CONSTITUTIONAL GOVERNANCE OF STATES

(Lecture Delivered on 04 October, 2019 Among
Law Students of the Galgotia University, Noida)

…S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com

1. **Rule of law alone governs the country:** Rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the executive or any other authority should be within the constitutional limitations. If any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, anyone as a member of the public would have sufficient interest and right to challenge such practice before the courts. Our Constitution envisages a rule of law and not rule of men. It recognizes that, howsoever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits. The primordial value is that it is the responsibility of every organ of the State to function within the four corners of the constitutional responsibility. That is the ultimate rule of law. See: (i) Nandini Sundar Vs. State of Chhattisgarh, (2011) 7 SCC 547 (para 84), (ii) Pancham Chand Vs. State of Himachal Pradesh & Others, AIR 2008 SC 1888 (para 17), (iii) I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench) (para 49) and (iv) Dr. D.C. Wadhwa Vs. State of Bihar & Others, AIR 1987 SC 579 (para 3).

2. **Rule of law: What is ?** Rule of law is the antithesis of arbitrariness. Plato believed that if philosophers were kings or king's philosophers, government by will would be intrinsically superior to government by law and he so proclaimed in his Republic. Experience eventually taught him that this ideal was not obtainable and that if ordinary men were allowed to rule by will alone the interests of the community would be sacrificed to those of the ruler. Accordingly, in the Laws he modified his position and urged the acceptance of the"second best", namely government under law. Since then the question of the relative merits of rule by law as against rule by will has been often debated. In the aggregate, the decision has been in favour of rule by law. On occasions, however, we have slipped back into government by will only to return again, sadder and wiser man, to Plato's "second best" when the hard facts of human nature demonstrated the essential egotism of men and the truth of the dictum that all power corrupts and absolute power corrupts absolutely. Bracton's dicta that if the king has no bridle one ought to be put upon him and that although the king is under no man he is under God and the law; Fortescue's insistence that the realm of England is a reginem politicium et regale and hence limited by law; coke's observation that "Magna Carta is such a fellow that he will have no sovereign"; these are but a few of the beacons lighting the way to the triumph of the rule of law. Rule of law is now the accepted norm of all civilised societies. Even if there have been deviations from the rule of law, such deviations have been covert and disguised for no government in a civilized country is prepared to accept the ignominy of governing without the rule of law. The rule of law has come to be regarded as the mark of a free society. Admittedly its content is different in different countries, nor is it to be secured exclusively through the ordinary Courts. But every where it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order. In every State the problem arises of reconciling human rights with the requirements of public

interest. Such harmonising can only be attained by the existence of independent Courts which can hold the balance between citizen and State and compel Governments to conform to the law. See: ADM, Jabalpur Vs. Shivakant Shukla, AIR 1976 SC 1207, (Five-Judge Bench) (para 154).

3. **Laws keep awake even during war and violence:** The saying "when the canons roar, the muses are silent" is not correct. Another saying that "laws are silent during war" also does not reflect the realities of the modern times. The foundation of this approach is not only pragmatic consequence of political and normative reality. Its roots lie much deeper. It is an expression of the difference between a democratic State fighting for its life and the aggression of terrorist rising up against it. The State fights in the name of the law and in the name of upholding the law. The terrorists fight against the law and exploit its violation. The war against terror is also the law's war against those who rise up against it. It is true that terrorism and extremism plague many countries and India unfortunately and tragically has been subject to it for many decades. The fight against terrorism and/or extremism cannot be effectuated by constitutional democracies by whatever means that are deemed to be efficient. Efficiency is not the sole arbiter of all values and goals that constitutional democracies seek to be guided by and achieve. Means which may be deemed to be efficient in combating some immediate or specific problem may cause damage to other constitutional goals and indeed may also be detrimental to the quest to solve the issues that led to the problems themselves. Consequently, all efficient means if indeed they are efficient, are not legal means supported by constitutional frameworks. See: (i) Nandini Sundar Vs. State of Chhattisgarh, (2011) 7 SCC 547 (para 85).

4. **Supremacy of the Constitution:** Governor while exercising his powers and functions under Articles 163 and 164 of the Constitution (to appoint a person as Chief Minister or Minister who is ineligible for membership of the legislature) is not bound by the will of the people as expressed by the majority if the will is contrary to the provisions of the Constitution or some law. Constitution prevails over the will of the people. Constitution of India itself has been adopted, enacted and given to the people of India by the people of India.The supremacy of the Constitution mandates all constitutional bodies to comply with the provisions of the Constitution. See: (i) Supreme Court Advocates-on-Record Association Vs. Union of India, (2016) 5 SCC 1 (Five-Judge Bench) (paras 293 & 296), (ii) I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench) (para 99), (iii) B.R. Kapur Vs. State of Tamilnadu & Another, (2001) 7 SCC 231 (Five-Judge Bench) and (iv) His Holiness Kesavananda Bharati Sripadgalvaru & Others Vs. State of Kerala & Another, AIR 1973 SC 1461 (Thirteen--Judge Bench)

5. **Constitution is not just a document but is a living framework for governance of the country:** A Constitution is not just a document in solemn form but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. In interpreting a constituent or organic statute, that construction which is most beneficial to the widest possible amplitude of its powers, must be adopted. Constitution must not be construed in a narrow and pedantic sense, a broad and liberal spirit should inspire those whose duty it is to interpret it. A Constitution of a Government is a living and organic thing. See: (i) Supreme Court Advocates-on-Record Association Vs. Union of India, (2016) 5 SCC 1 (Five-Judge Bench) (para 773), (ii) I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench) (para 43), (iii) S.R. Chaudhuri Vs. State of Punjab & Others, (2001)7 SCC 126 (Three-Judge Bench) (para 33) and (iv) M/S Vishnu Agencies (Pvt.) Ltd. Vs. Commercial Tax Officer & Others, AIR 1978 SC 449 (Seven-Judge Bench)(Para 26).

6. **Constitution of India is essentially a political document:** It will be an inexcusable error to examine the provisions of the Constitution of India from a pure legalistic angle and interpret their meaning only through jurisdictional technicalities. The Constitution is essentially a political document. Democracy

and federalism are essential features of the Constitution and are part of its basic structure. See: S.R. Bommai Vs. Union of India, AIR 1994 SC 1918 (Nine-Judge Bench) (para 64)

7. **Constitution is what the Judges say it is:** The Constitution is what the Judges say it is. That is because the power to interpret the Constitution vests in the Judges. A heavy responsibility lies on the Judges when they are called upon to interpret the Constitution. The responsibility is all the heavier when the provisions to be construed relate to the powers of the Judiciary. It is essential that complete objectivity is maintained while interpreting the Constitutional provisions relating to the power of the Judiciary vis-a-vis the executive in the matter of appointments to the superior Judiciary to avoid any feeling amongst the other constitutional functionaries that there has been usurpation of power through the process of interpretation. This is not to say that the Judiciary should be unduly concerned about such criticism but merely to emphasize that the responsibility is greater in such cases. To put it differently, where the language of the Constitution is plain and the words used are not ambiguous, care should be taken to avoid giving an impression that fancied ambiguities have been conjured with a view to making it possible to place a convenient construction on the provisions. If the words are plain and unambiguous, effect must be given to them for that is the constituent body's intent, whether you like it or not, and any seeking attempt to depart therefrom under the guise of interpretation of imaginary ambiguities would cast a serious doubt on the credibility and impartiality of the Judiciary. It would seem as if Judges have departed from their sworn duty. Any such feeling would rudely shock peoples' confidence and shake the very foundation on which the judicial edifice stands. The concern of the Judiciary must be to faithfully interpret the Constitutional provisions according to its true scope and intent because that alone can enhance public confidence in the judicial system. The one public interest which the courts of law are properly entitled to treat as their concern is the standing of and the degree of respect commended by the judicial system. See: Supreme Court Advocates-on-Record Association Vs. Union of India, AIR 1994 SC 268 (Nine-Judge Bench) (Para 292)**.**

8. **Law declared by the Supreme Court binding on all Courts and authorities by virtue of Article 141 of the Constitution**: Judicial discipline to abide by the declaration of law by the Supreme Court cannot be forsaken under any pretext by any authority or Court, be it even the highest Court in a State (High Court), oblivious to Article 141 of the Constitution of India. See: (i) Union of India Vs. Major General Shri Kant Sharma, (2015) 6 SCC 773, (ii) Suga Ram @ Chhuga Ram Vs. State of Rajasthan, AIR 2006 SC 3258, (iii) State of Punjab Vs. Bhag Singh, (2004) 1 SCC 547, (iv) S.I. Rooplal Vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three-Judge Bench)and (v) Union of India Vs. Kantilal Hemantram Pandya, AIR 1995 SC 1349.

9. **Mode of interpretation of the Constitution:** The Constitution is a living document. The constitutional provisions have to be construed having regard to the march of time and the development of law. It is necessary that while construing the doctrine of basic structure of the Constitution, due regard should be had to various decisions which led to expansion and development of the law. The principle laid down by the Supreme Court is that the interpretation and construction of the constitutional provisions which conflict with the constitutional goal to be achieved should be eschewed and interest of the Nation in such situation should be the paramount consideration. This principle should equally apply even while interpreting a statutory provision having application at the national level in order to achieve the avowed object of national integration and larger public interest. See: (i) Union of India Vs. V. Sriharan alias Murugan, (2016) 7 SCC 1 (Five-Judge Bench) (para 173.7) and (ii) I.R. Coelho Vs. State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench) (para 43).

10. **Democracy is a basic feature of the Constitution:** Democracy is a basic feature of the Constitution**.** Whether any particular brand or system of Government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of Government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals

is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes. See: Special Reference No. 1 of 2002 in the matter of Gujarat Assembly dissolution case, AIR 2003 SC 87 (Five-Judge Bench) (para 130).

11. **Parliamentary democracy and its essentials:** Parliamentary democracy generally envisages (i) representation of the people, (ii) responsible Government and (iii) accountability of the Council of Ministers to the legislature. The essence of this is to draw a direct line of authority from the people through the Legislature to the Executive. The character and content of Parliamentary democracy in the ultimate analysis depends upon the quality of persons who man the Legislature as representative of the people. It is said that "elections are the barometer of democracy and the contestants the life-line of the Parliamentary system and its set up. A multiparty democracy is a necessary part of the basic structure of the constitution. Democracy is a basic feature of the Constitution. Election conducted at regular and prescribed intervals is essential to the democratic system envisaged in the Constitution. See: (i) S.R. Chaudhuri Vs. State of Punjab & Others, AIR 2001 SC 2707 (Three-Judge Bench) (para 21), (ii) Kuldip Nayar Vs. Union of India, AIR 2006 SC 3127 (Five-Judge Bench) (para 460) and (iii) Shri Kihoto Hollohon Vs. Mr. Zachilhu & Others, AIR 1993 SC 412 (Five-Judge Bench) (para 18).

12. **Executive, Legislature and Judiciary are the three organs of the Constitution:** The term 'sovereign' is only used in the preamble of our Constitution. The Constitution is a document recording an act of entrustment and conveyance by the people of India, the political sovereign, of legal authority to act on its behalf to a 'Sovereign Democratic Republic'. The expression 'this Constitution' in the preamble has a basic structure comprising the three organs of the Republic: the Executive, the Legislative and the Judiciary. It is through each of these organs that the Sovereign will of the people has to operate and manifest itself and not through only one of them. Neither of these three separate organs of the Republic can take over the function assigned to the other. This is the basic structure or scheme of the system of Government of the Republic laid down in the Constitution whose identity cannot according to the majority view in Kesvananda's case (AIR 1973 SC 1461) be changed even by resorting to Article 368 of the Constitution. The Republic is controlled and directed by the Constitution to proceed towards certain destinations and for certain purposes only. The power to change even the direction and purposes is itself divided in the sense that a proposed change, if challenged, must be shown to have the sanction of all the three organs of the Republic, each applying its own methods and principles and procedure for testing the correctness or validity of the measure. If the judicial power operates like a brake or a veto, it is not one, which can be controlled by any advice or direction to the judiciary, as is the case in totalitarian regimes. In our system, which is democratic, its exercise is left to the judicial conscience of each individual Judge. This is also a basic and distinguishing feature of Democracy. See: Smt. Indira Nehru Gandhi Vs. Shri Raj Narain, AIR 1975 SC 2299 (paras 555 to 558).

13. **Constitution, and not any other organ under the Constitution is supreme:** When one speaks of legislative supremacy and the will of the people, the doctrine essentially consists of a rule which governs the legal relationship between the legislature and the court but what is stated to be the legislative supremacy in the United Kingdom has no application in our country with a written Constitution limiting the extent of such supremacy of the Legislature or Parliament. The Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution. See: B.R. Kapur Vs. State of Tamil Nadu, AIR 2001 SC 3435 (Five-Judge Bench) (para 71-A)

14. **All the three organs of the Constitution derive their powers from the Constitution:** The Constitution is '*suprema lex*', the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of government, be it the executive or the legislature or

the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. See: State of Rajasthan Vs. Union of India, AIR 1977 SC 1361 (Seven-Judge Bench).

15. **Governor as constitutional head of the State:** Governor of a State is the constitutional head of that State. Under the cabinet system of Government as embodied in our Constitution, the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of the council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his function in his discretion. See: (i) Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (para 375), (ii) B.P. Singhal Vs. Union of India (2010) 6 SCC 331 (Five-Judge Bench) and (iii) Pu Myllai Hlychho Vs. State of Mizoram, AIR 2005 SC 1537 (Five-Judge Bench) (para 14).

16. **Governor a vital link between the Union and the State Government:** The role of the Governor of a State is to function as a vital link or bridge between the Union Government and the State Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. See: B.P. Singhal Vs. Union of India (2010) 6 SCC 331 (Five-Judge Bench).

17. **Executive power of the State co-extensive with the legislative power of the State:** According to Article 162 of the Constitution, the executive power of the State is co-extensive with the legislative power of the State. Article 162 does not contain any definition as to what the executive function is nor gives an exhaustive enumeration of the activities which would legitimately come within its scope. Ordinarily, the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill. See: (i) Bishambhar Dayal Chandra Mohan Vs. State of UP, AIR 1982 SC 33 (para 20) and (ii) Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549.

18. **Choosing Ministers to form his Ministry is the sole prerogative of the Chief Minister under Article 164:** It is only the sole prerogative of the Chief Minister to form the Ministry by choosing such Ministers as the Chief Minister may deem fit. Such is the absolute discretion of the Chief Minister without permitting outside intervention. Indian Constitution earmarks the functions of each of the three organs of the State, Legislature, Executive and Judiciary. Article 50 aims at separation of powers of each of the above wings. Interference of one organ in the functions assigned to the other organ is impermissible. As Article 13 of the Constitution limits the right of the Government to legislate laws infringing the Fundamental Rights guaranteed in Part III of the Constitution, other Constitutional provisions relating to the Legislature and the Executive also limit the power of the Judiciary. Article 164 is one such provisions curtailing the right of Judiciary from intervening in the matter relating to appointment of Ministers. Who has to be appointed a Minister, whether a particular community needs representation in the Ministry and the subjects to be allocated to each of the Minister, are all within the domain and absolute discretion of a Chief Minister. Such matters fall outside the ambit of Article 226 of the Constitution. Taking the extracts from the decision of the Supreme Court reported in 'State of Bihar Vs. Bihar Distillery Ltd., AIR 1997 SC 1511 (para 18), the Division Bench has further observed

that "the Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and the Executive are expected to show due regard and deference to the Judiciary. It cannot also be forgotten that our Constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of 'Checks and balances' inherent in such schemes." See: F. Ghouse Muhiddeen Vs. The Govt. of India, AIR 2002 Madras 470 (DB) (para 5)

19. **There shall always be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in exercise of his functions :** There shall always be a Council of Ministers with the Chief Minister as its head, to aid and advise the Governor in exercise of his functions excepting those which he is by or under the Constitution required to exercise or in his discretion. In a case where members of the Legislative Assembly had not taken oath or affirmation under Article 188 of the Constitution, the Speaker had not been appointed under Article 178 of the Constitution, and the Legislative Assembly was not in a position to transact its business under Article 189 of the Constitution, Article 164 (2) would not be operational. The said view receives assurance by the logic furnished by a Constitution Bench of the Apex Court and the ratio laid down by it in the case U. N. R. Rao Vs.Smt. Indira Gandhi, AIR 1971 SC 1002. A perusal of paragraph Nos. 1, 2, 3, 6, 7, 8, and 9 of the said decision in the case of U.N.R. Rao Vs. Smt. Indira Gandhi show that U.N.R. Rao had preferred an appeal, by certificate, against the judgment of the Madras High Court, dismissing his writ petition, wherein he had prayed that a writ of quo warranto be issued against the respondent Smt. Indira Gandhi because the House of the People was dissolved by the President of India on December 27, 1970 and, therefore, the respondent Smt. Indira Gandhi, who was the head of the Council of Ministers, was not accountable to the House of the People in terms of Article 75(3) of the Constitution of India. Repelling the said contention, the Apex Court held that the provisions contained in Articles 74 and 75 must be read harmoniously. It held that Article 74(1) of the Constitution of India, which provided that "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions act in accordance with the said advice" was mandatory and the provisions contained in Articles 75(3), 74(1) and 75(2) should be harmoniously read. In para 9 the Apex Court laid down "In other words the Council of Ministers must enjoy the confidence of the House of the People. While the House of People is not dissolved under Article 85 (2) (b), Article 75(3) has full operation. But when it is dissolved the Council of Ministers cannot naturally enjoy the confidence of the House of People. Nobody has said that the Council of Ministers does not enjoy the confidence of the House of People when it is prorogued. In the context, therefore, this clause must be read as meaning that Article 75(3) only applies when the House of People does not stand dissolved or prorogued. Since the provisions contained in Article 163(1) are pari materia to those contained in Article 74(1); those contained in Article 164(1) are pari materia to those contained in Article 75(1); and those contained in Article 164(2) are pari materia to those contained in Article 75(3), it follows as a logical imperative that till the time members of the Legislative Assembly do not take oath or affirmation under Article 188 of the Constitution of India, the Speaker is not appointed under Article 178 of the Constitution of India and the Legislative Assembly is not in a position to transact its business in terms of Article 189 of the Constitution of India, Article 164(2) of the Constitution of India would not be operational. See : (i) Social Action for Peoples Rights, Lucknow Vs. State of UP, AIR 2003 All 250 (DB)(paras 8, 9 &10) and (ii) U.N.R. Rao Vs. Smt. Indira Gandhi, AIR 1971 SC 1002 (Five-Judge Bench)(paras 4, 5 & 6).

20. **Governor not being elected by the people cannot claim as right to govern the people by himself:** In as much as the Governor is only a nominee of the President and is not elected either directly or indirectly by the people, he cannot claim a legitimate right to govern the people by himself. The people elect a Legislature and a political party to govern them. The Government so elected is responsible to the people through the Legislature. It is only this political executive which can claim, and which possesses the legitimate right to govern the people. It is for this reason that Article 163(1)

declares that the Governor shall act on the aid and advice of the Council of Ministers headed by the Chief Minister, except in those matters where the Constitution requires him to discharge his functions in his discretion. See: (i) Shamsher Singh Vs. State of Punjab, AIR 1974 SC 2192 (Seven-Judge Bench), (ii) Ram Jawaya Vs. State of Punjab, AIR 1955 SC 549 and (iii) M. Kiran Babu Vs. Government of AP, AIR 1986 AP 275 (281).

21. **Governor not to run parallel administration in the State:** Governor is only a formal and constitutional head of the executive. Council of Ministers is the real head and virtually controls both legislative and executive functions. Principle of Cabinet responsibility is firmly entrenched in our constitutional democracy and does not accept any parallel administration by the Governor. Article 163(2) of the Constitution must be read subject to Article 163(1). Accepting primacy of Article 163(2) over Article 163(1) would convert the Governor to an all-pervading super-constitutional authority which is clearly not envisaged under the Constitution. Constituent Assembly Debates, legislative history of Article 163, principle of Cabinet responsibility/Ministerial Responsibility, Governor exercising only nominal powers, and overall impression that executive power of the State under the Articles 153 to 167 and the legislative power of the State under Articles 168 to 212 do not assigned any significant role to Governor. As per first part of Article 163(1), the Council of Ministers will aid and advise the Governor in the exercise of his functions and the Governor cannot reject the same and act in his 'individual judgement'. If the exercise of function is beyond the purview of the aid and advice of the Council of Ministers but is by or under the Constitution, Governor can act 'in his discretion'. Article 163(2) of the Constitution will have reference only to the last part of Article 163(1) and is not all-pervasive. See: Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench)

22. **Governor has more discretionary powers than the President of India:** There is a distinction between the powers of the President under Article 74 and the Governor under Article 163 of the Constitution. There is some qualitative difference between the position of the President and the Governor. The President under Article 74 has no discretionary powers but the Governor has certain discretionary powers under Article 163(2) of the Constitution. The President has to exercise all his functions in consonance with the advice tendered to him by the Union Council of Ministers with the Prime Minister as the head. No discretionary powers under Article 74 has been conferred on the President to enable him to exercise his functions in his own discretion. At the best, the President can require the Council of Ministers to reconsider the advice tendered to him. And on such reconsideration, if the position is reiterated by the Council of Ministers, the President is bound to act in consonance with the desire of the Council of Ministers. In contrast to the above, even though Article 163 similarly provides that the Governor of a State is to exercise his functions in consonance with the aid and advice tendered to him by the Council of Ministers with the Chief Minister as the head, yet Article 163(2) confers discretionary powers with the Governor when it is so expressly mandated by or under the Constitution. There can therefore be no doubt that to a limited extent Article 163(2) authorises the Governor to act in his own discretion and in that sense, there is a clear distinction between the power vested in the President and the power vested in the Governor. See: (i) Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (paras 140), (ii) State of Gujarat & Others Vs. Mr. Justice (retired) R.A. Mehta & Others, AIR 2013 SC 693 and (iii) Samsher Singh Vs. State of Punjab, AIR 1974 SC 2192 (Seven-Judge Bench)(para 138).

23. **Governor not answerable to the Union and State Legislatures nor to the Union and State Council of Ministers:** The Governor enjoys complete immunity under Article 361(1) of the Constitution and under his actions cannot be challenged for the reason that the Governor acts only upon the aid and advice of the Council of Ministers. If this was not the case, democracy itself would be in peril. The Governor is not answerable to either House of State or to the Parliament or even to the

Council of Ministers and his acts cannot be subject to judicial review. In such a situation, unless he acts upon the aid and advice of the Council of Ministers, he will become all powerful and this is an anti-thesis to the concept of democracy. Moreover, his actions including such actions which may be challenged on ground of allegations of mala fides are required to be defended by the Union or the State. In spite of the fact that the Governor is immune from any liability, it is open to him to file an affidavit if anyone seeks review of his opinion despite the fact that there is a bar against any action of the court as regards issuing notice to or for the purpose of impleading at the instance of a party the President or the Governor in a case making him answerable. See: State of Gujarat Vs. Mr Justice (retired) R.A. Mehta & Others, AIR 2013 SC 693 (para 40).

24. **Governor integral part of the State Legislature:** Article 168 of the Constitution provides that the Governor constitutes an integral part of the Legislature of the State though not in the fullest sense and is also vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the Legislative Assembly and this power may be exercised by him from time to time. No Bill passed by the Houses of the Legislature can become law unless it is assented to by him and before assenting to the Bill he may return the Bill (provided it is not a money Bill) to the Houses of the Legislature for reconsideration. He has the power to reserve for consideration of the President any Bill which in his opinion would, if it became law, so derogate from the power of the High Court as to endanger the position which that court is by the Constitution designed to fill. See: (i) B.P. Singhal Vs. Union of India (2010) 6 SCC 331 (Five-Judge Bench), (ii) Hargovind Pant Vs. Dr. Raghukul Tilak & Others, AIR 1979 SC 1109 (Five-Judge Bench), (iii) M/S Hoechst Pharmaceuticals Ltd. Vs. State of Bihar, AIR 1983 SC 1019 (Three- Judge Bench) (para 88) and (iv) Union of India Vs. Valluri Basaviah Chouwdhary & Others, AIR 1979 SC 1415 (Five-Judge Bench)(para 19).

25. **Governor's office is an independent constitutional office not subject to control of the Government of India:** Though the Governor is appointed by the President, which means in effect and substance the Government of India but it does not make him an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. The fact that the Governor holds office during the pleasure of the President does not make the Government of India an employer of the Governor. It is only a constitutional provision for determination of the term of office of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. If this test is applied to the office of the Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India nor is he accountable to them for the manner in which he carried out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive powers of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can be no doubt that the office of the Governor is not an employment under the Government of India. See: Hargovind Pant Vs. Dr. Raghukul Tilak and Others, AIR 1979 SC 1109 (Five-Judge Bench).

26. **Governor to act in an impartial and neutral manner:** The Governor of a State is not an agent of the political party in power (at the centre) nor required to act under the dictates of political parties. He has to act in an impartial or neutral manner where the views of the Union Government and the State Government are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character. See: B.P. Singhal Vs. Union of India (2010) 6 SCC 331 (Five-Judge Bench).

27. **Political responsibility of Governors:** Governors or Chief Ministers, as the case may be, must forever remain conscious of their constitutional obligations and not sacrifice either political responsibility or parliamentary conventions at the altar of 'political expediency'. See: S.R. Chaudhuri Vs. State of Punjab, (2001) 7 SCC 126 *(para 40).*

28. **Governor to act as per the will or advice of the majority party only when the same is in accord with the Constitution and the laws:** Governor should act as per the will or advice of the majority party only when the same is in accord with the Constitution and the laws. See: B.R. Kapur Vs. State of T.N. & Another, (2001) 7 SCC 231 (Five-Judge Bench) (para 50)

29. **Leader of the single largest party or group of MLAs commanding majority support should be invited to form the Government:** After general elections of the Legislative Assembly, the Governor should invite the leader of the party commanding majority in the House or the single largest party or group to form the Government. See: S.R. Bommai Vs. Union of India, AIR 1994 SC 1918 (Nine-Judge Bench) (para 328**)**

30. **Claim of majority party regarding appointment of its leader as Chief Minister should be accepted by the Governor:** The choice of the majority party regarding its leader for appointment as the Chief Minister should normally be accepted by the Governor. But the contention that in all eventualities, whatsoever, the Governor is bound by decision of the majority party is not a correct proposition. The Governor cannot be totally deprived of the element of discretion in performance of duties of his office, if ever any such exigency may so demand its exercise. The argument about implementing the will of the people in the appointment of Chief Minister under Article 164 of the Constitution even when the person to be appointed as Chief Minister is not eligible to be member of either house of the State Legislature or incurs any other disqualifications like conviction for an offence and sentenced with imprisonment not less than two years is misconceived and misplaced. See: B. R. Kapur Vs. State of Tamil Nadu, (2001)7 SCC 231 (Five-Judge Bench) (Paras 50, 51, 58 & 83).

31. **Options of Governor to appoint Chief Minister when no single political party gains majority after general elections of Assembly:** Para 4.11.04 of the Sarkaria Commission Report specifically deals with the situation where no single party obtains absolute majority and provides the order of preference the Governor should follow in selecting a Chief Minister. The order of preference suggested is:
    (i) An alliance of Parties that was formed prior to the elections.
    (ii) The largest single party staking as 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 the 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. See: Rameshawar Prasad & Others (VI) Vs. Union of India, (2006) 2SCC 1 (Five-Judge Bench) (para 65)

32. **Stepwise action to be taken by the Governor in selecting a Chief Minister in the event of fractured mandate:** The Sarkaria Commission in para 4.11.04 of its recommendations has recommended following steps in the order of preference to be taken by the Governors in the event of hung Assembly when no single party has gained majority in the general elections of the Legislative Assembly:
    (i). An alliance of Parties that was formed prior to the elections.

(ii). The largest single party staking as 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 the 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. See: Rameshawar Prasad & Others (VI) Vs. Union of India, (2006) 2SCC 1 (Five-Judge Bench) (para 65).

33. **Council of Ministers continues to exist and advise the Governor even after dissolution of the Assembly except when the State Government is dismissed under Article 356:** The Supreme Court while interpreting Article 74 and 75 as well as Articles 163 and 164 of the Constitution has held that even if the House is dissolved, the Council of Ministers continues. After the Governor of the State of UP dissolved the Legislative Assembly and directions were issued for holding fresh poll for constituting the Legislative Assembly, the Council of Ministers continued the contention further, there being no failure of constitutional machinery within the meaning of Article 356 of the Constitution, the contention that the President of India ought to have promulgated Presidents Rule in the State for carrying on the function of the Government must be rejected. The executive power of the State vests in the Governor of the State but the Governor cannot exercise executive power without the aid and advice of the Council of Ministers which is mandatory in form and, therefore, a harmonious construction has to be given to Articles 154, 163 and 164 and, therefore, it could be said that after the Legislative Assembly is dissolved, the Council of Ministers continues to aid and advise the Governor and Article 164(2) of the Constitution could not be applicable thus where the Governor of the State of UP dissolved the Legislative Assembly and directions were issued for holding fresh pole for constituting the Legislative Assembly the Council of Ministers continues. See : (i)Special Reference No. 1 of 2002, AIR 2003 SC 87 (Five-Judge Bench)(para 160) and (ii) Arun Kumar Rai Chaudhary Vs. Union of India, AIR 1992 Allahabad 1 (DB)(paras 6 & 7) and (iii) K.N. Rajgopal Vs. Thiru M. Karunanidhi, AIR 1971 SC 1551 (Five-Judge Bench).

34. **Executive Power of the State not to interfere with the rights of the citizens unless so empowered under some law:** The executive action of the State cannot interfere with the rights of a citizen unless backed by an existing statutory provision. Under Article 162 of the Constitution, the State or its officers cannot in the exercise of their executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. Every act done by the Government or by its officers must if it is to operate to the prejudice of any person, be supported by some legislative authority. See: (i) Bishambhar Dayal Chandra Mohan Vs. State of UP, AIR 1982 SC 33,(para 27)and (ii)State of Madhya Pradesh v. Thakur Bharat Singh, AIR 1967 SC 1170.

35. **Governor bound by the advice of his council of ministers :** A Governor of a State has dual role. The first is that of a constitutional head of the State bound by the advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special or emergent situations, he may also act as a special representative of the Union Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. See: B.P. Singhal Vs. Union of India (2010) 6 SCC 331 (Five-Judge Bench).

36. **"Satisfaction" of Governor means not his personal satisfaction but the satisfaction of Council of Ministers :** Where the Constitution requires the satisfaction of the President or the governor, for the purpose of exercise by the President or the Governor any power or function, such satisfaction is not the personal satisfaction of the President or of the Governor in their personal capacity but the

satisfaction of the President or Governor in the constitutional sense as contemplated in a Cabinet system of government, that is, the satisfaction of the Council of Ministers, on whose aid and advice the President or the Governor generally exercise all their powers and functions. The contrary view expressed by the Supreme Court while examining the case of an employee under Article 311(2) of the Constitution as reported in Sardari Lal Vs. Union of India, (1971) 1 SCC 411 that the President or the Governor can pass an order only on his personal satisfaction has been expressly overruled by the two subsequent Constitution Benches of the Supreme Court in the cases (noted below) reported in Samsher Singh Vs. State of Punjab and Nabam Rebia Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly. See: (i) Nabam Rebia Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (para 153), (ii) State of Gujarat Vs. Justice R.A. Mehta, (2013) 3 SCC 1 (para 33), (iii) Pu Myllai Hlychho Vs. State of Mizoram & Others, AIR 2005 SC 1537 (Five-Judge Bench) (para 15) and (iv) Samsher Singh Vs. State of Punjab, (1974) 2SCC 831 (Seven-Judge Bench).

37. ***'Darza Praapt Mantris'*** **i.e. deemed to be Ministers not entitled to the use of red beacon lights & hooters etc. on their vehicles:** A Minister or Minister of State can be appointed by the Governor of the State under Article 164 of the Constitution only on the advice of the Chief Minister of the State and not by means of any Office Memorandum or Notification etc. issued by the Government. In the case noted below, the Supreme Court while deciding as to which public functionaries holding some office under the Constitution or under ordinary statutes could be entitled to the use of hooters, red & blue beacon lights on their vehicles observed thus: "The contemptuous disregard to the prohibition by people in power, holders of public offices, civil servants and even ordinary citizens is again reflective of 'Raj Mentality' and is antithesis of the concept of a Republic. When the framers of the Constitution have considered it appropriate to treat those occupying constitutional positions as a special category, there is no reason for the Court to exclude them from the ambit of the term "high dignitaries". The use of red lights on the vehicles carrying the holders of constitutional posts will in no manners compromise with the dignity of other citizens and individuals or embolden them to think that they are superior to other people, more-so, because this distinction would be available to them only while on duty and would be co-terminus with their tenure." See: Abhay Singh Vs. State of UP, AIR 2014 SC 427 (paras 22 & 23).

38. **Discretionary power of Governor under Article 163(2) of the Constitution when to be exercised contrary to the advice of the Council of Ministers?**: In the case of M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench)=AIR 2005 SC 325, a Constitution Bench of the Hon'ble Supreme Court while interpreting the discretionary powers of Governor conferred by Article 163 of the Constitution has ruled that normally the Governor is required to act on aid and advice of Council of Ministers and not in his discretion but there may be situations where exercise of such discretion by himself may be proper in matters like (i) where bias is inherent and/or manifest in the advice, or (ii) in those rare situations where on facts bias becomes apparent, or (iii) where decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, or (iv) if Council of Ministers disables or disentitles itself, or (v) where as a matter of propriety Governor may have to act in his own discretion. See: M.P. Special Police Establishment Vs. State of M.P. & Others, (2004) 8 SCC 788 (Five-Judge Bench)=AIR 2005 SC 325.

39. **Independent & discretionary powers of Governor under Article 163(2) of the Constitution:** In the matters noted below, Governor, in exercise of his discretionary powers conferred on him by Article 163(2) of the Constitution, can ignore the advice of the Council of Ministers and take his independent decision in his own discretion:
    (i) Where bias is inherent and/or manifest in the advice, or
    (ii) In those rare situations where on facts bias becomes apparent, or

(iii) Where decision of Council of Ministers is shown to be irrational and based on non-consideration of relevant factors, or

(iv) If Council of Ministers disables or disentitles itself, or

(v). Where as a matter of propriety, Governor may have to act in his own discretion--Cautioned that if in such situations Governor cannot act in his own discretion there would be a complete breakdown of the rule of law and democracy itself will be at stake in as much as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out----Clarified however that Governor would not be sitting in appeal over decision of Council of Ministers---Duty of Council of Ministers when considering grant of sanction for prosecution---Held, is to act fairly and reasonably, not only within four corners of the stature but also for effectuating the purpose and object for which the statute has been enacted. See: M.P. Special Police Establishment Vs. State of M.P. and Others, (2004) 8 SCC 788=AIR 2005 SC 325 (Five-Judge Bench).

40. State Government to function in the name of Governor and according to the rules of business made under Article 163(3) : In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of State respectively or by allocation among his Ministers of the said business in accordance with Articles 77(3) and 166(3) respectively. Whenever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, proviso (c) to 311(2), 317, 352(1), 356 and 360, the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of the Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transactions of the business of the Government and the allocation of business among the Ministers of the said business. The rules of business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under these two Articles viz., Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively. Further the rules of business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the rules of business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's Department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister. See: Samsher Singh Vs. State of Punjab & Another, AIR 1974 SC 2192 (Seven-Judge Bench) (paras 30 & 31)

41. Council of Ministers, and not the Governor, can frame rules of business under Article 166(3): The functions of the Governor are limited to the matters of executive governance or executive issues of the Council of Ministers as is made explicit through Article 166 of the Constitution which provides that all executive action of the Government shall be expressed to be taken in the name of the Governor. Orders and instruments shall be executed in the name of the Governor and the Governor

shall make rules for the more convenient transaction of business of the Government and allocation of business among the Ministers "in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion". This clearly has reference to Article 163 of the Constitution and must be understood as meaning that framing the rules of business under Article 166(3) of the Constitution is not the discretion of the Governor but an executive exercise undertaken by the Council of Ministers. See: Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (para 387)

42. **Functioning of the State Government takes place through Council of Ministers and not through Chief Minister alone:** Interpreting the scope of Articles 163 and 166 of the Constitution, it has been held by the Supreme Court that the Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of Council of Ministers. The duties of functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognizes that, howsoever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits. See: Pancham Chand Vs. State of Himachal Pradesh & Others, AIR 2008 SC 1888 (para 17)

43. **Governor to make rules of business under Article 166(3) on the advice of the Chief Minister or the Council of Ministers:** Under our Constitution,the Governor is essentially a constitutional head. The administration of State is run by the Council ofMinisters. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty, the Constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for allocation amongst its Ministers, the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make Rules on the advice of his Council of Ministers for more convenient transaction of business. He can not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers. The Cabinet is responsible to the Legislature for every action taken in any of the Ministries. This is the essence of joint responsibility See: (i) Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (paras 147.1 & 387), (ii) U.N. R. Rao Vs. Smt. Indira Gandhi, AIR 1971 SC 1002 (Five-Judge Bench)(paras 4, 5 & 6) and (iii) Sanjeevi Naidu Vs. State of Madras, AIR 1970 SC 1102 (Six-Judge Bench) (para 11)

44. **Allocating particular subjects to Ministers is the sole prerogative of the Chief Minister under Article 166:** It is only the sole prerogative of the Chief Minister to form the Ministry by choosing such Ministers as the Chief Minister may deem fit. Such is the absolute discretion of the Chief Minister without permitting outside intervention. Indian Constitution earmarks the functions of each of the three organs of the State, Legislature, Executive and Judiciary. Article 50 aims at separation of powers of each of the above wings. Who has to be appointed a Minister, whether a particular community needs representation in the Ministry and the subjects to be allocated to each of the Minister, are all within the domain and absolute discretion of a Chief Minister. Such matters fall outside the ambit of the power of judicial review of the Courts. All the three organs of the State as created by the Constitution viz. the Executive, the Legislature and the Judiciary are expected to show due regard and deference to each other. It cannot be forgotten that our Constitution recognizes and gives effect to the concept of 'equality' between the three wings of the State and the concept of

'checks and balances' inherent in such schemes. See: (i) State of Bihar Vs. Bihar Distillery Ltd., AIR 1997 SC 1511 (para 18) and (ii) F. Ghouse Muhiddeen Vs. The Govt. of India, AIR 2002 Madras 470 (DB) (para 5)

45. **Section 3 (60)(c) of the General Clauses Act, 1897** : According to Section 3 (60)(c) of the General Clauses Act, 1897, as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean, in a State, the Governor, and in a Union Territory, the Central Government. The said definition of the 'State Government' to mean 'Governor' is in conformity with the provisions of the Constitution. See : State of UP & Others Vs. Pradhan Sangh Kshettra Samiti & Others, AIR 1995 SC 1512 (para 9).

46. **General Clauses Act, 1897 applies in interpreting the Constitution as provided by Articles 367 and 372 :** Under Article 367(1) of the Constitution, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 of the Constitution, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. See : UP State Co-operative Land Development Bank Ltd. Vs. Chandra Bhan Dubey & Others, AIR 1999 SC 753 (para 26)

47. **Under Article 166 of the Constitution, Governor means State Government**: When a Minister takes action, according to the rules of business framed under Article 166 of the Constitution, it is both in substance and in form, the action of the Governor. Under the Constitution, therefore, while exercising the non-discretionary functions, the Governor cannot act without the aid and advice of the Council of Ministers. To do so will cut at the very root of the cabinet system of Government we have adopted. In this connection, the Constitution Bench decision of the Supreme Court in Samsher Singh Vs. State of Punjab, AIR 1974 SC 2192 (Seven-Judge Bench) can be referred where it has been held that the executive power of the State is vested in the Governor under Article 154 (1) of the Constitution. The expression 'State' occurs in Article 154 (1) to bring out the federal principle embodied in the Constitution. Any action taken in the exercise of the executive power of the State vested in the Governor under Article 154 (1) is taken by the Government of the State in the name of the Governor as will appear in Article 166(1) of the Constitution. There are two significant features in regard to the executive action taken in the name of the Governor. First , Article 300 states, among other things, that the Governor may sue or be sued in the name of the State. Second, Article 361 states that proceedings may be brought against the Government of the State but not against the Governor. The reason is that the Governor does not exercise the executive functions individually or personally. Executive action taken in the name of the Governor is the executive action of the State. Paragraph 48 of the judgment in Samsher Singh Vs. State of Punjab, AIR 1974 SC 2192 (Seven-Judge Bench) explains the position of law in that behalf succinctly thus: "The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor but the satisfaction of the President or the Governor in the constitutional sense in the Cabinet system of Government is satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules or Business made under any of these two Articles 77(3) and 166 (3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor." Under the rules of business made by the Governor under Article 166 (3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. The Constitution itself thus equates the

Governor with the State Government for the purposes of the functions of the State Government. Further Section 3(60)(c) of the General Clauses Act, 1897 defines 'State Government' to mean Governor which definition is in conformity with the provisions of the Constitution. See: State of UP & Others Vs. Pradhan Sangh Kshettra Samiti & Others, AIR 1995 SC 1512 (para 9).

48. **Article 166 is only directory and not mandatory:** Interpreting the provisions of Articles 162 and 166 of the Constitution, the Supreme Court has repeatedly clarified that the provisions of Article 166 are only directory and not mandatory and if they are not complied with, an order issued by the State Government would not be invalid merely because it was not issued in the name of the Governor. The State Government can establish that the impugned order was issued in fact by the State Government. If the conditions laid down in Article 166 are complied with, the order cannot be called inn question on the ground that it is not an order made by the Governor. Strict compliance with the requirements of Article 166 gives immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of Article 166 are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. Article 166 directs that all executive action should be expressed and authenticated in the manner laid down therein but an omission to comply with the provisions of Article 166 does not render the executive action a nullity. Even when an order was not issued in the name of the Governor and for that reason the same was defective in form, it is open to the State Government to prove by other means that such an order had been validly made. It is settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. See: (i) State of Bihar Vs. Sunny Prakash, (2013) 3 SCC 559 (para 20), (ii) R. Chitralekha Vs. State of Mysore, AIR 1964 SC 1823 (Five-Judge Bench) (paras 4 & 5), (iii) Dattatraya Moreshwar Vs. State of Bombay, AIR 1952 SC 181 (para 7), (iv) State of Bombay Vs. Purushottam Jog Naik, AIR 1952 SC 317 and (v) Ghaio Mal & Sons Vs. State of Delhi, AIR 1959 SC 65.

49. **An order of the State Government issued in the name of its Chief Secretary is valid:** The Supreme Court has repeatedly held that the provisions of clauses (1) and (2) of Article 166 of the Constitution are directory and substantial compliance with those provisions is sufficient. In the case of State of UP Vs. Om Prakash Gupta (noted below), the impugned order was made in the name of the State Government. It was signed by the Chief Secretary. Therefore, prima facie it is a valid order. See : (i) State of UP Vs. Om Prakash Gupta, AIR 1970 SC 679 (para 17), (ii) Chitralekha Vs. State of Mysore, AIR 1964 SC 1623 and (iii) P. Joseph John Vs. State of Travancore Cochin, AIR 1955 SC 160.

50. **Order in the name of Governor passed and signed by an Under Secretary of the State Government instituting departmental enquiry against a retired employee held valid :** Where the order initiating departmental proceedings under Rule 9(2)(b)(i) of Madhya Pradesh Civil Services Pension Rules, 1976 against an employee was executed in the name of the Governor and was duly authenticated by the signature of the Under Secretary to the Government, it has been held by the Supreme Court that the bar to judicial enquiry with regard to the validity of such order engrafted in Article 166 (2) of the Constitution would be attracted. The order which was expressed in the name of the Governor and was duly authenticated cannot be questioned in any Court on the ground that it is not made or executed by the Governor. The signature of the concerned Secretary or Under Secretary who is authorised under the authentication rules to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned Minister. The order initiating the departmental proceedings having been signed by the Under Secretary to the Government by Order of the Governor, the same is immune from attack on the ground that it is not an order executed by the Governor. See: State of MP Vs. Dr. Yashwant Trimbak, AIR 1996 SC 765 (Paras 10 &13)

51. **Signature of Chief Minister or superior authorities on the decision taken by them not must:** Where relying on a Supreme Court decision reported in Municipal Corporation, Ludhiana Vs. Inderjit Singh (2008) 13 SCC 506, it was argued that the authorities like Chief Minister and other statutory authorities cannot pass verbal orders and cannot issue verbal directions to their subordinates to take a particular decision or pass orders, it has been held by a Division Bench of the Lucknow Bench of the Allahabad High Court that so far as fastening of liability for the decision taken or order passed is concerned, it will depend upon the facts and circumstances of each case. Merely because the Chief Minister does not sign or put his signatures on the file, it would not absolve the Chief Minister of his liability if otherwise he is found liable for any action or any order passed by him, may be under his own signatures or under his directives, oral or otherwise. Overruling a Division Bench decision of the Lucknow Bench of the Allahabad High Court reported in Luxmi Kant Shukla Vs. State of UP, 2010 (5) ESC 3347 (All) (DB) (Lucknow Bench), the Supreme Court has hold that putting of signatures by the Chief Minister on all orders or directions issued by him verbally is not always must but if any such orders or directions are issued by the Chief Minister verbally, the officer concerned who passes the orders in writing on the file must record this fact on the file that the order was passed by him under the oral instructions or directions of the Chief Minister or of his superior or controlling authority. See:(i) State of Uttar Pradesh & Others Vs Luxmi Kant Shukla, (2011) 9 SCC 532 and (ii) Judgement dated 20.08.2011 of Lucknow Bench of the Allahabad High Court passed inWrit Petition (M/B) No. 11794/2010, Lok Prahari Vs. State of UP.

52. **Chief Minister and Minister held responsible on the basis of notings on file by their Secretary for favouring Chief Minister's developer son-in-law:** Two plots were initially reserved by the Municipal Corporation of Pune for a garden/playground and a primary school. The Municipal Commissioner of Pune and a Minister of State, at the behest of the Chief Minister, prepared a proposal/report to allot the said plots to a developer who was son-in-law of the Chief Minister to develop for private residences by flouting all norms and mandatory legal provisions. The Bombay High Court passed an order on 06.03.1999 on a PIL Writ Petition directing the State Government of Maharashtra to initiate criminal investigation against the concerned Chief Minister and the Minister of State for Urban Development Department. The Chief Minister himself had called for the file for his perusal and his Private Secretary before sending file to him had recorded a note on the file that the Chief Minister had directed to send the file to him. On the basis of the facts of the case, it was observed by the Bombay High Court and later on approved by the Supreme Court that the only inference that could have been drawn was that the Chief Minister had clear knowledge about the file throughout and the orders were issued only because the developer was his son-in-law and he wanted to favour him. Such inferences were drawn on the basis of probabilities as the test was not one of being proved guilty beyond reasonable doubt but one of preponderance of probabilities. The Supreme Court observed that the Chief Minister had misused his office for the benefit of the son-in-law and in that process he destroyed a public amenity in the nature of a primary school and playground. See: Girish Vyas Vs. State of Maharashtra & Others, AIR 2012 SC 2043 (paras 121,122, 130)

53. **State Policy must be covered within the constitutional frame work:** Effectiveness of State Policy cannot be the sole determinant. It should be legal and supported by the constitutional framework. No policy decision can be taken in terms of Article 77 or Article 162 of the Constitution of India which would run contrary to the constitutional or statutory scheme. See: (i) Nandini Sundar Vs. State of Chhattisgarh, (2011) 7 SCC 547 and (ii) Post Master General, Kolkata Vs. Tutu Das, (2007) 5 SCC 317 (para 13)

54. **Too much legalism not to be read in the government policies:** It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations. At the same time, the Central Govt. which combines the dual role of policy-maker and the delegate of

legislative power, cannot at its sweet will and pleasure give a go-bye to the policy guidelines evolved by itself. In this age of specialization when policies have to be laid down with great care after consulting the specialist in the field, it will be wholly unwise for the courts to encroach into the domain of the executive or legislative and try to enforce its own views and perceptions. See: (i) Secretary, Ministry of Chemicals & Fertilizers, Govt. of India Vs. M/S Cipla Ltd. & Others, AIR 2003 SC 3078 (Three-Judge Bench) (para 4.1) and (ii) Govt. of A.P. Vs. Smt. P. Laxmi Devi, AIR 2008 SC 1640 (paras 68, 69, 76)

55. **Courts should normally not interfere with the Governmental policies in the absence of expertise in the concerned field :** There is wide separation of powers between the different limbs of the State and, therefore, it is expected of the Supreme Court to exercise judicial restraint and not encroach upon the executive or legislative domain. The Courts do not have the expertise or wisdom to analyse the same. It entails intricate economic choices and though the Supreme Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the Court is entitled to analyse the legal validity of the different means of distribution but it cannot and should not term a particular policy as fairer than the other. The matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. The Supreme Court should step in only when it finds that the policy is inconsistent with the Constitutional laws or arbitrary or irrational.Candidly speaking, the Courts do not have the expertise to lay down policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the Constitutional limits. Even if it is assumed that the Court has the expertise, it should not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A policy dispute cannot be appropriately adjudicated by Courts when it involves multiple variables and interlocking factors, decision on each of which has bearing on others. While disposing of an interlocutory application in this very appeal, by order dated 22.07.2011, the Supreme Court observed thus :"We are of the opinion that the prayer for allocation of adequate water in Kutch district is not one which can be a matter of judicial review. It is for the executive authorities to look into this matter. As held by this Court in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass & Another, (2008) 1 SCC 683, there must be judicial restraint in such matters." There being no judicially manageable standards for allocation of water, any interference by the Supreme Court would mean interference with the day-to-day functioning of the State Government. In view of separation of powers, this Court cannot charter the said path. See : Kachchh Jal Sankat Nivaran Samiti Vs. State of Gujarat, AIR 2013 SC 2657 (paras 9, 10 & 15)

56. **Interpretation of statutes should be made keeping in view the socio-economic changes in the life of the progressive society:** In a modern progressive society, it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations if the words are capable of comprehending them. Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction or the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. See: (i) C.E.S.C. Limited Vs. Subhas Chandra Bose & Others, AIR 1992 SC 573 (Three-Judge Bench) (paras 33 & 34), (ii) Senior Electric

Inspector Vs. Laxmi Narayan Chopra, AIR 1962 SC 159 (Three-Judge Bench) (para 8) and (iii) Pentiah Vs. Muddala Veeramailappa, AIR 1961 SC 1107 (Five-Judge Bench) (para17).

57. **Constituent Assembly Debates or Observations not binding on Courts while interpreting the provisions of the Constitution:** Reports of the Drafting Committee of the Constituent Assembly may be read not to control the meaning of the Articles of the Constitution but may be seen in case of ambiguity. The individual opinions of the members of the Constituent Assembly expressed in the debate cannot be referred to for the purpose of construing the Constitution. While it is not proper to take into consideration the individual opinions of the members of the Parliament or the Constituent Assembly to construe the meaning of the particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted. See: A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27 (Six-Judge Bench) (para 17).

58. **Constituent Assembly Debates & Parliamentary Debates are not to be relied on to interpret the provisions of the Constitution or the statutes if there is no ambiguity in the language used:** A reference may be made to CAD or to Parliamentary Debates (as indeed to any other relevant material) to understand the context in which the constitutional or statutory provisions were framed and to gather the intent of the law-makers but only if there is some ambiguity or uncertainty or incongruity or obscurity in the language of the provision. A reference to the Constituent Assembly Debatesor the Parliamentary Debates ought not to be made only because they are there. The Constituent Assembly Debatesor Parliamentary Debates ought not to be relied upon to interpret the provisions of the Constitution or the statutes if there is no ambiguity in the language used. These provisions ought to be interpreted independently, or at least, if reference is made to the Constituent Assembly Debates or Parliamentary Debates, the Court should not be unduly influenced by the speeches made. Confirmation of the interpretation may be sought from the Constituent Assembly Debates or the Parliamentary Debates but not vice versa. See: Supreme Court Advocates-on-Record Association Vs. Union of India, (2016) 5 SCC 1 (Five-Judge Bench) (para 647).

59. **Author's opinion in text books & their value:** Though opinion expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given. See: State of M.P. Vs. Sanjay Rai, AIR 2004 SC 2174.

60. **Constitution of India envisages concept of 'equality' and 'checks and balances' among the three organs of the State**: All the three organs of the State as created by the Constitution viz. the Executive, the Legislature and the Judiciary are expected to show due regard and deference to each other. It cannot be forgotten that our Constitution recognizes and gives effect to the concept of 'equality' between the three wings of the State and the concept of 'checks and balances' inherent in such schemes. The separation of powers does not mean the equal balance of powers and what cannot be sustained is the exercise by the legislature of what is purely and indisputably a judicial function. In our co-operative federalism, there is no rigid distribution of powers. What is provided is a system of salutary checks and balances. See: (i) State of Bihar Vs. Bihar Distillery Ltd., AIR 1997 SC 1511 (para 18) and (ii) F. Ghouse Muhiddeen Vs. The Govt. of India, AIR 2002 Madras 470 (DB) (para 5), (iii) Dharam Dutt Vs. Union of India, AIR 2004 SC 1295 (para 66) and (iv) Smt. Indira Nehru Gandhi Vs. Shri Raj Narain & Another, AIR 1975 SC 2299.

61. **All constitutional functionaries must have democratic spirit of fair play, self restraint and mutual accommodation of different views:** In a democratic set up of Government, the successful functioning of the Constitution depends upon democratic spirit, i.e. a spirit of fair play, of self restraint, and of mutual accommodation of different views, different interests and different opinions of different sets of persons. There can be no Constitutional Government unless the wielders of power are prepared to observe limits upon governmental powers. See: State of Gujarat Vs. Mr. Justice (retired) R.A. Mehta & Others, AIR 2013 SC 693 (para 40).

62. **All constitutional authorities to act in harmony:** The Constitution of India expects all the constitutional authorities to act in harmony and there must be comity between them to further the constitutional vision of democracy in the larger interest of the nation. In other words, conflicts between them should be completely avoided but if there are any differences of opinion or perception, they should be narrowed down to the maximum extent possible and ironed out through dialogue and discussion. It must be appreciated that no one is above the law and equally no one is not answerable to the law. See: Nabam Rebia & Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (para 373)

63. **Sarkaria Commission's recommendations:** The Central Government had setup a Commission in June, 1983 to examine the relationship and balance of power between the Central and the State Governments and suggests changes within the framework of the Constitution of India. The Commission was headed by Justice Ranjit Singh Sarkaria, a former Judge of the Supreme Court of India. The Commission submitted its report containing 247 specific recommendations on 27.10.1987 to the then Prime Minister Rajiv Gandhi.It has been suggested in the Sarkaria Commission's report that a person to be appointed as Governor of a State should be a person of some eminence who could be above party politics. Persons of calibre, experience and distinction are chosen to fill the office of the Governor. Such persons are chosen not to enable them to earn their livelihood but to serve the society. It is wrong to assume that such persons having been chosen on account of their stature, maturity and experience will be demoralized or be in constant fear of removal unless there is security of tenure. They know when they accept these offices that they will be holding the office during the pleasure of the President. Observance of these criteria almost in their total breach by all political parties has been deprecated by the Supreme Court. However, the Supreme Court has left this matter to the wisdom of political parties to arrive at a national policy with some common minimum parameters applicable and acceptable to all major political parties. See: Rameshwar Prasad & Others (VI) Vs. Union of India and Another, (2006) 2 SCC 1 (Five-Judge Bench).

64. **Venkatachaliah Commission's Report:** The NDA Government at the Centre headed by Atal Bihari Vajpayee as Prime Minister had setup a 'National Commission to Review the Working of the Constitution' (NCRWC) on 22.02.2000 for suggesting possible amendments to the Constitution of India. The Commission was headed by Justice Manepalli Narayana Rao Venkatachaliah, former Chief Justice of India and is known as the 'Justice Venkatachaliah Commission'. The terms of reference of the NCRWC required the Commission to suggest necessary amendments in the Constitution by keeping in view the working of the Constitution of India since its inception from January 26, 1950. The NCRWC submitted its report in two volumes to the Government of India on 31.03.2002.

65. **Punchhi Commission's Report:**The Government of India constituted a Commission on 27.04.2007 to study and submit its report on 'Centre-State Relations'. The Commission was headed by Justice Madan Mohan Punchhi, former Chief Justice of India. The Commission made 273 recommendations in seven volumes and submitted its report to the Government of India on 30.03.2010. The Commission covered variety of subjects relating to the relations between the Union and the State Governments. As regards the role of Governors and the Centre-State relations, the Commission's report is found in its Volume II, Chapter IV titled 'Constitutional Governance and the Maintenance of Centre-State

Relations'. The report covers subjects like (i) role of Governor under the Constitution, (ii) role of Governor in management of Centre-State relations, (iii) appointment and removal of Governors, (iv) powers of Governor in the context of harmonious Centre-State relations and (v) conclusions and recommendations. The recommendations of the Commission on various roles of Governor are being quoted at appropriate places under the relevant heads and sub-heads.

66. **Rajamannar Committee's Report on Centre-State Relations:** The DMK Government of Tamil Nadu constituted a Committee on 02.09.1969 to study and suggest for improvements in Centre-State relations in various fields of governance. The Committee was headed by Justice Pakala Venkataramana Rao Rajamannar, first Chief Justice of Madras High Court who also served for certain period during 1957-58 as the Acting Governor of Tamil Nadu. The Committee submitted its report to the Tamil Nadu Government in 1971. The Committee recommended for constituting an "Inter-State Council" to study and recommend its views on legislations of national importance likely to affect the States before their introduction in the Parliament. The Committee's main recommendation was that: "Every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in the Parliament, be referred to the Inter-State Council and its views thereon should be submitted to the Parliament at the time of introduction of the Bill." The other much talked about recommendation of the Committee is for abolition of IAS and IPS for the reasons that the States do not have full control over such All India Services mainly in their disciplinary matters etc. and many a times it is seen as an obstacle in good Centre-State relations. Inspired by the said recommendations of the Committee, Shiromani Akali Dal, a political party in the State of Punjab, adopted a resolution in 1973 in its meeting at Anandpur Sahib (Punjab) for abolition of IAS and IPS. Echoing similar views, the State Government of West Bengal published a Memorandum in 1977 for abolition of IAS and IPS so that the autonomy of the States in governance is protected against the uncontrolled bureaucratic style of functioning. The Committee's view was that abolition of such All India Services would help the political executives of the States in protecting their autonomy in the administrative affairs of the States and in exercising their full control over the bureaucratic executive which is cardinal for good governance in a federal set up like ours.

67. **Administrative Reforms Commissions' Reports :** With an objective to review the public administration system of India and to suggest measures for making the administrative machinery fit for efficiently carrying out and effectively implementing the social and economic policies of the Governments, the First Administrative Reforms Commission was constituted by the Government of India on 5th January, 1966 under the chairmanship of Shri Morarji Ranchhodji Desai, the then Member of Parliament of India. Later on, when Morarji Desai became the Deputy Prime Minister of India, the chairmanship of the Commission was handed over to K. Hanumanthaiah, a Member of Parliament. However, given the fact that by then, the Indian political discourse and policy making scenario was largely dominated by a single party and its allies. The role of the Governor as an independent Constitutional head of the state was not pondered and deliberated upon diligently. There was no direct and clear relationship drawn between the office of the Governor and the role it might play in reforming and strengthening the administrative establishment of our quasi-federal Constitutional Democracy. Further, after a gap of almost four decades, in the year 2005, Second Administrative Reforms Commission was established under the chairmanship of Mr. Marpadi Veerappa Moily, Minister of Law & Justice, Govt. of India, with an objective to chalk out a blueprint for revamping the public administrative system of India. Herein, limited but strong relationship was established between the role of the Governor with that of the requirements of an effective public administration. As per its recommendations, the State Election Commissioner was now to be appointed by the Governor of the state on the recommendation of collegium consisting of the Chief Minister, Speaker of the Legislative Assembly and the Leader of Opposition in the State Legislative Assembly concerned. The role of the Governor with respect to examining of the reports submitted by the Lokayukta and the local bodies Ombudsman regarding discrepancies in the functioning of the local bodies was discussed and

recommendations were made to expand the role of the Governor. With respect to the Scheduled Areas, the Commission suggested that the Annual Reports of the Governors, under the Fifth Schedule of the Constitution, should be given due importance. It was recommended that such reports should be published immediately and placed in the public domain. The role of the Governor with reference to the Scheduled Areas under Schedule V and in the Autonomous Councils as provided under Schedule VI of the Constitution was also discussed at length Statewise in the Commission's report and recommendations for Governor's expanded role with respect to related issues were duly submitted. The developments so made in and after the Second Administrative Reform Commission give a very positive message for subsequent policy making in India. The consciousness that there is a vital and crucial role that the office of the Governor is constitutionally envisaged with has in spirit found resonance in the Commission's report. This shall not only provide the future policy makers with a better understanding over as to how the relationship between the office of the Governor and the efficient administrative governance gradually unfolds but also an opportunity to look beyond to widen the role of the office of the Governor with respect to the administrative maneuvers required to keep the public administration in India in sync with the rapidly developing modern age we live in today.

68. **British conventions not always relevant in India:** British conventions are not always relevant in India. For example, a person who is not a member of the Union or the State Legislature can be appointed Prime Minister or Chief Minister of a State under Articles 75(4) & 164(4) of the Indian Constitution for six months. The British and the Indian conventions in this regard are just the opposite. In the past, persons who were not elected to the State Legislatures had become Chief Ministers and those not elected to either House of the Parliament had been appointed Prime Minister. The British convention in this regard is neither in tune with our constitutional scheme nor has it been a recognised practice in our country. See: (i) Ashok Pandey Vs. Mayawati (Km) & Others, (2007)10 SCC 16 (Para 14) and (ii) S.P. Anand Vs. H.D. Deve Gowda & Others, AIR 1997 SC 272 (para 16).

69. **British Parliament is sovereign but not the Indian Parliament:** There is marked distinction between the British Parliament and the Indian Parliament. The British Parliament is sovereign. One of the hallmarks of such sovereignty is the right to make or unmake any law which no court or body or person can set aside or override. On the other hand, the Indian Parliament is a creature of the Constitution and its powers, privileges and obligations are specified and limited by the Constitution. A legislature created by a written Constitution must act within the ambit of its power as defined by the Constitution and subject to the limitations prescribed by the Constitution. Any act or action of Parliament contrary to the constitutional limitations will be void. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will but the Indian Parliament qua legislative body is fettered by a written Constitution and it does not possesses the sovereign powers of the British Parliament. The doctrine of the Parliamentary sovereignty as it obtains in England does not prevail here except the extent and in the fields provided by the Constitution. The entire scheme of the Constitution is such that it ensures the sovereignty and integrity of the country as a Republic and the democratic way of life by parliamentary institutions based on free and fair elections. See: (i) Peoples Union for Civil Liberties Vs. Union of India, AIR 2003 SC 2363 (Three-Judge Bench) (para 53), (ii) Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184 (Five-Judge Bench) (paras 720 to 725), (iii) Kuldip Nayar Vs. Union of India, AIR 2006 SC 3127 (Five-Judge Bench) (para 50), (iv) Sub-Committee of Judicial Accountability Vs. Union of India, AIR 1992 SC 320(Five-Judge Bench), (v) In re UP Assembly Case (Keshav Singh Case), AIR 1965 SC 745 (Seven-Judge Bench), (vi) Kesavananda Bharati Vs. State of Kerala, AIR 1973 SC 1461, (Thirteen-Judge Bench) and (vii) In re, Constitution of India & Delhi Laws Act, AIR 1951 SC 332 (Seven-Judge Bench).

70. **Relevance of democratic practices & conventions:** Conventions grow from long standing accepted practices or by agreement in areas where the law is silent and such a convention would not breach the

law but fill the gap. Even in the written Constitution it is not possible to provide each and every detail. Practices and conventions do develop for certain matters. This is how democracy becomes workable. See: (i) B. R. Kapur Vs. State of Tamil Nadu, (2001)7 SCC 231 (Five-Judge Bench) (Para 83) and (ii) S.P. Anand Vs. H.D. Deve Gowda & Others, AIR 1997 SC 272 (para 16).

71. **Entries in the three Lists of Schedule VII to the Constitution not powers of legislation but only fields of legislation:** The Union and State Legislatures derive their legislative powers from Article 245 of the Constitution. While the legislative power is derived from Article 245, the entries in the three Lists in the Seventh Schedule of the Constitution only demarcate legislative fields of the respective legislatures and do not confer legislative power as such. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI of the Constitution and the legislative heads mentioned in the three Lists of Seventh Schedule. The legislative power of both Union and State Legislatures are given in precise terms Entries in the three Lists of Schedule Seven not powers of legislation but only fields of legislation. However, an entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt should be made to harmonies the same. See: (i) State of Kerala Vs. M/S Mar Appraem Kuri Co. Ltd., AIR 2012 SC 2375 (Five-Judge Bench) (para 16), (ii)Association of Natural Gas & Others Vs. Union of India & Others, AIR 2004 SC 2647 (Five-Judge Bench) (para 13) and (iii) T.M.A. Pai Foundation & Others Vs. State of Karnataka & Others, (2002) 8 SCC 481 (Eleven-Judge Bench)(para 183).

72. **Article 246 divides legislative field between Parliament and the State Legislature:** Article 245 of the Constitution is the fountain source of legislative power. It provides-subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of a State. The legislative field between Parliament and the legislature of any state is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the "Union List". Subject to the said power of Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in list III, called the "Concurrent List". Subject to the abovesaid two, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in list II, called the "State list". Under Article 248 the exclusive power of Parliament to make laws extends to any matter not enumerated in the Concurrent List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or State List vests in Parliament. See : State of W.B. Vs. Kesoram Industries Ltd. & Others, (2004) 10 SCC 201, (Five-Judge Bench)(Para 31). The principles have been succinctly summarised and restated by a Bench of Three Judges of the Supreme Court on a review of the available decision in Hoechst Pharmaceuticals Ltd., vs State of Bihar, (1983)4 SCC 45. They are:

(1) The various entries in the three lists are not "powers" of legislation but "fields" of legislation. The constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. *There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.*

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) *Taxation is considered to be a distinct matter for purposes of legislative competence*. There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. *The power to tax cannot be deduced from a general legislative entry as an ancillary power*.

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest-possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific categories. *A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.*

(5) When the legislative competence of the Legislature of any State is questioned on the ground that it encroaches upon the legislative competence of parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need to be asked and parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation, the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While reading the three Lists, List I has priority over Lists III and II and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.

73. Tests for deciding validity of an enactment made by Legislature: The power to legislate is a plenary power vested in the legislature and unless those who challenge the legislation clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they would not succeed in their challenge to the enactment brought forward in the wisdom of the legislature. Constitutional validity of an enactment made by a Legislature should be tested on the following touchstones:

(i) whether the statute enacted by the Legislature was within its legislative competence ?

(ii) Whether the statute enacted offends any of the fundamental rights guaranteed by part III of the Constitution?

(iii). Whether the stature enacted contravenes any other provisions of the Constitution? See:

(iv). Mylapore Club Vs. State of T.N., AIR 2006 SC 523(Three-Judge Bench) (para 9)

(v). Nand Lal Vs. State of Haryana, AIR 1980 SC 2097 (Five-Judge Bench) (para 4)

74. Presumption in favour of constitutionality of legislations: While examining the constitutionality of a legislation, court (or authority), it should start with the presumption of constitutionality of the legislation. There is always a presumption that the legislature under stands and appreciates the need of the people and the laws it enacts are directed to the problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. The burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. There is always a presumption that the legislature does not exceed it jurisdiction and the burden of establishing that the legislature has transgressed mandates such as those relating to fundamental rights is always on the person who

challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand. See: (i) State of Kerala Vs. M/S Mar Appraem Kuri Co. Ltd., AIR 2012 SC 2375 (Five-Judge Bench) (para 24), (ii) Govt. of A.P. Vs. Smt. P. Laxmi Devi, AIR 2008 SC 1640 (paras 58 to 68), (iii) M.H. Quareshi Vs. State of Bihar, AIR 1958 SC 731 (Five-Judge Bench) (para 15), (iv) Charanjit Lal Chouwdhury Vs. Union of India, AIR 1951 SC 41 (Five-Judge Bench) (para 10), (v) B.R. Enterprises Vs. State of U.P. & Others, AIR 1999 SC 1867 , (vi) Union of India Vs. Elphinstone Spinning & Weaving Co. Ltd., AIR 2001 SC 724 (Five-Judge Bench) (para 9), (vii) State of Bihar Vs. Bihar Distillery Ltd., AIR 1997 SC 1511 (Five-Judge Bench) (para 18), (viii).Hamdard Dawakhana Vs. Union of India, AIR 1960 SC 554 (para 9) and (ix) M. Karunanidhi Vs. Union of India, AIR 1979 SC 898 (Five-Judge Bench) (para 24)

75. **Ordinance making power of the Governor under Article 213(1) is co-extensive with the legislative powers of the State Legislature:** Ordinance-making power of the Governor under Article 213(1) of the Constitution is similar to that of the President and it is co-extensive with the legislative powers of the State Legislature. Besides the role of assenting etc. to the Bills under Article 200 of the Constitution, the only other legislative function of the Governor is that of promulgating ordinances under Article 213 (1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. See : Union of India Vs. Valluri Basavaiah Chouwdhary & Others, AIR 1979 SC 1415 (Five-Judge Bench)(para 19).

76. **Pre-conditions for promulgation of Ordinance by Governors under Article 213(1) of the Constitution:** The Governor's power to promulgate Ordinances under Article 213 of the Constitution is subject to two conditions, namely:

(i) The House or Houses of the State Legislature must not be in session when the Ordinance is issued,

(ii) The Governor must be satisfied as to the existence of circumstances which render it necessary for him to take immediate action,

(iii) The Governor can issue an Ordinance only on the aid and advice of the Council of Ministers with the Chief Minister as its head,

(iv) The Ordinance must not unreasonably infringe any fundamental rights of any person under Part-III of the Constitution or contravene any other provisions of the Constitution. See:(i)Nabam Rebia and Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench) (para 147.2), (ii) M/s S.K.G. Sugar P. Ltd. Vs. State of Bihar & Others, AIR 1974 SC 1533 (Five-Judge Bench), (iii) P. Venugopal Vs. Union of India, (2008) 5 SCC 1 (para 17), (iv) Peoples Union for Civil Liberties Vs. Union of India, AIR 2003 SC 2363(Three-Judge Bench), (v) Nand Lal & Another Vs. State of Haryana & Others, AIR 1980 SC 2097 (Five-Judge Bench) (para 4) and (vi) In re Kerala Education Bill 1957, AIR 1957 SC 956 (Seven-Judge Bench) (para 8).

77. **Power of Pardon of Governor :** Besides Articles 72 and 161 of the Constitution of India, provisions in the Code of Criminal Procedure, 1973, prison laws, guidelines issued by the National Human Rights Commission, instructions issued from time to time by the Central and State Governments, local laws enacted by State Legislatures also apply to the matter of pardon etc. Various laws applicable to the matter of clemency etc. of the prisoners are given below:

(i) Article 161 of the Constitution of India.
(ii) Article 72(3) of the Constitution of India (in relation to Governor).
(iii) Sections 432, 433, 433-A etc. of the Code of Criminal Procedure, 1973
(iv) Judicial pronouncements
(v) Advisories issued by the Ministry of Homes, Govt. of India
(vi) Guidelines issued by the National Human Rights Commission

(vii) Second Schedule under rule 8 of UP Rules of Business, 1975 (in relation to the State of Uttar Pradesh)
(viii) G.Os. issued by the Central & State Governments from time to time.
(ix) U.P. Prisoners' Release on Probation Act, 1938 (in relation to the State of Uttar Pradesh)
(x) U.P. Prisoners' Release on Probation Rules, 1939(in relation to the State of Uttar Pradesh)
(xi) The U.P. (Suspension of Sentence of Prisoners) Rules, 2007(in relation to the State of Uttar Pradesh)

78. Meaning of the expressions (i) Pardon (ii) Remit (iii) Commute (iv) Reprieve (v) Respite and (vi) Amnesty: Different words like (i) Pardon (ii) Remit (iii) Commute (iv) Reprieve (v) Respite and (vi) Amnesty occur in Articles 72 and 161 of the Constitution and in Sections 306, 432, 433, 433-A of the Code of Criminal Procedure, 1973 and various laws applicable to prisons. In the case reported in State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121, the Supreme Court has defined and clarified the meaning of the above words which are reproduced below:

(i) Pardon: "Pardon" is one of the many prerogatives which have been recognized since time immemorial as being vested in the Sovereign, wherever the sovereignty might lie. This sovereign power to grant a pardon has been recognized in our Constitution in Articles 72 and 161 and also in Sections 432 and 433 of the Criminal Procedure Code. Grant of pardon to an accomplice under certain conditions as contemplated by Section 306 of the Code is a variation of this very power. The grant of pardon whether it is under Article 161 or 72 of the Constitution or under Sections 306, 432 and 433 of the Code is the exercise of sovereign power. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender. In other words, a full pardon may blot out the guilt itself. It does not amount to an acquittal unless the court otherwise directs. Pardon is to be distinguished from "amnesty" which is defined as "general pardon of political prisoners; an act of oblivion". As understood in common parlance, the word "amnesty" is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (paras 9 & 12)

(ii-a) Remit: The word "remit" as used in Section 432 of the Code of Criminal Procedure is not a term of art. Some of the meanings of the word "remit" are to pardon, to refrain from inflicting, to give up. Remission is reduction of the amount of a sentence without changing its character**.** In the case of a remission, the guilt of the offender is not affected nor is the sentence of the court except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence but is relieved from serving out a part of it. Section 432 CrPC confines the power of the Government to the suspension of the execution of the sentence or the remission of the whole or any part of the punishment. The conviction under which the sentence is imposed remains unaffected. The section gives no power to the Government to revise the judgment of the court. It only provides with the power to remit the sentence. Remission of punishment assumes the correctness of the conviction and only reduces the punishment in part or in whole**.** A remission of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (para 10).

(ii-b) 'Remission' is of two types: As far as remissions are concerned, they consist of two types. One type of remission is what is earned by a prisoner under the Prison Rules or other relevant rules based on his/her good behaviour or such other stipulations prescribed therein. The other remission is the grant of it by the appropriate Government in exercise of its power under Section 432 of the Code of Criminal Procedure. Therefore, in the latter case, when a remission of the substantive sentence is granted under Section 432 CrPC, then and only then giving credit to the earned remission can take place and not otherwise. Similarly, in the case of a life imprisonment, meaning thereby the entirety of the convict's life, unless there is a commutation of such sentence for any

specific period, there would be no scope to count the earned remission. However, in case of life imprisonment, the applicability of either of the said remissions would be subject to the principles laid down by the Supreme Court in the case of Swamy Shraddananda (2) Vs. State of Karnataka, (2008) 13 SCC 767. See: (i) Union of India Vs. V. Sriharan alias Murugan, (2016) 7 SCC 1 (Five-Judge Bench) (para 62).

(iii) Commute: According to the 'Legal Glossary' approved and published by Ministry of Law, Justice & Company Affairs, Govt. of India, the word "commute" means to substitute a lesser punishment for a greater one. The power to commute a sentence of death is independent of Section 433-A of the Code of Criminal Procedure. The restriction under Section 433-A of the Code of Criminal Procedure comes into operation only after the power under Section 433 of the Code of Criminal Procedure is exercised. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (para 11)

(iv) Reprieve: "Reprieve" means a stay of execution of sentence, a postponement of capital sentence. Respite means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. It is something like a release on probation for good conduct under Section 360 of the Code of Criminal Procedure. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (para 10)

(v) Respite: "Respite" means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (para 10)

(vi) Amnesty: Pardon is to be distinguished from "amnesty" which is defined as "general pardon of political prisoners; an act of oblivion". As understood in common parlance, the word "amnesty" is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned. See: State (Govt. of NCT of Delhi) Vs. Prem Raj, (2003) 7 SCC 121 (para 9).

79. Constitution Bench decisions of the Supreme Court on remission etc. of the prisoners under Articles 72 or 161 of the Constitution and/or Sections 432, 433, 433-A CrPC: During the last several decades, the law on remission, respite, commutation, pardon, amnesty, parole, premature release from jail of prisoners has been settled by the different Constitution Benches of the Supreme Court of India by their landmark judgements delivered in the cases noted below:

(i). Union of India Vs. V. Sriharan alias Murugan & Others, (2016) 7 SCC 1 (Five-Judge Bench).
(ii). Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench).
(iii). K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688 (Five-Judge Bench).
(iv). Kehar Singh Vs. Union of India AIR 1989 SC 653(Five-Judge Bench).
(v). Maru Ram Vs. Union of India, AIR 1980 SC 2147 (Five-Judge Bench).
(vi). Gopal Vinayak Godse Vs. State of Mahrashtra, AIR 1961 SC 600 (Five-Judge Bench) (Mahatma Gandhi murder case).
(vii). K.M Nanavati Vs. State of Bombay, AIR 1961 SC 112 (Five-Judge Bench).
(viii). Sarat Chandra Rabha & others. Vs. Khangendra Nath and others, AIR 1961 SC 334 (Five-Judge Bench).

80. Relevant considerations for deciding petition under Articles 72 or 161 by the President or the Governor: In the cases noted below, the Supreme Court has repeatedly held that the President or the Governor must take into consideration the following factors while deciding a petition filed under Articles 72 or 161 of the Constitution :

(i) nature of crime
(ii) motive for commission of crime
(iii) magnitude of crime

(iv) impact of the crime on society

(v). nature of weapon used. See : (i) Devender Pal Singh Bhullar Vs. State (NCT of Delhi), (2013) 6 SCC 195 (para 66), (ii) Machhi Singh Vs. State of Punjab, (1983) 3 SCC 470, (iii) Ediga Anamma Vs. State of A.P., (1974) 4 SCC 443 and (iv) Triveniben Vs. State of Gujarat, (1989) 1 SCC 678.

81. Situations which may or may not constitute failure of constitutional machinery in a State: Quoting para 6.4.01 of the recommendations of the Sarkaria Commission, the Supreme Court in the case of S.R. Bommai Vs. Union of India has held that a failure of constitutional machinery may occur in a number of ways. Factors which contribute to such a situation are diverse and imponderable. It is, therefore, difficult to give an exhaustive catalogue of all situations which would fall within the sweep of the phrase, "the government of the State cannot be carried on in accordance with the provisions of this Constitution". Even so, some instances of what does and what does not constitute a constitutional failure within the contemplation of Article 356(1) may be grouped and discussed under the following heads:

(i) Political crisis

(ii) Internal subversion

(iii) Physical break-down

(iv) Non-compliance with the constitutional directions of the Union Executive

(v) It is not claimed that this categorisation is comprehensive or perfect. There can be no water-tight compartmentalisation as many situations of constitutional failure will have elements of more than one type. Nonetheless, it will help determine whether or not in a given situation it will be proper to invoke this last-resort power under Article 356. See: S.R. Bommai Vs. Union of India, AIR 1994 SC 1918 (Nine-Judge Bench) (para 57)

82. Situations which do not amount to failure of constitutional machinery in State : Quoting para 6.5.01 of the Report of the Sarkaria Commission on Centre-State Relations, the Supreme Court has, in Bommai case, given following illustrations as examples of the situations which may not amount to failure of the Constitutional machinery in the State and where the use of the power under Article 356(1) of the Constitution will be improper and uncalled for **:**

(i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution-framers that this power is not meant to be exercised for the purpose of securing good government.

(ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative government enjoying such support or ordering fresh elections.

(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority Support through the 'floor test', recommends its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

(iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.

(v) Where in a situation of 'internal disturbance' not amounting to or verging on abdication of its governmental powers by the State Government, all possible measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.

(vi) The use of the power under Article 356 will be improper if, in the illustrations given in the preceding paragraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity

to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, under Article 356, will lead to disastrous consequences.

(vii) Where in response to the prior warning or notice or to an informal or formal direction under Articles 256, 257, etc., the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". Hence, in such a situation ' also, Article 356 cannot be properly invoked.

(viii) The. use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct.

(ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(x) This power cannot be invoked, merely on the ground that there are serious allegations of corruption against the Ministry.

(xi) The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred, by the Constitution, would be vitiated by legal mala fides. See: S.R. Bommai Vs. Union of India, AIR 1994 SC 1918 (Nine-Judge Bench)(para 58)

xxxxxxxxxxxxxx