Chapter- I
Introduction

Governor is an integral part of the State Legislature as the President is in the Parliament. Article 168(1) of the Indian Constitution provides that for every State there shall be a Legislature, which shall consist of the Governor and two Houses or one House as the case may be. He plays multifaceted role in the administration of the State even though he is not the member of the State Legislature. He is the executive head of the State. All executive actions in the State are taken in his name. He is empowered to exercise his executive power either directly or through the officers, who are subordinate to him.

The Constitution of India provides that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in the exercise of his functions, except when he/she is required by the Constitution to act in his discretion.¹ Under the Cabinet System of Government, the Governor is the constitutional or formal head of the State and the real executive is the Chief Minister, who is accountable and immediate responsible for any act of omission and commission to the Legislature.² Governor exercises all 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. The Governor whether

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¹ Article 163(1), Constitution of India.
acting with or without the advice of the Council of Ministers, plays a pivotal role in our constitutional system and in its working, he is the Linchpin of the constitutional apparatus of the State.  

Governor is appointed by the President on the recommendations of the Central Government. The Governor holds office during the pleasure of the President of India. The normal tenure of the Governor is five years, which starts from the date of assumption of office. However, the Governor shall continue to hold the office even after the expiry of his term until his successor enters upon his office.  

Article 158(2) of the Constitution provides that he/she shall not hold any other office of profit during his tenure as the Governor.

Article 355 of the Constitution imposes a duty on the Centre to protect every State against external aggression and internal disturbance and it is also the duty of the Centre to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. For the fulfillment of this duty of the Centre, the office of the Governor plays an important role. Governor plays two types of roles, in the normal circumstances, he acts as the head of the State or as a link between the Central Government and the State Government. But in exceptional circumstances, he may become the agent of the Centre. He is the representative of the Centre, who maintains the democratic form of government in the State in accordance with the Constitution.

Former Governor, Sri Prakash has written that after having been a Governor for 12 years during which I served in three States, I had a feeling that a

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3 Report of Sarkaria Commission on Centre-State relations, Para 4.5.03.
4 Article 156(3), Constitution of India.
Governor has four main duties to perform. They are all important and whether they are fulfilled by a person of the name of Governor or by some one else, there is no doubt in my mind that they have to be done. A Governor’s first duty is to know that he is the representative of the Centre and that he must keep the Centre informed of the affairs of his State whenever he should feel that such things are going on, which can endanger the unity of the Country. His second duty is to look after the interest of the State to which he is assigned. If he feels that the Centre must step in to help in this way or in that, to meet any difficulty which the State itself is in no position to do, then he must tell the Centre as such. His third duty is to stand in human form, as the symbol of the State before representative of foreign people. Finally, in case the Constitutional machinery breaks down, whatever the reason may be, he must be prepared to take charge of the whole of the administration of the State.5

About the role of the Governor, Dr. B.R. Ambedkar said that “He is the representative not of a representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient and honest administration.”6

About the need and importance of the role of the Governor, Sarkaria Commission upheld that the Parliamentary System of the Cabinet type, which the Constitution has adopted at the State level, is not on all fours with that of the United Kingdom. It is a case suigeneris. The Governor in our system does not function as constitutional head for the whole gamut of his responsibilities. There is an

6 In a speech given by him in the Constituent Assembly on 2.1.1949.
important area, though limited and subject to Constitutional constraints within which he acts in the exercise of his discretion. It will bear reiteration that there are more than one facet of his role. As a 'bridge' between the Union and the State, he can foster better understanding between them and remove such misapprehensions as may be souring their relations. He is sentinel of the Constitution. He is a live link of channel between the Union and the State. As such link, it is his duty to keep the Union informed of the affairs of the State administration, whenever he feels that matters are not going in accordance with the Constitution, or there are developments endangering the security or integrity of the Country. The Governor thus assists the Union in discharging its responsibilities towards the States. The part which the Governor plays to help maintain the democratic form of government in accordance with the Constitution is of vital importance. In the ultimate analysis, due observance of the Constitutional provisions is the soundest guarantee of enduring unity and integrity of the Nation.  

About the role of the Governor, Sh. H.R. Bharadwaj, the former Union Law Minister, after taking the oath as the Governor of Karnataka said that “I have no doubt that the duty of the head of the State is to protect every citizen of the State, irrespective of caste and creed, he need to bring in confidence among the public in order to bring down the communal rivalry in the society.”  

The Constitution of India itself gives some discretionary powers to the Governor, so that he can fulfill his responsibilities in an effective manner. The constitutional functions of the Governor are normally expected to be discharged on

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7 Supra note 3 para 4.5.02.
8 www.in.com.
the aid and advice of the Council of Ministers headed by the Chief Minister. When the Chief Minister enjoys the confidence of the majority in the State Legislature, then the Governor’s capacity to exercise his/her discretionary powers is reduced. It is under special circumstances that the Governor may act without the advice of the Council of Ministers. In other words, circumstantial powers are exercised by him in his own discretion.

Article 163(2) of the Constitution provides that if there is a conflict of opinion between the Governor and the Ministry as to whether or not a particular matter falls within the scope of the Governor’s discretionary power, the decision of the Governor in his discretion shall be final and the validity of anything done by him shall not be called in question on the ground that he ought or ought not to have acted in his discretion. In the discharge of his responsibilities as the head of the State, the Governor performs functions similar to those of the President as the head of the Union. Like the President at the Centre, the Governor of a State can summon, address, prorogue the State Legislature and can dissolve the Legislative Assembly.\(^9\) He appoints the Chief Minister.\(^10\) Under Article 200 of the Constitution, he assents to the Bills passed by the Legislative Assembly or withholds assent or reserves the Bill for President's assent. He can issue ordinances when the Assembly is not in session.\(^11\) He can send a report to the President about the failure of the constitutional machinery of the State and recommends for the imposition of the

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\(^9\) Article 174, Constitution of India.
\(^10\) Article 164(1). ibid.
\(^11\) Article 213, ibid.
President’s Rule.\textsuperscript{12} With the proclamation of an emergency by the President, the State administration comes under the control of the Union and being the man on the spot or as the representative of the Union Government in the State, the Governor during the period of emergency, takes over the reins of administration directly into his own hands and runs the State with the administrative aid of bureaucrats.

There is an erroneous impression in general on the role and the powers of a Governor. It is true that the Governor is appointed by the President and holds office during the pleasure of the President. As the President acts in accordance with the advice of the Union Cabinet, it is assumed that the Governor is an employee and an agent of the Centre and should consult the Union Government before taking decisions even in matters where the Governor has discretionary powers.\textsuperscript{13} Generally, Governor fulfills his obligations imposed on him by the Constitution. Governor before entering in his office promises to preserve, protect and defend the Constitution and the law and the well being of the people of the State.\textsuperscript{14}

If the government in the State is of the same party, that having government in the Centre, the exercise of the discretionary powers by the Governor remains safe and without controversy. But if the government in the Centre and the government in the State are of the different parties, the exercise of discretionary powers by the Governor many a times makes him controversial. In such circumstances, Governors have played a dictatorial role many a times and

\textsuperscript{12} Article 356(1), ibid.
\textsuperscript{14} Article 159, Constitution of India.
transcended all the democratic limits. Different political parties have misused the
position of the Governor at different times for their partisan interests. The most
frequent instances of misuse relate to two sets of actions by Governors. First, the
swearing-in of new governments and second, the pliability with which the Centre is
often able to secure from Governors, a report to the effect that the constitutional
machinery in the concerned State has broken down, paving the way for President’s
rule.\(^\text{15}\) The discretionary powers exercised by the Governor are no doubt a naked
and aggressive violation of constitutional provisions and subversion of the structure
of our Constitution.\(^\text{16}\)

Some committees like Committee of Governors, Rajamannar
Committee, Administrative Reforms Committee, Sarkaria Commission, and
Constitution Review Committee were appointed at different times. They worked on
several issues which were directly or indirectly concerned with the Union-State
relations and provided valuable guidelines for the Governors regarding their powers
and duties. To control the differences between the Centre and the States, the
Central Government has also set up a new Commission in April, 2007 under the
Chairmanship of Justice M.M. Punchhi to look into the issues of Centre-State
relations in view of the sea changes that have taken place in the polity and economy
of India. The Commission reviewed the working of the existing arrangements
between the Union and the States and submitted its report on April 19, 2010, to the
Union Home Minister, Sh. P. Chidambaram.

\(^{16}\) Dr. R. Gangadhara Sastry, Governor’s Discretion, Third Concept, Vol. 15, 2001, p. 22.
The Governor is not answerable to any court for the exercise of his powers or performance of his duties regarding his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. He enjoys immunity against criminal proceedings whatsoever shall be instituted or continued in any court during the term of his office. He is immune from the arrest or imprisonment issue from any court during his term of office. No civil proceedings in which relief is claimed shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office of Governor until the expiration of two months next after notice in writing has been served upon him stating the nature of the proceedings, the cause of action, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims. Although the Governor is not answerable to any court and is immune from criminal consequences for any act done during the performance of his functions, this does not restrict the right of any person to initiate appropriate proceedings against the Governor to have declared such acts unconstitutional.

1.1 Object of the study:

The main objects of my study are:

i) To ascertain the theme of the framers of our Constitution regarding the discretionary powers of the Governor.

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17 Article 361, Constitution of India.
ii) To identify the discretionary powers of the Governor under the changing perspective of the Office of the Governor and that to what extent Governor should use these powers and to search out the means to plug the lacunae in exercising these powers.

iii) To ascertain the interference of the courts in the use of discretionary powers by the Governor.

1.2 Research Methodology:

For the purpose of completion of my research work, I have applied the doctrinal or traditional research method in which the research is carried on, on the basis of facts and data stored in the library and archives. It involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions. I have discussed the followings:

i) The Constituent Assembly Debates have been extensively consulted to find out the real consideration of the framers of the Constitution for the Office of the Governor.

ii) The Parliamentary and State Legislature Assembly Debates relating to the office of the Governor have been consulted.

iii) The Autobiographies of retired Governors are also consulted.

iv) Decisions of the courts regarding the discretionary powers of the Governors are taken into consideration.

v) Reports of various commissions and their views are discussed and incorporated in the work.
vi) The various web sites are consulted for the collection of material regarding discretionary powers of the Governor.

vii) Various newspapers have been consulted and information is collected regarding the working of the Governors.

viii) Different articles relating to the discretionary powers of the Governor, published in various Journals have been consulted and quoted in my research work.

1.3 Chapter Scheme of the Study:

The present study has been divided into eight chapters. Chapter- I is of the Introduction which covers:

i) The purpose and importance of the Office of the Governor in the State.

ii) The object of the present study.

iii) The different methods of research which are used during the completion of this study.

Chapter-II is regarding the Historical Perspective of the Office of the Governor. The historical background of the Office of the Governor has been traced since Ancient India and with the concept of king for the proper functioning of the regime the concept of Governor also came. The study revealed that the administration of the Provinces was under the control of the Governor but he was called by different names at different times. But the word ‘Governor’ was used in India during the British period. The functions of the Governor during British period were not the same as those at present time.
Chapter-III is regarding Governor as a Factor of Indian Federalism. It describes the nature of our Constitution. Our Constitution is federal with strong and indestructible Centre. For strengthening the unity and integrity of the Country, Constitution provides a special kind of federalism. Some jurists call it quasi-federalism and some call it co-operative federalism. Our Constitution is unique in its nature having the features of both federal and unitary. Governor is the executive head of the State. He is appointed and removed by the President. Many times he acts as the agent of the Centre. In this chapter Governor’s role as an agent of the Centre as well as a link between the Centre and State has been discussed.

Chapter-IV deals with the Constituent Assembly Debates regarding powers of the Governor. The views and amendments presented by the Hon’ble members of the Constituent Assembly, relating to the discretionary powers of the Governor are mentioned in this chapter. According to the members, the Governor should do all to maintain the standards of good administration, to promote all measures making for moral, social and economic welfare of the people of the State.

Chapter-V is relating to Powers of the Governor in Enacting Laws and Promulgating Ordinances under the Constitution of India. The study reveals that Governor has the power to promulgate an ordinance if he is satisfied about the emergent need. His subjective satisfaction means his personal satisfaction about the existence of necessity, in the given circumstances and such satisfaction is conclusive. He can promulgate an ordinance, when, firstly the Legislative Assembly is not in session and where there are two Houses in a State both Houses are not in session and secondly he must be satisfied that such circumstances exist which
render it necessary for him to take immediate action. And in other circumstances, if the Legislature is in session and it is felt that the present law is not able to control the situation and a particular law is immediately needed which is not likely to be passed by the State Legislature due to procedural formalities, the Governor may prorogue either of the two Houses and issue an ordinance.

Chapter-VI deals with the Discretionary powers of the Governor in India. Generally Governor acts on the advice of the Council of Ministers but in special circumstances the Constitution requires the act of the Governor in his individual judgement. The circumstances in which the Governor may use his discretionary powers arise in the following matters:

i) Appointment of the Chief Minister;

ii) Governor’s Assent to Bills;

iii) Dissolution of State Assembly;

iv) Dismissal of Ministry;

v) Summon and Prorogue the State Assembly;

vi) Recommendation of President’s Rule;

vii) Pardoning Power;

viii) Appointment of the Vice-Chancellor;

If any question arises as to whether any matter is, or is not a matter in respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of any thing done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Various
suggestions have been made in this regard so that discretionary power is used by the Governor judicially and for the benefit of the general public and country.

Chapter- VII is regarding judicial review of the Exercise of Discretionary Powers of the Governor. The Governor can act as per his own judgement but he cannot act arbitrarily. He cannot in the exercise of his discretion or otherwise, do anything that is contrary to the Constitution and the laws because his act is under review of court. In many cases the judiciary has interfered in the decisions of the Governor and it has also provided some guidelines for the Governor which may be useful for the Governor in the exercise of his discretionary powers. Hence, critical analysis of various judicial pronouncements has been made.

Chapter- VIII is relating to the Conclusion and Suggestions. The Constitution of India is based on the principle of federalism with a strong and indestructible Centre. Governor is a vital link between the Central Government and the State Government. The founding fathers of our Constitution had deliberately conferred certain special and extra ordinary powers on the Governor. Many a times Governors misuse his discretionary powers on behalf of the Centre to which he should avoid. Being the head of the State he should try to maintain the dignity of this august office and try to maintain the cordial relations between the Centre and the State. Various suggestions have been made so that Governor can act strictly as per constitutional provisions and also as the head of the State, he should not be affected by the rise and fall of the governments.