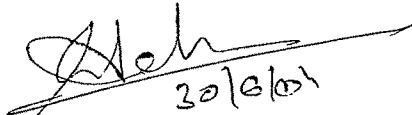




SUMMARY OF THE THESIS
SUBMITTED
FOR THE DEGREE OF PH.D. IN LAW


CRITICAL EVALUATION OF SOME ASPECTS OF WORKING
OF PARLIAMENTARY FORM OF GOVERNMENT AND
FEDERAL SYSTEM IN INDIA

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Should the fate of the country be left on the sweet mercy of politicians on mere hope that a day will come when the political birds will restrain themselves from horse-trading and selling their souls away for sordid boons? Here comes the need of searching a system which can render these politicians unable to bargain, as they do today and fill the lacunas in the Constitutional system.



In the beginning our Constitution has worked pretty well. One of the factors responsible for the smooth drafting and the **successful working of the Constitution earlier was** the fact that the Congress Party, which held supreme and unrivalled way over the mass of people in the country, and Pandit Nehru, who was the unquestioned leader of the Congress Party and lived for many years after the coming into force of the Constitution, were genuinely wedded to the principles of democracy and political ethics. A democratic Constitution, as has been rightly pointed out, can be smothered, as in Ghana, by the very factors that have protected it in India—a charismatic leader and a mass party, because these each gives only lip-service to democracy. In this connection, to quote the words of Dr. Rajendra Prasad at the concluding session of the Constituent Assembly.²

“We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them, willingness to respect the viewpoint of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let us hope that we shall show those capacities and develop those conventions.” And Dr. Rajendra Prasad added:

“Successful working of democratic institutions require in those who have to work them, willingness to respect the view points of the others, a capacity for compromise and accommodation. Many things

² Vide, C.A.D.VI.

which cannot be written in a Constitution are done by conventions. Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the man who administer it. It is a trite saying that a country can have only the Governments it deserves. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution is like a machine, is a lifeless thing. It acquires life because of the men who cast it and operate it and India needs today nothing more than a set of honest men who will have the interest of the country before them.”³

The study also reveals that it is not the Constitution or the system which has failed. The real question is of how much and what to change to strengthen and improve the system. We have to be clear about the precise need, the direction and the extent of the reforms that would be desirable at present. It is obvious that mere tinkering first-aid repairs and trifling cosmetic adjustments would not anymore be enough. However, it is high time that having regard to the lack of character and caliber in the overwhelming majority of our politicians, we should think of some badly needed changes in our political system.

According to Nani Palkhiwala there are three ways of amending the constitutional law. These are following;⁴

1. To change those parliamentary laws which qualify to be treated as constitutional law, without amending the Constitution itself.
2. To amend the Constitution, without altering its basic structure, in accordance with Article 368 of the Constitution.
3. The third way is to amend the Constitution so drastically that its basic structure is altered and this can be done, having regard to

³ Ibid.

⁴ We, The People, by Nani Palakhiwala.

the Supreme court's judgement in Kesavananda Bharati's case⁵, only by setting up a new Constituent Assembly or by a referendum.

When we can have persuasive remedy, we do not need basic Constitutional change. Structure is an alibi for analytical failure. Constitutional tinkering can be fascinating, let it not divert us from the real task of statecraft.. Let us not forget that politics is the high and serious art of solving substantive problems. We may adapt to our advantage, recommendations of various Commissions and Committees to reform our present system. Our Constitution rejects the Presidential system and it is far too late to reargue that proposition. The Presidential system also has weaknesses different from our own. While we muse about the weaknesses of 'ministerial responsibility', American yearn for 'accountability'. Given the nature of the Indian political tradition, the Presidential system is an unreal alternative. Fifty years are not a long time, we have already survived but that is not enough. We should grow also. One must raise a deeper question: Is the difficulty we encounter these days in meeting our problems really the consequence of defects in the structure of our government? After all, our Framers of the Constitution had preferred the responsibility and accountability to stability. This has not prevented competent Prime-Ministers from acting with decision and dispatch. They did not see any obstacle to effective government. Why are things presumed to be so much worse today?

At least people have right for enactment for these:

1. No union or state minister of law will ever be appointed on the ground that he/she is best suited to bail out his/her cabinet colleagues on the charges of defrauding/ violating the impoverished Indian citizen masses.

⁵ AIR 1973 SC1461.

2. No person shall retain any constitutional office once charged with any criminal offence.
3. No political party will be entitled to nominate as candidate for election one, against whom criminal investigation or proceedings are pending.
4. Corruption trials will be swift and autonomous of the executive prerogatives.
5. An office of ombudsperson fully authorised by the Constitution to examine charges of corruption or misconduct of all public officials (including the Prime Minister and Chief Ministers) will be created.

A – Allow parliament to complete a full term of 5 years without mid-term elections.

To eliminate the many disadvantages of frequent parliamentary downfall of the unstable coalition Government, it is suggested to bring about a change in the law which would ensure that parliament complete, its full five year term. A Government at the Centre (or in the State may change but mid-term elections should not be held. No doubt there is an opposing view point which conveys that in a democracy one the ruling group loses its majority and no other group can form a majority, then the only alternative is to go for election. But India cannot afford frequent elections under, what might be called, a misguided definition of democracy. As an example, the German System and it is democratic – is attractive. A vote of no confidence in the incumbent Government/Prime Minister should be accompanied by a 'vote of confidence' in a new Government/Prime Minister. Most of our Members of Parliament and members of the legislative assemblies of the states have been elected, not only with less than 50% of the electorate, but with less than 50% of those voting. Similar is the case with many Governments both at the Centre and in the States. Hence

the claim that an effort to ensure that Parliament completes its full five year term is undemocratic, cannot be justified.

B – Proposal of state – funding of Elections.

There has always been a link between ‘money and ‘politics’. The role of money is increasing in elections. Politics is not a poor mans game. In a democracy there has to be a free flow of information among citizens, groups, candidate of public office and political parties. This, no doubt, requires financial resources, it is our duty to ensure that money does not corrode the body politic as it has obviously been doing in our country. Most of us prefer democracy with all its inadequacy to a dictatorship, however benevolent it may be. Democratic political system needs to be financed from somewhere. The financial cost of managing a political system is heavy., not only do party need money to fight election ,they need funds between elections to keep their organizational functioning in the absence of state funding of polls, we create and have already created a reason and an excuse for corruption. Political Parties got funds from all kinds of businessmen who certainly expect a return on their investment.

Demand creates its own supply. In the present circumstances it appears the fringes of legitimacy – illicit liquor interest, shown loads, criminals – to have a growing influence on the political process. One should not be under delusion that corruption will disappear if there is state funding of elections, whether by adopting the German system or any other suitable system. However tighter with some other measures, such a step will reduce the existence of black money and corruption considerably, also, political parties, the political process and governance would benefit from being less be hold on to unscrupulous interests.

It may be argued that state funding of elections cannot be accepted because the Central Government and the State Governments do not

have the funds. However our Central Government and state governments have money for subsidizing the of public sector units, subsidies and for providing unnecessary subsidies (i.e. non married subsidies) and for paying salaries to people who do not work. In fact, such acts make state Governments bankrupt and create a fiscal deficit for the Centre. We have money for all such acts but we have no money for a very legitimate and essential activity which is funding of elections. Reducing unnecessarily heavy expenses of governmental administration at the Centre and State levels, necessary provision for state funding of elections can be made. If such proposal is supported by a majority of members of Parliament belonging to different political parties, an appropriate legislation may be drafted and enacted in regard to state funding of elections. It goes without saying that if this is done it will really be a commendable democratic step in the direction of limiting the ill-effect of corruption and of criminalization of politics. The principles of the state funding of elections are not difficult to envisage. They would include, inter alia, the support to the political parties could be either in cash or kind, that it should be linked to the votes polled and resources raised by political parties, that there should be an upper limit for each recognized party and total funding. Companies should continue to be permitted, as per the present regulations, to contribute to political parties and industry should do this transparently and through cheques. Like in the U.K., large contributions received by the parties should be publicly disclosed. Accounts of political parties should be transparent in order to ensure that effect of black money and corruption are reduced. This means they need to be audited and made public.

C – Disclosure of information by the candidate

Our Constitution, in general, prescribes mainly two essential pre-requisites for candidature for Lok Sabha, Rajya Sabha, Legislative Assembly and legislative Council elections and for the posts of the President, and Vice-President, etc. Indian citizenship and the prescribed

minimum age limit, and that he should not be disqualified by or under any law. There are restrictions on people convicted of certain types of offences. But, but and large, if “qualification” means “passing the quality test”, the word is a misnomer in this context.

Further, even the educated and presumably well-informed amongst us go out to the election booth's with very little information about the candidates, other than their names and their party affiliations and sometimes some people even vote merely for the party, the candidate remaining faceless and nameless to them. In this, the so-called intelligentsia among us are no more discriminating than the mass of illiterate voters. But we could be more discriminating if we had more information about the candidates, such as his educational qualification, professional qualification, party affiliation, record of public/elected offices previously held, record of criminal conviction, if any and punishment undergone therefore, assets and liabilities, etc. However, caste need not be a required disclosure. Disclosure of all such information's by a candidate should not merely be at a time. When he fills and files nomination papers for elections. A synopsis of the information about the candidate must be presented at every public meeting he addresses. Every handbill, posters, newspaper advertisement printed to promote the candidate's campaign must contain the information. The information should be made available on public demand at centers designated by the Election Commission and sufficiently publicized.

In democracies such as the U.S.A. a candidates achievements in public office or service, his political history and the manner in which he had voted on key issue in past in the senate or House of representatives are matters of public record and they are widely discussed before the elations. This is highly seen as warranted by the voters basic right to relevant information. If, in the interests of consumers, the authorities can insist on the listing of all ingredients

and the manufacturing and expiring dates on the packaging of every product sold to the public, why can they also not insist that every candidate who wants the public to 'buy' his candidacy should display his credentials? Any progress towards achieving greater disclosure of information is automatically progress towards better quality of pertinently democracy. Requirement relating to disclosure of information's by the candidates would greatly reduce the number of "non-serious" candidates more importantly, in the midst of their preoccupation with caste, money-power, involvement in criminal cases, clout in the underworld and involvement in criminal cases (all of which are presently among the important criteria in the selection of candidates), the disclosure requirement would make political parties pay attention to the candidates' credentials as they appear to the voters. If necessary legal provision regarding disclosure of information by the candidates of election is made and strictly enforced then this will certainly contribute, even in a small way, towards moving the focus from 'macro' (partly jingoism) to 'micro' (individual candidate evaluation) the electorate would have a better deal, and probably better legislators. It is clear that out of these legislators come ministers who make laws and who thus determine the directions along which the ship of the state will be steered.

Being disturbed by the growing political instability of the Government at the Centre manifested in the emergence of a hung parliament, it is pleaded sometimes for the replacement of Parliamentary democracy by a suitable Presidential system. A comparative study of the Presidential system and Parliamentary democracy leads to some important inferences. The presidential system provides more stability but less accountability. On the other hand, Parliamentary democracy, as it exists in India, may offer less stability but provides more accountability to parliament. Article 75(3) of the constitution makes it mandatory that, "The Council of Ministers shall be collectively responsible to the House of people". Those who plead for discarding

the Parliamentary system to overcome the problems of instability are committing the blunder of throwing the baby away with the bath water. They ignore the reality that elements of instability discernible under the existing model of Parliamentary democracy are not the inherent characteristics of the system itself. They are essentially the out come of the aberrations and distortions of the present system of elections and can be corrected through suitable electoral reforms.

Traditionally, 'responsibility' to the legislature was understood to mean that defeat on major legislature measures or policy proposals as well as on specifically worded confidence motions amounted 'loss of confidence' in the executive and were fatal to its continuance. But this no longer seems to be believed or acted on in Britain now. In the 1970s, the governments in U.K. have switched over to a new rule according to which only votes specifically stated by government to be matters of confidence, or votes of no confidence by the opposition could throw the executive out of office. The commentators on British Constitution also seem to have tacitly acknowledged the rule as governing constitutional principle. We can follow their footsteps. An explanation added to Constitution 75 (3) incorporating the meaning of 'collective responsibility' were to mean that Government had to resign only when defeated on motion of confidence or no confidence, the stability of Government would be ensured and also there would be no scope for criticism that in the name of 'Stability' the members in Parliament are reduced to puppets in the hands of political parties.

The founding fathers of our constitution were faced with dilemma of whether to give primacy to stability or to accountability and in their wisdom, they gave priority to accountability despite the unstable conditions created by the partition of India. They expected that the emergence of an appropriate electoral system would be able to tide over the problems of instability under parliamentary democracy.

E – Adopt former West German model ‘List System’

n the present election system there is a sharp disparity between the votes secured by political parties and the seats won by time. One of the causes of this disparity is the fragmentation of political life brought about by the multiplicity of parties. This leads to splitting of opposition votes and subsequent disproportionate gain to the ruling party, for example, in the first general election in 1952, the Congress party came to power securing only 45% votes but winning 74.4% of the total seats. The opposition party together secured 55% votes and won only 25.6% seats. The disparity between votes and seats widened further in the subsequent election. This led to the formation of successive government at the Centre which were essentially Minority Governments in terms of votes secured. This situation ultimately led to the formation of Coalition governments at the Centre in the last decade, thus functioning in a Hung Parliament with instability over its head like the sword of Damocles.

In this situation when parliaments became unrepresentative in character, the governments thrown up by such parliaments would be even more so. A system of proportional representation would ensure that the strength of the various parties in the House at least broadly reflects the popular will. The present rule of “first past the post” clearly does not do so in a multi-party system like over, through it would in a two-party system. The victor wins not necessarily because he has the majority behind him, but because he has managed to split the votes against him.

The unrepresentative character of parliament and the state legislatures in the present system has resulted in a situation in which decision making is sought to be influenced more by mass movements, public opinion and the press than through parliamentary politics. The farmers movements of Sharad Joshi Mahindra Singh Tikait, the

Chipko movements and the Narmada Bachao Andolan are cases in point. The infamous Bihar Press Bill and the Defamation Bill fell through mainly because of a vigilant press and public opinion, and not due to strong opposition within the for a in which they were introduced. Democracy survives because of forces outside the legislature.

Under these circumstances, an alternative system in which each voter is allowed two votes, a positive one in favour of the candidate considered best, and a negative one to be cast against the candidate disliked most. This system may be described as binary voting system. If there are only two candidates, binary voting will make no difference but the moment any additional candidate steps in, the vote bank arithmetic will collapse. Even if there are only three candidates (say A, B and C) against whom can A ask his followers to cast their negative votes. If it is B, C will get a decided advantage, and if it is C, B will benefit. Either way A will have no worthwhile gain.

Another reason for instability of the Government at the centre and in the states is the phenomenon of **defections**. There exists an anti-defection law but it has failed to secure the purpose for which it was enacted. It has encouraged prospective defectors to engineer “adequate” defections to avoid disqualification – ultimately leading to a change in the government. All this is invisibly done through manipulative politics offering various allurements to the defectors. The best way to put an end to unethical defections would be to disintegrate legislature and executive and make the membership of executive incompatible with that of legislature. The French and Swiss models of parliamentarism are illustrative of such ‘incompatibility’ Article. 23 of the French Constitution lays down that, “The functions of member of the Government shall be incompatible with the exercise of any parliamentary mandate...”. Practical difficulties which may arise if the members of government are members of parliament are

solved by giving premier right to intimate legislation and by providing members access to the parliament and right to be heard when they so request. Similarly, Article 77 of the Swiss constitution lays down that, "Deputies to the Council of States, members of the Federal Council and officers appointed by the council, cannot be at the same time members of the National Council" and Article 81 lays down that "Members of the National Council and those of the Federal Council may not be deputies to the Council of State". The members of the Council have the right to speak in the Federal Assembly and right to propose motions of subjects under discussion but they have no right to vote. If this principle of incompatibility be introduced in the Indian Constitution, the motivation for defections would be effected and with it the inclination of members to defect will vanish.

While the inherent paradoxes in the working of the West – Minister model based on 'interaction by integration' are also experienced in U.K., the multiple party structure in India has further precipitated the problem. The unsuitability of the System is reflected in the growth of its ugly off-shoot – the menace of unscrupulous defections. Though attempt has been made by the legislature to solve the problem by passing the Anti – defection Law, and the Court has also upheld it in the fond hope that legislature is a better body than the Court to perceive the intricacies of the problem and find a solution, a dispassionate analysis of the Act shows that, instead of striking at the root of the problem, it further complicates the issue. A better method would be to introduce in the Indian Constitution the principle of 'incompatibility' of executive and legislative membership as in French and Swiss Constitutions. This could be done by deleting Art. 75(5) of the Constitution and also deleting S.3(a) of the Parliament (prevention) of Disqualification Act, 1959, which declares that any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex-officio or by name would not disqualify their holders for membership of either House of Parliament.

Such “incompatibility would, unlike the West –Minister mode, ensure ‘stability’ and ‘responsibility’ in a better way as there will be no scope for either the executive or the legislature dominating the other – the executive could not by wielding ‘whip’ and party discipline stifle the voice of the parliament. The legislature, as its members could not as members of majority party also aspire for ministerial posts, would be less inclined to wield the ultimate deterrent, i.e., the motion for no confidence. Further, acknowledging the connotation of ‘collective responsibility as now prevalent in U.K. as more in tune with Indian Constitutional precepts and incorporating it as an explanation to Article 75(3) would enable the legislature to function without any outside pressure and thereby responsibility of the government would be more effectively and efficiently ensured; also as the responsibility would be invoked, more often than not, by measures other than those effecting the very existence of the government, the stability of the government would be ensured. Once these changes are brought about, provisions to deal with defections introduced in the constitution by constitution (fifty-second) Amendment Act, 1985, which are in doubtful efficacy would also become superfluous and, as such, could be deleted from the Constitution.

D – Both ‘Stability’ and ‘accountability’ can be reconciled.

The formation of successive coalition governments including the present one (after the result of the last general elections to Lok Sabha in May 2004) has created problem : How can stability be reconciled with the requirement of accountability? Can we achieve both – stability and accountability – within the existing frame work of, parliamentary democracy in India?

Similar kind of problem in the former **west Germany** was resolved, to a great extent through electoral reform. The elections these were held through a dual system – a part of Parliament was elected as in India **through a single member consistency system,**

while another part was elected on the basis of a “List System”. In the latter, every voter is required to indicate his preference for a party. The vote is not for an individual candidate but for the party. The percentage of votes secured by each party is calculated and through a suitable formula, additional parliamentary seats are allotted. Prior to elections, each party submits a list of candidates in order of preference. It is from this list that additional candidates are allotted on the basis of percentage of votes polled by the party. Through this system, the disparity between the votes and seats is reduced as is the probability of a hung parliament. It is submitted that India can fruitfully adopt this system to avoid the situation of hung parliament.

The multiplicity of parties which causes the splitting of votes is considerably reduced in the German model through state-funding of elections. The government gives financial assistance to parties which had polled a minimum prescribed percentage of votes in the previous elections. Since small splinter parties could not fulfill this condition, they generally merged with the bigger but ideologically like-minded parties. Thus reduced political fragmentation also resulted in narrowing the gap between the votes polled and the seats won. State funding of elections can also ensure the minimum finances needed by a party candidate who has a genuine electoral support are made available to him. If the Indian democratic system is not to be destabilized, the growing money-power in elections has to be curbed through proper electoral reforms like state-funding of elections. All agree that electoral reforms are essential. Different Commissions and Committees were made to study the problem areas and for offering suggestions. Goswami Committee, Inderjit Gupta Committee, Election Commission, Law Commission and NCRWC all have worked in this direction but due to lack of serious attempt at reforming the existing system and the credibility of the democratic system itself is at stake in the absence of such reforms.

List systems and Binary voting can be helpful in curbing number of political parties in India and it may rejuvenate and Parliamentary system and lead towards two party system. Through state funding party activities and party funds can be regulated and regular accounts can be maintained. The role of the Election Commission is needed to be strengthened. Election Ombudsman can be an alternative but powers must vest not in one person, but in a collective of functionaries. This office may continue to be called Election Commission and must be composed at least 3-4 members with an experience.⁶ It should be given powers to disqualify the candidates with criminal antecedents from contesting elections. It should also be empowered to scrutinize the accounts of the political parties. As regards the election expenses, there is a proviso in the R.P. Act which excludes the expenditure incurred by 'the friends and sympathizers' from the scrutiny of the commission. Such provisions are required to be done away with. A provision can be made in the law that any person or a group of persons changing loyalty should have to resign as an MP or an MLA and contest fresh elections, whatsoever may be the number of the defectors.

NCRWC has brought with certain ideas (which have already discussed in earlier chapter) for stability and finding ways of preventing mid-term polls in the light of the frequent fall of union governments through acts of no-confidence votes, at times deciding their fate by a hair's breadth. NCRWC has proposed that most of the changes can be brought by simply amending the Constitution. Though the Commission has refrained from recommending a fixed tenure for the State Legislative Assemblies and the Lok Sabha, it seeks to tackle the problem of political instability by suggesting a provision in the Rules of Procedure of the Legislatures and the Lok Sabha for the election of the Leader of the House, along with that of the Speaker. The person so elected may be appointed Prime Minister or Chief Minister, it

recommends. Similarly, it has recommended an amendment in the Rules of Procedure of the Legislatures for the adoption of a system of constructive vote of no-confidence: it states that for a motion of no-confidence to be admitted against a government, at least 20 per cent of the total number of members of the House should give notice and it should be accompanied by the proposal of an alternative leader, to be voted on simultaneously with the no-confidence motion.

Disallow a candidatee from contesting elections in more than one constituency. The run-off system of election, which elects only those candidates who obtains 50 percent plus 1 votes, if in the first round, nobody gets over 50 percent of the vote than there is a runoff contest the very next day or soon thereafter between the two top candidates so that one of the two gets more than half the votes polled. This decision was refered to the government and the Election Commission.

(Allow “constructive” no-confidence vote, meaning alternative leader should be named before voting takes place.

Coalition Governments are likely to stay in India,

A coalition government is not a band of solo performers rather, it is more like an orchestra in which there are different instruments and some are heard occasionally, but where the conductor produces music rather than cacophony by ensuring that each one plays his part at the right time.

Once the coalition government is formed with the help of different political parties each party joining the coalition government must realize that it has become a constituent unit thereof and therefore, integral and inseperable apart of the coalition. All the constituent units must understand that once joined coalition government they have nowhere else to go for now, that they must fall in line and stop fighting among themselves, that united they would be able to stand and divided they would fall that once in government the dharma of governance must take precedence.

Well if it finds coalition government cannot carry on subjected to pitifully vulnerable to the blackmailing threats of its smaller constituents.

It is submitted that in the interest of accountability, which is the very basis of democracy, the model of parliamentary democracy will have to be preserved to complement it with the elements to stability, the electoral system will have to be radically reformed on the lines of the West German model as mentioned above.

To ensure some accountability and a sense of morality in the elected representatives, it is really essential to have the LokPal Bill passed at the earliest. All the high dignitaries, including the Prime Minister should be brought within the preview of the LokPal.

Any panicky action to discard the parliamentary model will be detrimental to democracy. It should not be forgotten that whatever be the outcome of a presidential model in the developed countries of the world, in many developing countries of Africa and Asia, **the presidential system has invariably degenerated into some form of dictatorship. Let it not be said of us that "the only lesson we learn from history is that we do not learn from history."**

F. PARLIAMENTARY FORM OF GOVERNMENT AND FEDERAL SYSTEM CAN GO TOGETHER

The persistence and intensification of multi party federalism over the last decade have created serious doubts regarding the viability of the old centralized regulatory conception of federal management. The Sarkaria Commission's guide lines can be helpful in maintaining dignity of office of the Governor. Stress should be put on implementation of the various commissions guidelines in regard to co-operative federalism. There is a need for better understanding between

the Centre and States. A time has come to establish a true federal system that would strengthen the bonds of cooperation, amity and cordial relations between the Centre and the states.

The demise of the Soviet Union has important implication for the Union of India. Regional aspirations can no longer be dismissed as chauvinistic and federalism will have to be taken seriously. Comprehensive review of the entire gamut of center – state relations by a body specially constituted for the purpose is necessary what is needed is the new federal balance in India for changing the opresent “ **Centralized federation” in to a Cooperative and constructive federal polity the following measures are vital :**

- 1) territorial reorganization of state on the criterion of providing to the states maximum homogeneity within and maximum identity without :
- 2) increase the autonomy of the states by incorporating greater administrative and fiscal power to them,
- 3) atomization of the panchayat raj and nagar palika system with necessary devolution of authority to build an active grass roots democracy and
- 4) building of a new federal national consensus to fight communalism cartelism and separatism and defend the values of democracy, secularism, social justice and federal nation building.

F. Appointment of Governors :

There are any number of examples of high handedness by governors:

- 1) unjustifiable imposition of President's rule
- 2) sacking of Chief Ministers
- 3) refusing to appoint Lokayukta
- 4) reserving Bill passed by State Legislatures for Presidential assent for periods that are unconscionable
- 5) generally acting as lieutenant and spy for the party in power at the Center

- 6) with the change of the Government the Center the Governors are asked to resign in their place new Governors having political affiliation of the party or party leader at the Center are appointed even without following the statutory procedure of consulting the Chief Minister.



G. APPOINTMENT OF INTER-STATE COUNCIL TO DEAL WITH ALL MATTERS CONNECTED WITH GOVERNORS;

What is required is to devise some Procedure for the appointment of Governors so that the present system of Presidential appointment is not so absurdly capricious as it has turned out to be **article 263 of the Constitution makes it lawful for the President to establish and Inter State Council for investigating and discussing subject in which the States have a common interest and make recommendations for the better co-ordination of policy and action in respect of that subject there is nothing to prevent the President form** appointing a Council with a permanent sub-committee which deals exclusively with the appointment of governors. Such body would provide a panel of names, lay down procedure for appointment of Governor and resolve disputes in regard to such appointments. In order to prevent the power of appointment of Governor becoming an appointment power in the hands of the Prime Minister and to have suitable non-political and honest persons with integrity as Governor, it is necessary to have a council appointment by the President exclusively dealing with the matters connected with the appointment of Governors.

Governors who have no security of tenure and are subject to an entirely unscrupulously hire-fire regime can, if they are honest, hardly be expected to sustain an independent course of action. The moment they show their independence, they are transferred or sacked. And if they are politically dishonest, the integrity of the constitution is

uncompromisingly jeopardized the undoubted advantages of providing some security of tenure to Governor entirely disappears if such guarantees entail preserving. The right to office for five years of worthless persons of partisan predilection who discredit the office but if the right persons were appointed the guaranteed of tenure (Subject to the reserve power of removal in extreme case would be part of the constitutional scheme to ensure that an important post serves the constitutional design without fear or favour the Inter State Council dealing with Governors should stand guarantee for and act as a watchman of this process ones appointed a Governor should normally continue for the full constitutional term of five years subject to a power to recall the governor or seek his resignation for incapacity or misbehavior or because the extreme exigencies of the situation requires it normally such a recall request should also take place after consultation and under the aegis of the proposed Inter State Council.

Unethical and nasty role played by some governors have done too much damage to our constitutional polity for us to ignore the office as trivial to unimportant at present it is an office of power without responsibility and yet even the incidence of power without responsibility.

It took nearly forty years for setting up the aforesaid Council. It is required to meet atleast thrice every year. Its proceedings are to be held in Camera and decisions on all questions are required to be taken by consensus. Decision of the Chairman as to whether or not there is a consensus is final. It has been considering the recommendations of Sarkaria Commissions.