Chief Minister is first appointed and, on his advice, the other Ministers are appointed by the Governor. The joint responsibility of the Council of Ministers operates through the personality of the Chief Minister. The Constituent Assembly considered a specific amendment to the effect that the Ministers could remain in office only so long as they retained the confidence of the Legislature. It was made clear by Dr. Ambedkar that the 'pleasure' should not continue when the Ministry had lost the confidence of the Assembly; and the moment this happened, the Governor would use his 'pleasure' to dismiss it.<sup>21</sup> In the result, the Governor cannot dismiss his Council of Ministers so long as they continue to command the majority, and conversely, he is bound to dismiss them if they lose the same but do not resign.

4.11.10 The question of majority can be easily tested on the floor of the House when the Assembly is in session. However, during the period the Assembly remains prorogued, a Governor may receive reliable evidence (e.g. one or more letters signed by, or a non-confidence motion proposed by, a majority of

members with their signatures authenticated by the Secretary of the Assembly) that the Ministry has lost its majority. Should the Governor in this situation on his subjective satisfaction dismiss the Ministry without giving it a chance to prove its 'majority' on the floor of the House?

4.11.11 Arid legality apart, as a matter of constitutional propriety, the Governor should not dismiss a Council of Ministers, unless the Legislative Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible. If the Chief Minister does not accept the Governor's advice, the Governor may, as explained in paras 4.11.19 and 4.11.20 below, summon the Assembly for the specific purpose of testing the majority of the Ministry.

4.11.12 In deciding on the date of summoning, the Chief Minister should be allowed such time as the Governor in his judgement considers reasonable. A prolonged period of uncertainty for the Ministry-in-office can lead to political as well as administrative malpractices. At the same time, insistence that the Chief Minister should prove his majority in the Assembly within the period which he considers unduly short, leads to resentment and evokes avoidable criticism that the Governor is unreasonably hasty or partisan in his approach. This is one of those situations which call for all the political acumen, experience and persuasive skills of the Governor.

4.11.13 Considering all factors, we recommend that the Assembly should be summoned to meet early within a reasonable time. What is "reasonable" will depend on the circumstances of each case. Generally, a period of 30 days will be reasonable, unless there is very urgent business to be transacted, such as passing the Budget, in which case, a shorter period may be indicated. In special circumstances, it may even exceed this period and go up to 60 days.

4.11.14 Under Article 164(1), the Chief Minister is appointed by the Governor and the other Ministers are appointed by him on the advice of the Chief Minister. In dismissing a Minister other than the Chief Minister, therefore, the correct procedure is for the Governor to act entirely on the advice of the Chief Minister. In so far as we are aware, this has all along been the practice and has not been objected to by any one.

4.11.15 Defections were at one time a major cause of instability which often led to proclamation of President's rule, as no viable Ministry could be formed. With the incorporation of the anti-defection provisions in the Constitution by the 52nd Amendment, instability should be significantly reduced. However, party-splits and breakdowns of coalition governments may continue to occur till such time as political maturity develops among the parties.

### **Summoning, Proroguing and Dissolving the Legislative Assembly**

4.11.16 The Governor is empowered to summon, prorogue and dissolve the Legislative Assembly. The Draft Constitution provided *inter alia* that both in the matter of summoning the Legislative Assembly or Council and dissolving the Assembly, the Governor would be required to act in his discretion. But this provision was subsequently deleted on the ground that a Governor would not exercise any function in his discretion and would follow the advice of his Ministry in all these matters.

4.11.17 It is a well-recognised principle that, so long as the Council of Ministers enjoys the confidence of the Assembly, its advice in these matters,—*unless patently unconstitutional*—must be deemed as binding on the Governor. It is only where such advice, if acted upon, would lead to an *infringement of a constitutional provision*, or where the Council of Ministers has ceased to enjoy the confidence of the Assembly, that the question arises whether the Governor may act in the exercise of his discretion. One of the State Governments, answering the question in the affirmative has suggested that Article 174 may be amended, so as to make the position explicit.

### **Summoning**

4.11.18 Some State Governments are of the view that if the Governor comes to know that the Ministry in office may have lost majority support in the Assembly, he may summon the Assembly on his own with a view to testing whether the Ministry continues to have majority support. One of them has suggested amendments to Article 174 so as to confer this power on the Governor in the situation just mentioned. Another State Government has suggested that the Governor may summon a House of the State Legislature on his own, if the Chief Minister fails to advise him to summon the House within six months of the last day

of the preceding session. However, certain other State Governments are not in favour of the Governor exercising this power. One of them is apprehensive that the power may be exercised at the behest of the Union Government. According to some others, the Governor should dismiss the Ministry, if the Chief Minister does not accept the Governor's suggestion that the Assembly should be summoned within a reasonable time in order to test the majority of the Ministry, which according to available indications, has ceased to enjoy majority support. Some State Governments feel that the responsibility to summon the Assembly should be left to the Chief Minister.

4.11.19 Normally, the State Legislature is summoned by the Governor on the advice of the Chief Minister. The Chief Minister provides business agenda for the Legislative Assembly and also for the Legislative Council, if there is one. However, the exigencies of certain situations may require a departure from this convention. The Governor, then, exercises his own discretion to summon the Assembly. He exercises this discretion only to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution. A situation may, however, arise where the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period. The Governor can, then summon the Assembly within the period of six months specified in Article 174(1), the neglect or wrong advice of the Chief Minister notwithstanding. Again, in our view, the Governor would be justified in summoning the Assembly when the Chief Minister, in contravention of the rule suggested in para 4.11.06 above, is not prepared to summon it within 30 days of his taking over. Similarly, when at a later stage, on the basis of reliable evidence it appears to the Governor that the incumbent Ministry no longer enjoys the confidence of the Assembly, he should ask the Chief Minister to have the question of his majority support tested on the floor of the House within a reasonable time as suggested in para 4.11.13 above.

4.11.20 The exigencies of the situations described above are such that the Governor must necessarily over-rule the advice of his Ministry if he is to ensure that the relevant constitutional requirements are observed both in letter and spirit. As already explained in paras 4.3.07 and 4.3.11, the Governor would, in the special circumstances, be within his constitutional right in summoning the Assembly in the exercise of his discretion. It is neither necessary nor advisable to amend the Constitution to make any express provision in this regard. We, therefore, recommend that, if the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose.

#### **Proroguing**

4.11.21 Most of the State Governments are of the view that, in the matter of proroguing a House of the State Legislature, the Governor should act on the advice of his Council of Ministers. However, one of them has suggested that, when a Chief Minister, being aware that he no longer enjoys majority support, advises the Governor to prorogue the Assembly, the Governor would be justified in compelling the Chief Minister to face the Assembly in order to demonstrate his majority.

4.11.22 We too are of the view that, as regards proroguing a House of Legislature, the Governor should normally act on the advice of the Chief Minister. But where the latter advises prorogation when a notice of a no-confidence motion against the Ministry is pending, the Governor should not straightaway accept the advice. If he finds that the no-confidence motion represents a legitimate challenge from the Opposition, he should advise the Chief Minister to postpone prorogation and face the motion.

#### **Dissolution**

4.11.23 Varying views have been expressed on the line of action to be adopted by the Governor in regard to the dissolution of the Legislative Assembly when the Ministry in office loses majority support in the Assembly and no new Ministry can be formed. One State Government has suggested that the Assembly should stand dissolved on the expiry of one month from the date the Ministry in office was defeated in the Assembly on a vote of confidence. According to another State Government, the Governor may, on his own, dissolve the Assembly so that fresh elections could be held. A third State Government has suggested that the Assembly should be given an opportunity to show cause why it should not be dissolved. Some State Governments are of the view that the Governor should always act in accordance with the advice of the Chief Minister. One of them, however, considers that the Chief Minister should place the question of dissolution before the Council of Ministers.

4.11.24 We have considered the above suggestions. The one for automatic dissolution of the Assembly at the end of one month from the date of defeat of the Ministry implies that the State administration will be carried on during that period by the Governor on the advice of a Ministry which has ceased to enjoy the confidence of the Assembly. The other suggestion that, in deciding whether the Assembly should be dissolved, the Governor should invariably act on the advice of the Ministry implies that he should do so even if the Ministry has lost majority support. Both the suggestions are patently unconstitutional. We, therefore, propose as follows.

4.11.25 The Council of Ministers may advise the Governor to dissolve the Legislative Assembly on the ground that it wishes to seek a fresh mandate from the electorate. If the Ministry enjoys a clear majority in the Assembly the Governor must accept the advice. However, when the advice for dissolving the Assembly is made by a Ministry which has lost or appears to have lost majority support, the Governor should adopt the course of action suggested in paras 4.11.09 to 4.11.13 and 4.11.20 above as may be appropriate.

4.11.26 If ultimately a viable Ministry fails to emerge, a Governor is faced with two alternatives. He may either dissolve the Assembly or recommend President's rule under Article 356, leaving it to the Union Government to decide the question of dissolution. We are firmly of the view that the proper course would be "to allow the people of the State to settle matters themselves".<sup>22</sup> The Governor should first consider dissolving the Assembly and arranging for a fresh election. Before taking a decision, he should consult the leaders of the political parties concerned and the Chief Election Commissioner.

4.11.27 If the Governor concludes that the Assembly should be dissolved and an election can be held early, he should normally ask the outgoing Ministry to continue as a caretaker Government. Here, a convention should be adopted that a caretaker Government should not take any major policy decisions.

4.11.28 However, if the Governor has reliable evidence that the outgoing Ministry has been responsible for serious maladministration or corruption, it would not be proper for him to install such a Ministry as a caretaker Government. In such an event and also if the outgoing Ministry is not prepared to function as a caretaker Government, the Governor, without dissolving the Assembly, should recommend President's rule in the State. It will be then for the Union Government to arrange for early election.

4.11.29 It may happen that, if the Assembly is dissolved, fresh election cannot be held immediately on account of a national calamity or State-wide disturbances. It would then not be proper for a caretaker Government to be in office for the long period that must elapse before the next election is held. The correct course for the Governor would be to recommend proclamation of President's rule under Article 356, without, however, dissolving the Assembly. As suggested in para 6.6.20 of Chapter VI on "Emergency Provisions", it is only after Parliament has had an opportunity to consider the Proclamation bringing the State under President's rule, that the Union Government may decide whether the Assembly should be dissolved and election held in due course.

4.11.30 Another possible situation is that it may be too early to hold a fresh election, the Assembly not having run even half its normal duration of 5 years. Frequent elections one closely following another, tend to distract the attention of the people, disturb the continuity of administration, and involve heavy expenditure. In such an event also, the correct course for the Governor would be to recommend President's rule under Article 356 without dissolving the Assembly.

#### **Nomination to Legislative Council/Assembly**

4.11.31 A question has been raised whether the Governor has discretion in making nominations to the Legislative Council under Article 171(3)(e) and (5) and to the Legislative Assembly vide Article 333. Article 171 does not provide for the exercise of discretion by the Governor. Similarly, no discretion is available to the Governor to make a nomination to the Legislative Assembly under Article 333. The Governor should await the formation of a Ministry, if at the time of making a nomination, a Ministry has not been formed or has resigned or lost majority in the Assembly.

#### **Role of the Governor as Chancellor of a University**

4.11.32 State University Acts generally provide that the Governor by virtue of his office, shall be the Chancellor or head of the University concerned and endowed with various powers such as appointment of vice-Chancellor. The question is whether the Governor's functions as Chancellor of a University fall within

the purview of Article 163(1). This would imply that a Governor is bound to act on the aid and advice of his Council of Ministers in the discharge of his functions as Chancellor except in so far as he is required by the statute to exercise any of the functions in his discretion. There have been instances where, in selecting Vice-Chancellors, Governors as Chancellors have acted in their discretion, over-ruling the advice of the Council of Ministers.

4.11.33 The question first arose when the Governor of Bombay had to nominate members of the Senate of the University of Poona in consultation with the Vice-Chancellor. The Attorney-General for India reportedly held that, as Chancellor, the Governor was not bound to act on the aid and advice of his Ministers. The position was later accepted by Pandit G.B. Pant as Chief Minister of Uttar Pradesh when a question arose about the role of the Governor as Chancellor of Universities in that States.<sup>23</sup>

4.11.34 Two State Governments have suggested that the Governor, while functioning as Chancellor of a University in an *ex-officio* capacity, should exercise his functions in regard to the appointment of vice-Chancellor only on the aid and advice of his Council of Ministers. However, one of them has pointed out that it would be permissible to make an express provision in the State enactment governing the university, requiring the Governor to exercise his discretion in this matter. Two State Government have expressed a different view. One of them has said that, as Chancellor of a University, the Governor is not bound to accept the advice of his Ministry. Yet another State Government has sought to make a distinction between the statutory functions of the Governor as Chancellor which can (and are) challenged in a court of law, while the action taken by him in his capacity as Governor cannot be so challenged.

4.11.35 In its report on "State Administration" the Administrative Reforms Commission recommended<sup>24</sup> that the functions assigned to a Governor by statute (e.g. those of Chancellor of the University) should be exercised by him in his discretion. The Governor may consult the Chief Minister if he so wishes, but he should not be bound by the latter's advice. The Commission surmised that the idea underlying the assignment of certain functions to the Governors by statute was to insulate them from political influence.<sup>25</sup>

4.11.36 The powers and duties conferred on the Governor by a statute fall in two distinct categories. Those conferred on the Governor in his capacity *as Governor* constitute one such category. Such functions pertain to the office of the Governor, as provided for in Article 154(1) and are to be exercised by him on ministerial advice in accordance with Article 163(1). Further, by virtue of Article 361(1), the Governor enjoys personal immunity from answerability to any court for the exercise by him of such functions.

4.11.37 The other category of functions are those which a statute may confer on the Governor, not in his capacity as Governor but in a different capacity such as, for instance, the Chancellor of a University. Here, the Governor functions in pursuance of a statute in relation to the affairs of the University—not as Governor but as Chancellor, notwithstanding that he holds the office in the University in an *ex-officio* capacity. Even though the governor is the chancellor by virtue of his office and would cease to be the Chancellor on ceasing to be Governor, it does not necessarily follow that the functions assigned to him as Chancellor of the University are to be performed by him in his capacity as the Governor. In fact University Acts generally confer certain powers on the State Government which are distinct and separate from those conferred on the Chancellor. It has been held<sup>26</sup> that the immunity given to the Governor, under Article 361(1) does not extend to the exercise of powers and duties falling under this category. The statutory functions of the Chancellor do not fall within the purview of Article 154(1) and cannot be regarded as 'business of the Government of the State' under Article 166(3), the reason being that the office of Chancellor is distinct from that of the Governor.

4.11.38 In relation to exercise of executive power of a State, the word 'Governor' can normally be equated with the State Government. However, the office of Chancellor, even though held by the Governor under a statute in an *ex-officio* capacity cannot be so equated. The former, being an officer of the University, is not obliged to seek the advice of the State Government in the matter of exercise of his functions such as the appointment of Vice-Chancellor. The same view has been taken by the Andhra Pradesh High Court in *M. Kiran Babu Vs. Government of Andhra Pradesh*.<sup>27</sup>

4.11.39 Although there is no obligation on the governor always to act on ministerial advice under Article 163(1), there is an obvious advantage in the governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. The Governor, in his capacity as

Chancellor of a University, may possibly be required by the University's statute (e.g. the Calcutta and the Burdwan University Acts) to consult a Minister mentioned in such statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

## 12. GOVERNOR'S FORTNIGHTLY REPORT TO THE PRESIDENT

4.12.01— Each Governor sends to the President every fortnight a report on important developments that have taken place in the administration of the State. The practice generally followed is to send a copy of this report to the Chief Minister.

4.12.02 One of the State Governments considers that these reports are useful as they keep the President, informed about the state of affairs in the State and, at the same time, enable the Chief Minister and his colleagues to know the views of the Governor on such matters. The reports also enable the Chief Minister to correct any wrong policies that may have been pursued. Another State Government would like fortnightly reports to offer objective advice to both the Union and the State Governments in order to remove misunderstandings and differences between them. These reports should create mutual trust between the Governor and the Chief Minister. It should therefore be made obligatory for the Governor to make a copy of the fortnightly report available to the Chief Minister.

4.12.03 However, two other State Governments are opposed to the practice of the Governor sending periodical reports to the President on the ground that it makes the Governor subservient to the Union Government. One of them has suggested that the fortnightly reports to the Union Government should be sent by the Chief Minister and not by the Governor.

4.12.04 The ARC Study Team on Centre-State Relationships recommended in its report that Governors should keep themselves informed about key sectors of public administration in the State so that their fortnightly reports could provide the Union with meaningful information and, at the same time, give timely advice and warning, if necessary, to the Chief Minister also. The Study Team was of the view that Governors were perfectly within their right to send reports, fortnightly and *ad hoc*, to the President without any obligation to send copies to the Chief Ministers.<sup>28</sup>

4.12.05 In its report on Centre-State Relationships, the Administrative Reforms Commission observed that, through his fortnightly reports, the Governor should keep the Union Government adequately informed of the developments and events in the State and the manner in which the Government of the State was being carried on. In making fortnightly and *ah hoc* reports, the Governor should act according to his own judgement. However, he should take his Chief Minister into confidence, unless there are overriding reasons to the contrary.<sup>29</sup>

4.12.06 We do not see any reason to recommend a change in the well-established practice of Governors sending fortnightly reports to the President, with copies thereof to the Chief Minister. However, we are of the view that it would not be constitutionally proper to make it obligatory for the Governor to send a copy of the report to the Chief Minister. As explained earlier in paras 4.3.11(d) and 4.3.13, the Governor may be obliged to report to the President some important developments together with his own assessment of them. He may consider it inadvisable to endorse a copy of such a report to the Chief Minister. Normally, such a report should not be included in the fortnightly letter but sent as a separate *ah hoc* report. However, in principle, it is the Governor's right and duty to make a report, whether it is fortnightly or *ah hoc*, without the obligation of informing the Chief Minister. Even so, what is legally permissible may not always be politically proper. We would, therefore, reiterate the recommendation of the Administrative Reforms Commission that while sending these *ah-hoc* or fortnightly reports the Governor should normally take his Chief Minister into confidence, unless there are over-riding reasons to the contrary.

## 13. NEED FOR DISCRETIONARY POWER

4.13.01— It has been suggested to us that the discretionary power of the governor under Article 163 should be removed. The Governor may be assigned only some symbolic functions to perform but must act only according to the advice of the State Council of Ministers. Two State Governments are of the view that the expression “except in so far as he is, by or under this Constitution required to exercise his functions or any

of them in his discretion” in Article 163(1) should be retained. However, the Governor should exercise his discretion, in public interest, not arbitrarily, and so as to subserve the purpose for which discretionary power has been conferred. One of these State Governments has further suggested that the discretionary power needs to be curtailed, as the present interpretation of the scope of this power is a potential threat to the autonomy of the States and to the right of the people of the State to be governed by a responsible government. It has accordingly suggested that, if exercise of discretion by the Governor under a particular Article of the Constitution cannot be regarded as justified, the Article should be amended so as to remove that function the purview of the Governor's discretionary power.

4.13.02 As it is humanly impossible to visualise and provide for all contingencies in which the Governor may be required to act in the exercise of his discretion for discharging his constitutional responsibilities, the Constitution-makers advisedly refrained from putting it within the strait jacket of a rigid definition. The ways in which the Constitution can be tampered with cannot be foreseen. Political pressures and human ingenuity may try many methods of circumventing the Constitution and creating chaos. Which way the Governor may have to react under any such situation cannot be pre-determined.

4.13.03 For all these reasons, we are of the opinion that the discretionary power of the Governor as provided in Article 163 should be left untouched. It is neither feasible nor advisable to regulate its exercise or restrict its scope by an amendment of the Constitution.

4.13.04 In the earlier paragraphs we have indicated broadly the principles and conventions to be followed by the Governor in exercising discretion in relation to some specified functions. On all such occasions when a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Minister, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

#### 14. SPECIFIC FUNCTIONS ENTRUSTED TO GOVERNORS OF CERTAIN STATES

##### Functions to be exercised in their discretion

4.14.01— In para 4.3.09 (A)(ii) *ante*, we referred to the fact that specific functions have been entrusted to Governors of certain States to be exercised by them in their discretion. These are listed below:

(i) *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)].<sup>30</sup>
- (d) Deciding all matters relating to Tuensang District (Article 371A (2)(f)).<sup>30</sup>

(ii) *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)].

(iii) *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)].

(iv) *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].

4.14.02 It has to be noted that the above provisions are applicable only to a few States and are in the nature of temporary, transitional or special provisions as the case may be. It will also be observed that some among the functions listed above, are expressly termed as “special responsibilities”. While the remaining

have not been so termed. Notwithstanding this distinction, all these functions have some features in common. First, the final decision in all the cases has to be taken by the Governor on his own. That is to say, he is not bound to seek or accept the advice of his Council of Ministers. Second, the functions relate entirely to State administration for which the Council of Ministers in each of these States is ultimately accountable to the Legislative Assembly. In contrast, the Governors of States other than these are expected to exercise the corresponding functions, to the extent applicable, only on the aid and advice of their Council of Ministers.

#### **Functions to be exercised in their individual judgement**

4.14.03 As mentioned in para 4.3.09(B), the Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect to law and order in their respective States. In deciding the action to be taken in the discharge of this special responsibility, the Governor concerned has to exercise his individual judgement *after consulting his Council of Ministers*. [Articles 371 H(a) and 371A (1) (b)]. These are the only two provisions in the Constitution which use the expression 'individual judgement' and make prior consultation with the Council of Ministers mandatory. The ultimate decision, as already pointed out is taken by the Governor on his own. This feature distinguishes these provisions from a provision for the exercise of discretion by the Governor (either expressly or by necessary implication). In the latter case, the Governor is not bound to seek or accept the advice of his Council of Ministers.

#### **Functions entrusted by presidential orders under the Constitution and exercisable in their discretion**

4.14.04 As mentioned in para 4.3.10 *ante* there is yet a third category of functions envisaged in Articles 371 and 371C. These functions, however, arise only after the President has made an Order under either Article providing for any special responsibility of the Governor of the State in respect of the matters specified in the Article. Two such Orders made with respect to the States of (composite) Punjab and Andhra Pradesh under Article 371(1)<sup>31</sup> enabled the irrespective Governors to decide finally, in the exercise of their discretion/judgement, certain matters on which there was a difference of opinion between the Council of Ministers and the Regional Committee. Two other Presidential Orders made with respect to the State of Gujarat<sup>32</sup> [Article 371 (2)] and Manipur [Article 371C (1) specifically empowered the Governor to exercise discretionary power.

4.14.05 In the discharge of the functions referred to in paras 4.14.01— and 4.14.04 above, the Governor concerned has to exercise his discretion. He is thus *not bound* to seek or accept the advice of his Council of Ministers. But that does not mean that he is forbidden to consult them. Rather, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State, before taking a final decision in exercise of his discretion. Such a practice will be conducive to the maintenance of healthy relations between the Governor and his Council of Ministers. Further, going by the principle recommended in para 4.13.04 in the preceding Section, a Governor, while exercising any of the functions referred to in this Section too, may act in his discretion only when he finds that the advice given by his Council of Ministers would be prejudicial to the effective discharge of such functions.

### **15. GUIDELINES FOR GOVERNORS**

4.15.01— A number of views have been expressed before us as to whether guidelines are necessary for Governors in regard to the exercise of their discretionary powers. According to one view, it will be difficult to frame a set of guidelines because the characteristics of the situations in which they have to be exercised will be so diverse as to defy even broad categorisation. Another view is that guidelines may lead to litigation. In any case, they are unnecessary and it should be assumed that a Governor will use his discretion properly in accordance with the spirit of the Constitution.

4.15.02 There is the opposing view that guidelines are necessary. They should be directory and embody accepted conventions. While some would prefer the guidelines to be kept outside the Constitution, others would like them to be issued in the form of an Instrument of Instructions under the Constitution. According to one view, an Instrument of Instructions may be formulated by the Union in consultation with the States. Another view is that this should be done by the Inter-Governmental Council.

4.15.03 The Draft Constitution provided that, in choosing his Ministers and in his relations with them, the Governor would be guided by the Instructions set out in a Schedule (*viz.* the Fourth)<sup>33</sup>. The Schedule

was subsequently deleted by the Constituent Assembly. While doing so, it was explained that the Governor had to act on the advice of his Ministers. His discretion being very meagre, his relations with his Ministers should be left entirely to convention.<sup>34</sup>

4.15.04 The ARC Study Team on Centre-State Relationships (1967) emphasised the need for the evolution of a national policy to which the Union and the States subscribe, which gives recognition to the role of the Governor and guides the responses of the Union, the States and the Opposition parties to any actions taken in discharge of it. The national policy, according to it, should spell out the implications of the Governor's role in the form of conventions and practices, keeping in view the national objective of defending the Constitution and the protection of democracy.<sup>35</sup>

4.15.05 The Administrative Reforms Commission (1969) recommended that guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and, on acceptance by the Union, issued in the name of the President.<sup>36</sup> The Government of India, however, did not accept this recommendation on the ground that these matters should be left to the growth of appropriate conventions and that the formulation of rigid guidelines would be neither feasible nor appropriate.

4.15.06 Considering the multi-faceted role of the Governor and the nature of his functions and duties, we are of the view that it would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise by him of his discretionary powers. No two situations which may require a Governor to use his discretion, are likely to be identical. Their political nuances too are bound to be different, making it virtually impossible to foresee and provide for all such situations. Consequently, guidelines will be too broad to be of practical use to a Governor and yet may force him to search for precedents every time. It is important that no such handicaps should be placed on him. He should be free to deal with a situation, as it arises, according to his best judgement, keeping in view the Constitution and the law and the conventions of the parliamentary system outlined in the preceding paragraphs as well as in the Chapters on "Reservation of Bills by Governors for President's consideration",<sup>37</sup> and "Emergency Provisions".<sup>38</sup>

## 16. RECOMMENDATIONS

4.16.01— A person to be appointed as a Governor should satisfy the following criteria:

- (i) He should be eminent in some walk of life.
- (ii) He should be a person from outside the State.
- (iii) He should be detached figure and not too intimately connected with the local politics of the State; and
- (iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

(Para 4.6.09)

4.16.02 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 a combination of other parties.

(Para 4.6.19)

4.16.03 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 suitably amending Article 155.

(Para 4.6.25)

4.16.04 The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. The Consultation should be confidential and informal and should not be a matter of constitutional obligation.

(Para 4.6.33)

4.16.05 The Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reason.

(Para 4.7.08)

4.16.06 Save where the President is satisfied that, in the interest of the security of the State. It is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this Group, the President may pass such orders in the case as he may deem fit.

(Para 4.8.08)

4.16.07 When, before expiry of the normal terms of five years, a Governor resigns or is appointed Governor in another State, or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him, in reply.

(Para 4.8.09)

4.16.08 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 a 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.

(Para 4.9.04)

4.16.09 A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse.

(Para 4.10.02)

4.16.10 (a) In choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

- (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
- (ii) The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which he approves.

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

If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

- (i) An alliance of parties that was formed prior to the Elections.
- (ii) The largest single party staking a claim to form the government with the support of others, including 'independents'.
- (iii) A post-electoral coalition of parties, with all the partners in the coalition joining government.
- (iv) A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents', supporting the government from outside.

The Governor while going through the process described above should select a leader who in his (Governor's) judgement is most likely to command a majority in the Assembly.

(c) A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

(Paras 4.11.03 to 4.11.06)

4.16.11 The Governor should not risk determining the issue of majority support, on his own, outside the Assembly. The prudent course for him would be to cause the rival claims to be tested on the floor of the House.

(Para 4.11.07)

4.16.12 The Governor cannot dismiss his Council of Ministers so long as they continue to command a majority in the Legislative Assembly. Conversely, he is bound to dismiss them if they lose the majority but do not resign.

(Para 4.11.09)

4.16.13 (a) When the Legislative Assembly is in session, the question of majority should be tested on the floor of the House.

(b) If during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost 'majority', he should not, as a matter of constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible so that the 'majority' may be tested.

(c) Generally, it will be reasonable to allow the Chief Minister a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing the Budget, in which case, a shorter period may be allowed. In special circumstances, the period may go up to 60 days.

(Paras 4.11.10, 4.11.11 and 4.11.13)

4.16.14 So long as the Council of Ministers enjoys the confidence of the Legislative Assembly, the advice of the Council of Ministers in regard to summoning and proroguing a House of the Legislature and in dissolving the Legislative Assembly, if such advice is not *patently* unconstitutional, should be deemed as binding on the Governor.

(Para 4.11.17)

4.16.15 (a) The Governor may in the exigencies of certain situations, exercise his discretion to summon the Assembly only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution.

(b) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months specified in Article 174(1).

(c) When a Chief Minister (who is not the leader of the party which has absolute majority in the Assembly), is not prepared to summon the Legislative Assembly within 30 days of the taking over [*vide* recommendation 4.16.10(c) above] or within 30 days or 60 days, as the case may be, when the Governor finds that the Chief Minister no longer enjoys the confidence of the Assembly [*vide* recommendation 4.16.13 (c) above], the Governor would be within his constitutional right to summon the Assembly for holding the "Floor Test".

(Paras 4.11.19 and 4.11.20)

4.16.16 If a notice of a no-confidence motion against a Ministry is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition, but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. He should advise the Chief Minister to postpone the prorogation and face the motion.

(Para 4.11.22)

4.16.17 (a) When the advice for dissolving the Assembly is made by a Ministry which has lost or is likely to have lost majority support, the Governor should adopt the course of action as recommended in paras 4.16.12, 4.16.13 and 4.16.15 (c) above.

(b) If ultimately a viable Ministry fails to emerge, the Governor should first consider dissolving the Assembly and arranging for fresh elections after consulting the leaders of the political parties concerned and the Chief Election Commissioner.

(c) If the Assembly is to be dissolved and an election can be held early, the Governor should normally ask the outgoing Ministry to continue as a caretaker Government. However, this step would not be proper if the outgoing Ministry has been responsible for serious mal-administration or corruption.

(d) A convention should be adopted that a care taker Government should not take any major policy decisions.

(e) If the outgoing Ministry cannot be installed as a caretaker Government for the reason indicated in (c) above or if the outgoing Ministry is not prepared to function as a caretaker Government, the Governor, without dissolving the Assembly, should recommend President's rule in the State.

(f) If fresh election cannot be held immediately on account of a national calamity or State-wide disturbances, it should not be proper for the Governor to install a caretaker Government for the long period that must elapse before the next election is held. He should recommend proclamation of President's rule under Article 356 without dissolving the Assembly.

(g) If it is too early to hold fresh election, the Assembly not having run even half its normal duration of five years, the Governor should recommend President's rule under Article 356 without dissolving the Assembly.

(Paras 4.11.25 to 4.11.30)

4.16.18 The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time of making a nomination, a Ministry has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new Ministry.

(Para 4.11.31)

4.16.19 Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the Governor, in his capacity as Chancellor, always to act on Ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chancellor of a University, the Governor may be required by the University's statute to consult a Minister mentioned in the statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters, also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

(Paras 4.11.37 to 4.11.39)

4.16.20 The Governor, while sending *ad hoc* or fortnightly reports to the President, should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

(Para 4.12.06)

4.16.21 The discretionary power of the Governor as provided in Article 163 should be left untouched.

(Para 4.13.03)

4.16.22 When a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

(Para 4.13.04)

4.16.23 Certain specific functions have been conferred (or are conferable) on the Governors of Maharashtra and Gujarat [Article 371(2)], Nagaland [First Proviso to Article 371A(1)(b), Article 371A(1)(d) and Article 371A(2)(b) and (f)], Manipur [Article 371C(1)], Sikkim [Article 371F(g)] and

Arunachal Pradesh [First Proviso to Article 371H(a)] to be exercised by them in their discretion. In the discharge of these functions, the Governor concerned is *not bound* to seek or accept the advice of his Council of Ministers. However, before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State.

(Para 4.14.05)

4.16.24 It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise of the discretionary powers of the Governor. A Governor should be free to deal with a situation according to his best judgement, keeping in view the Constitution and the law and the conventions of the Parliamentary system outlined in this Chapter as well as in Chapter V “Reservation of Bills by Governors for President's consideration” and Chapter VI “Emergency Provisions”.

(Para 4.15.06)

COMPARISON BETWEEN NUMBER OF TENURES OF GOVERNORS  
AND THEIR DURATIONS (EACH LESS THAN THE NORMAL  
TENURE OF 5 YEARS) DURING

451

ANNEXURE IV.1

(i)	1947	TO	31.3.1967	_____
(ii)	1.4.67	TO	31.10.86	_____

Total Number of tenures (a) and (c)

Number of tenures not  
terminated before expiry  
of normal tenure (5 years) (b) and (d)