Chapter- III

Governor as a Factor of Indian Federalism

3.1 Introduction:

The Constitution of India is the supreme law of the land. It possesses all the characteristic of federalism. A Constitution which possesses the following characteristics may be called Federal Constitution:

i) The distribution of powers between the Centre and the States. Matters of national importance are given to the Centre and matters of local importance are given to the States.

ii) Every power whether legislative, executive or judicial belonging to the Centre or the States, is derived from the Constitution.

iii) It must be in writing and the procedure of its amendment should be rigid to maintain its supremacy.

iv) The judiciary remains independent to maintain the division of powers between the two levels of government as stipulated in the Constitution.¹

Constitution is the basis on which the government of a nation works. It is a legal document where the will of the people is revealed.² Constitution of India was drafted by the Drafting Committee constituted from amongst the members of the Constituent Assembly under the Chairmanship of Dr. B.R.

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¹ Dr. R.K. Chaubey, Federalism, Autonomy and Centre-State Relations, Satyam Books, Delhi, 2007, pp. 16-17.
Ambedkar. After the preparation of the Draft Constitution, it was placed before the Constituent Assembly for debate and after a number of debates, it was adopted as the Constitution of India, which came into force on January 26, 1950. It is supreme and written. Every one is under and controlled by the Constitution. It divides all the powers whether legislative, executive or judicial between Central Government and the State Governments in the form of three lists. First List is called Union List, which covers those matters on which Union Government can formulate laws. Second list is called State List which covers those matters on which State Government can make laws. Third list is called Concurrent List which covers those matters on which Centre Government and State Governments both can make laws but State Laws cannot override the Centre Laws. About its federal character Dr. B.R. Ambedkar pointed out that “the basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States in our Constitution are in no way depending upon the Centre for their legislative authority. The Centre and the States are co-equal in this matter.\(^3\)

For strengthening the unity and integrity of the Country, Indian Constitution provides a special kind of federation. Some jurists call it quasi-federalism and some call it co-operative federalism. Indian Constitution is unique in its nature having the features of both federal and unitary. The founding fathers of the Constitution were aware of the fact that in the past the absence of strong Central Government has always led to aggression and conquest from outside and this was

\(^3\) Vol. XI CAD at 952.
equally responsible for revolts in the Country. The members were convinced of the fact that if the newly won political freedom and unity were to be preserved, the Centre should be strong enough, to defend the Country, both against external and internal disruptions. Hence, the Centre was endowed with monopoly of control over defence, external affairs, adequate control over finance and extensive powers to be exercised, when the emergency is in force.4

Hence, Indian Constitution is federal with strong and indestructible Centre. Dr. B.R. Ambedkar viewed about the nature of the Constitution that “Indian Constitution could be both federal and unitary. In normal times, it could work as a Federal Constitution and at the time of war or economic and political crisis, it will work as a unitary one.”5

Mr. Justice Shelat and Mr. Justice Grover also describe the nature of the Constitution and held6 that “the Constitution of India has all essential elements of a federal structure as was the case in the Government of India Act, 1935, the sense of federalism being the distribution of powers between the federation or the Union and the States or the Provinces.”

India is a member of the family of federations of which the better known members are the U.S.A, Canada and Australia. The Indian federalism has been designed after a close and careful study of the contemporary trends in these federations. It does not follow strictly the conventional or orthodox federal pattern.7

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4 Supra note 1 at 20.
5 Vol. VII CAD at 34.
6 Keshvananda Bharti vs State of Kerala, (1973) SCC 225 at 408.
Indian Constitution establishes a system of double government, with the Union Government in the Centre and the State Governments in the State. Every government either Central or State is supreme in its own sphere. Governor is the executive head of the State. Article 153 of the Constitution provides that there shall be a Governor for each State. It is also provided that the same person may be appointed as Governor for two or more States.  

3.2 Appointment of the Governor:

Governor is appointed by the President on the recommendations of the Central Government. Article 155 of the Constitution provides that the Governor of a State shall be appointed by the President by warrant under his hand and seal. The only qualification mentioned in the Constitution, for the appointment of Governor is that he should be a citizen of India and must have completed the age of thirty-five years. The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the first schedule and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

When Governor is appointed, before entering in his Office of the Governor, he takes an oath in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or in his absence the senior most

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8 Proviso to Article 153 inserted by the Constitution Seventh Amendment Act, 1956.
9 Article 157, Constitution of India.
10 Article 158(1), ibid.
judge of that court available. Article 159 of the Constitution prescribes the form of oath, that is to say:

swear in the name of God
“I, A.B., do -------------------------------- that I will faithfully
Solemnly affirm
execute the Office of Governor (or discharge the functions of the Governor) of …. (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of …. (name of the State).”

For the appointment of the Governor, Drafting Committee had suggested two methods for the appointment of the Governor in the Draft Constitution. These two alternatives had one thing in common that they proposed the Governor to be elected. There were three or four amendments, which set out a principle, which completely opposed these two alternative drafts of Article 131 of the Draft Constitution and suggested that “the Governor should be nominated.” Dr. B.R. Ambedkar and Pt. Jawaharlal Nehru also viewed that there is no need for an elected Governor. If we have an elected Governor and an elected Chief Minister, then the elected Governor would not be the constitutional head. It would be different from the position obtaining at the Centre and finally Constituent Assembly approved the system of presidential nomination of the Governor in the State.

Constitution does not prescribe any mechanism to evaluate as to who is the fit person for the appointment as the Governor because much of the criticism against the Governor can be avoided, if his selection is made on principles, which

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ensure the appointment of right type of person as Governor. Sarkaria Commission and Punchhi Commission have given some recommendations/guidelines regarding appointment of the Governor. Sarkaria Commission recommends that the President should appoint the Governor of a State, after consultation with the Chief Minister of that State. In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155 of the Constitution.\textsuperscript{12} Commission has also given some recommendations that who shall be fit person for the appointment as Governor. The person who is to be appointed as Governor should fulfill the following criteria.\textsuperscript{13}

i) He should be eminent in some walk of life.

ii) He should be a person from outside the State.

iii) He should be a detached figure and not too intimately connected with local politics of the State.

iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.\textsuperscript{14} It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or of a

\textsuperscript{12} Sarkaria Commission Report on Centre-State Relations, para 4.16.03.

\textsuperscript{13} Id. para 4.16.01.

\textsuperscript{14} Id. para 4.6.09.
combination of other parties. Commission also recommended that the Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. Such consultation will greatly enhance the credibility of the selection process. The consultation should be confidential and informal and should not be a matter of constitutional obligation.

But in reality, irrespective of the guidelines and recommendations of the Sarkaria Commission, the party in power at the Centre does not follow any uniform policy in regard to the appointment of the Governors. Former Union Law Minister in UPA Government, Sh. H.R. Bharadwaj was sworn-in as Governor of Karnataka on June 29, 2009. Former Orissa Chief Minister, Sh. Janaki Ballabh Patnaik was sworn-in as the Governor of Assam on December 11, 2009. He had served as Chief Minister of Orissa for two terms. Recently, Sh. Shiv Raj Patil was sworn-in as Governor of Punjab on January 22, 2010. He was the Home Minister in UPA Government and resigned from this post after terrorist attack in Mumbai. M.O.H. Farook was sworn-in as the Governor of Jharkhand on January 22, 2010. He had served as Speaker of Punducherry from 1964 to 1967 and as Chief Minister from 1967-68, 1969-74 and 1985 to 1990.

Punchhi Commission, which was set up in April 2007 under the Chairmanship of Justice Madan Mohan Punchhi suggests that the nominee for the
Governor not have participated in active politics at even local level for at least a couple of years before his appointment. It has also recommended that the State Chief Minister should have a say in the appointment of Governor. It also agrees with the Sarkaria Commission recommendation that a Governor be an eminent person and not belong to the State, where he is to be posted. It also endorses an NCRWC recommendation saying that the appointment of Governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and Chief Minister of the concerned State. The Vice-President can also be involved in the process.

3.3 Removal of the Governor:

In the normal circumstances, the Governor holds office for a term of five years which will be counted from the day of entering in his office as Governor. The day of entering is the day on which the Governor undertakes or subscribes an oath which is a condition precedent to entering into the office. But in the exceptional circumstances, he may resign or may be removed from his office before the completion of five years. Regarding the tenure of the office of the Governor, Article 156 of the Constitution provides that:

i) The Governor shall hold office during the pleasure of the President.

ii) The Governor may, by writing under his hand addressed to the President, resign his office.

iii) Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office.
Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. Or, in other words, Governor stands in his office even after the expiration of his term of five years, till his successor takes or subscribes an oath before entering in his office as Governor.

Only the President has the power to terminate the Governor at any time from his office. The use of words “during the pleasure of the President” in Article 156 of the Constitution denotes that Governor can be terminated at any time when the President withdraws his pleasure. This Article does not mention any ground on which the pleasure of the President may be withdrawn. Hence, the power of the President regarding removal of the Governor is extreme.

At the time of discussion on the Article 132 of the Draft Constitution which was relating to the tenure of Office of the Governor, some members in the Constituent Assembly were not in favour of leaving the tenure of office of the Governor on the mercy of the President. They thought that if the Governor holds office at the pleasure of the President, then his tenure would be uncertain. He would be removed from the office any time. Prof. K.T. Shah, Hon’ble member of the Constituent Assembly said, "I just cannot understand this". He wanted to insert the words “and shall during the term be irremovable from his office”, after the word “office” in the Draft Article 132. If the words were inserted, the Draft Article 132 would read as "The Governor shall hold office for a term of five years from the date on which he enters upon his office and shall during that term be irremovable from his office" but his amendment was not accepted by the Constituent Assembly.
Prof. K.T. Shah had moved his amendment with a view that the Governor should be irremovable from the Office during his term of five years. He argued that we should see to it that if he has to be the constitutional head of a Province, if he is acting in accordance with the advice of his ministers, we should see to it that at least while he is acting correctly, in accordance with the Constitution, he should not be at the mercy of the President who is away from the Province and who is a national and not a local authority.

Prof. Shibban Lal Saksena, the Hon’ble member of the Constituent Assembly said that now the Governor will be there only at the pleasure of the President and such a Governor will have no independence and my point in that the Centre might try to do some mischief through that man. Even if he is nominated, he can at least be independent, if after he is appointed, he is irremovable. This was the kind of thinking that went on and it was not only of Prof. K.T. Shah and Prof. Saksena, who said so but some others had also favoured the fixed tenure and said that otherwise, we might put down in writing under what circumstances he could be removed.

Dr. B.R. Ambedkar had in mind, when he provided that the Governor shall hold office at the pleasure of the President, meaning if the President withdraws pleasure, the Governor goes, he said that he would do it not ordinarily, not as a matter of routine, he would do it for corruption, for bribery, for violation of the Constitution or for any other reason which the President, no doubt, feels is a legitimate ground for the removal of the Governor.\(^2\)

Hence, some members were aware that leaving the Governor on the mercy of the President is not good and may be misused. The Governor is removed when President withdraw his pleasure. The High Court of Rajasthan, in *Surya Narain Choudhary vs Union of India*,\(^{22}\) has held that the five years term provided for a Governor under Article 156 (3) is not mandatory. Clause (3) of Article 156 is subject to clause (1) of this Article. This means that the five year term is subject to the exercise of pleasure by the President. Thus, it lies within the power of the President to terminate the term of the Office of the Governor at his pleasure. Court also held that it was not necessary to specifically mention in the order that it was issued in exercise of the power “at the pleasure of the President”. The President must be deemed to have exercised this power under Article 156, when the order of removal is duly signed by him.

For the removal of the Governor, the Constitution does not provide the system of impeachment as it is provided for the removal of the President. About the removal of the Governor, H.M Seervai\(^ {23}\) stated in his book that Governors holds office during the pleasure of President and can be removed by him at any time during their term of office. It is not necessary to provide for the removal of Governors by impeachment or by a process analogous to impeachment.

Pleasure of the President has weakened the position of the Office of the Governor as after 42\(^ {nd}\) amendment, the President is bound by the decision of Council of Minister in matter of Article 156. And he is increasingly being subject to the whims and fancies of the Central Government. The Central Government has

\(^{22}\) AIR, 1982 Raj 1.

many times shortened the tenure of a Governor for political reasons. When the government at Centre changes, the removal or shifting of Governors of State has become a normal practice and this practice needs to be changed. There are many examples of removal or transfer of Governors only on political considerations. In October, 1980 the then Tamil Nadu Governor, Prabhudas Patwari was dismissed demonstrating that the President’s pleasure under Article 156(1) can be used by the Prime Minister to dismiss any Governor for political reasons and without assigning any cause. In 1981, the then Governor of Rajasthan, Sh. Raghulal Tilak was dismissed from his office. In December 1989, on the advice of the Central Government, the President asked to all the Governors to tender their resignations. The main reason behind it was only that all those Governors were appointed by the previous government at the Centre. In April 1992, the Governor of Nagaland, Sh, M.M. Thomas was dismissed because he dissolved the State Legislative Assembly on the advice of the defeated Chief Minister, without consulting the Centre and the Central Government had not accepted this decision. The post of such a high constitutional validity has become a puppet in the hands of the Central Government under Article 156. The removal or shifting of Governors in Stats begins with the change of government in the Centre. Every time when a different political party comes in power in the Centre calls for change of Governor under Article 156(1).

In 2004, Governors of four States, namely Babu Parmanand (Haryana), Kidar Nath Sahani (Goa), Kailashpati Mishra (Gujarat) and Vishnu Kant Shastri (Uttar Pradesh) were dismissed from their respective States by the UPA

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Government headed by Dr. Manmohan Singh (which had assumed office after March-April Lok Sabha Elections, 2004) without giving any valid reason except for that “the ideologies of respective Governors were different from that of the Central Government.” They all were appointed during the tenure of previous government of National Democratic Alliance (NDA). It was the arbitrary act and the Central Government tried to justify its act by stating that the given dismissal was to bring a harmonious relation between States and the Centre, so that the policy made by Centre could be swiftly implemented in the States. However, a PIL was filed by VHP leader Sh. B.P. Singhal and in this case a five-member Constitutional Bench headed by the then Chief Justice, K.G. Balakrishnan of Supreme Court has ruled that:

“Governors cannot be removed with the change of power at the Centre or for refusing to act as government’s agent or for being out of sync with its ideology. Change in government is not a ground for removal of Governors to make way for others favoured by new regime. Governors could only be removed under rare and exceptional circumstances for valid and compelling reasons and not in an arbitrary, capricious or unreasonable manner for being, out of sync with the party in power at the Centre.”

The court has also ruled that the compelling reasons for removing Governors would depend upon the facts and circumstances in each case. The court will interfere if Union Government does not disclose any reason for the removal or if the reasons disclosed are found to be irrelevant, arbitrary and whimsical or malafide. Court has also ruled that no interference, however, would be done on the

25 Ibid.
ground that a different view is possible or that the material or reasons are insufficient. President appoints and removes the Governor, who is recommended by the Central Government. Constitution does not provide particular guidelines for the President for the use of his power under Article 156(1). Sarkaria Commission has given some recommendation regarding removal of the Governor, which are as follows:

i) The Governor’s tenure of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reasons.

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

iii) When, before expiry of the normal term of five years, a Governor resigns or is appointed as Governor in another State or has his tenure terminated, the Union

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27 Supra note 12 para 4.16.05.
28 Id. para 4.16.06.
Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him in reply.\textsuperscript{29} This procedure would strengthen the control of Parliament and the Union Executive's accountability to it.

Punchhi Commission also criticizes arbitrary dismissal of Governors, saying, “the practice of treating Governors as political football must stop”. It has suggested that there should be critical changes in the role of the Governor including fixed five year tenure as well as their removal only through impeachment by the State Assembly.

\section*{3.4 Constitutional Position of the Office of Governor:}

The constitutional position of the Governor in relation to the Legislature and administration is the same as that of the President.\textsuperscript{30} Governor is the formal head of the State and the real power in the State is exercised by the Chief Minister. Article 163(1) of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So, Governor exercises his functions on the aid and advice of his Council of Ministers except where he is to exercise his discretion. But he can guide his ministers and ask them

\textsuperscript{29} Id. para 4.16.07.

to reconsider the matter. Governors’ Committee appointed by the President on November 26, 1970 opined that:

“Even in the sphere where the Governor is bound to act on the advice of his Council of Ministers, it does not necessarily mean the immediate and automatic acceptance by him of such advice. In any relationship between the Governor and his Council of Ministers, the process of mutual discussion is implicit and the Governor will not be committing any impropriety if he states all his objections to any proposed course of action and asks the ministry to reconsider the matter. In the last resort, he is bound to accept its final advice but he has the duty, whenever necessary, to advise the ministry as to what he considers to be the right course of action, to warn the ministry if he thinks that the ministry is taking an erroneous step and to suggest to it to reconsider the proposed course of action.”

Constitution of India confers discretionary powers to the Governor to tackle the unforeseen situations in the State; in such situations Governor can perform his functions without any aid and advice of the Council of Ministers. Constitution does not prescribe on which matters, the Governor will exercise his discretionary power. It will be decided only by the Governor as to when he will use his discretionary power.

Article 163(2) of the Constitution states that if any question arises as to whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his
discretion. Therefore, generally Governor acts on the aid and advice of the Council of Ministers but sometimes he can also use his individual judgement, where Constitution so provides.

In *Ram Jawaya Kapoor vs State of Punjab*\(^{31}\), the Supreme Court held that, “the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive government. In the Indian Constitution, we have the same system of parliamentary executive as in England and the Council of Ministers consisting as it does, of the members of the Legislature is, like the British Cabinet, ‘a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part.’” Therefore, the Cabinet enjoying as it does a majority in the Legislature concentrates in itself the virtual control of both Legislature and Executive functions.

In *Samsher Singh vs State of Punjab*,\(^{32}\) the Supreme Court made it clear that except in sphere where the Governor is to act in his discretion, the Governor acts on the aid and advice of the Council of Ministers in the exercise of his executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. The Governor exercises his discretion in harmony with his Council of Ministers.

\(^{31}\) AIR 1955 SC 549 at 556.
\(^{32}\) AIR 1974 SC 2192.
The Office of the Governor is not subordinate or subservient to the Government of India. In *Hargovind Pant vs Dr. Raghukul Tilak*, the court held that it is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee and servant of the Government of India. He is the head of the State and holds a high constitutional office which carries with it an important constitutional functions and duties. He holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. He is not amenable to the direction of the Government of India nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office, which is not subject to the control of the Government of India. Actually, the Governor is more than a constitutional head. He is an important functionary designed to play a vital role in the administration of the affairs of the State. Or in other words he is a link between the Centre and the States under the Indian Constitution. But on some occasions he looks as the agent of the Centre.

3.5 Governor as the Agent of the Centre:

The role of the Governor as the head of the State is very important. The Governor of a State plays a multifaceted role. In the normal circumstances, he acts as a vital link between the Central and the State Government. Under the Constitution, Governor is expected to play a double role, as the head of the State

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33 (1979) 3 SCC 458.
and as the representative of the Centre. The Central Government has been kept strong in the Indian federal set up by providing more powers under the Constitution. Moreover, the procedure of appointment and the removal of the Governor, also make the Centre strong because his term of office is not secure and he acts only on the directions of the Centre.

The founding fathers of our Constitution made the Central Government strong so that it would be able to put a check on the disintegrating forces and can act to safeguard the sovereignty, integrity and stability of the Country. The Central Government has many over-riding powers over the State Government. It has been given a dominant voice in the affairs of the State.

Article 160 of the Constitution states that the President may confer on a Governor function in any contingency not provided in the Constitution. Article 164(1) of the Constitution provides that the Chief Minister shall be appointed by the Governor. Article 200 of the Constitution states that when a Bill has been passed either by both the Houses or the House as the case may be, it shall be presented to the Governor and he may reserve it for the consideration of the President. In the proclamation of the emergency in the State, the report of the Governor about the functioning of the constitutional machinery of the State plays an important role as Article 356(1) provides that, “if the President on the receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.” Article 167 of the Constitution provides that it is the obligation of the Chief Minister to keep the Governor informed about the affairs of the State so
that the Governor may inform about it to the President. Article 257 of the Constitution provides that the executive power of the State shall be so exercised as not to prejudice the exercise of the executive power of the Union.

It is the constitutional obligation of the Centre to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. In order to the fulfillment of these obligations, it is necessary that the Centre should have its own representative in each State, who has a duty to defend the Constitution, protect democracy, promote national objectives and national integration and also preserve national standards of public administration. He is the Governor by whom the Central Government completes its constitutional obligation. Hence, Governor is the representative of the Centre in the State. Being the appointee of the Central Government, in exceptional circumstances the Governor becomes the agent of the Centre and Centre misuses the discretionary powers of the Governor for the fulfillment of its political goals. And at this time it appears the post of the Governor should be abolished. Because at this time he does not act as the head of the State and for the welfare of the State but only as a puppet in the hands of the Centre for providing political benefit to the party in command at the Centre.

K. V. Rao says that Governor is nominated by the President. And it is this thing, which is most obnoxious. He says “today at the root of all troubles is

34 Article 355, Constitution of India.
the simple fact that the head of the State is neither chosen by that state nor is he responsible to it or removable. By the very method of appointment and removal the Governor becomes subordinate to the President.\(^{36}\)

The recent example where the Governor acted upon the directions of the Centre or Centre used the office of the Governor for political consideration is, when in Jharkhand, Jharkhand Mukti Morcha Chief Shibu Soren was sworn-in as Chief Minister hurriedly in a hush-hush manner. Governor Syed Sibtay Razi gave him three weeks time to prove the majority on the floor of the House, although he did not enjoy majority support. As against it NDA had pre-poll alliance, it was the single largest party and enjoyed the support of 41 legislators in a House of 81 members. Shibu Soren remained as Chief Minister illegally for 8 days.

The Apex Court had earlier taken exception to the Governor’s decision of inviting Soren to form the government. By doing so, the SC sought to save democracy and stopped Razi from playing ‘fraud’ with the Constitution. A Governor has discretionary powers to invite a leader of a political party enjoying majority support, to form a government, but in a given situation, when the Governor behaves wrongly, the SC has to intervene to save democracy. Jharkhand Governor ‘defrauded’ the Constitution by appointing Shibu Soren as Chief Minister. It raised a lot of political dust. BJP President, Lal Kishen Chand Advani has labelled Jharkhand Governor, Syed Sibtay Razi as ‘the supari killer of democracy’ because the pre-poll combine of BJP-JDU was not asked to form the new government in the State despite claiming a majority of 41 Legislators in a House of 81.

The Governor, Razi on the specific instruction from the Congress High Command invited NDA’s Arjun Munda to form the government. Razi ought to have taken such a step earlier and shown moral uprightness instead of bowing to the wishes of the Congress.

Another example, when the Governor had acted as the agent of the Centre was in Bihar, where after General Assembly Elections in 2005, no political party or group came out with majority and gave birth to a hung Assembly. The Governor, Buta Singh recommended for the imposition of the President’s Rule in the State. The Supreme Court has declared that the action of Governor, Buta Singh was unconstitutional and wrong.37 The Sarkaria Commission has stated very categorically and very clearly that Article 356 can be used, when there is not only a breakdown of law and order but also when there is a constitutional breakdown. In Bihar, this high-handed and undemocratic use of Governor’s power once again highlights as to why the post of ‘Governor’ as used in the Indian context should not be abolished, as it deprives the Chief Minister of his powers under the State’s rights as enshrined in the Constitution. The list of the acts of the Governor when he acted only as the agent of the Centre is very long and it is not possible to discuss all the incidents here.

Founding fathers of our Constitution would never have thought that the Centre may use the office of the Governor in such a way. About Article 356 of the Constitution, it was hoped by Dr. B.R. Ambedkar, the Chairman of the

37 Rameshwar Prashad vs Union of India, (2006) 2 SCC I.
Constituent Assembly that Article 356 will never be called into operation and would remain a dead letter.\textsuperscript{38}

3.6 To Sum Up:

The Constitution of India is based on the principle of federalism with a strong and indestructible Union. This is unique in its nature. Governor of a State is the key functionary in the system envisaged by the Constitution. He is appointed by the President on the recommendation of the Central Government. At the time of the appointment of the Governor the recommendations provided by the Sarkaria Commission should be followed by the President. Governor is a vital link between the Centre and the State.

The founding fathers of our Constitution had deliberately conferred certain special and extra-ordinary powers on the Governor. Vesting the Governor with discretionary powers was justified even in the Constituent Assembly on the ground that the Provincial Governments are required to work in subordination to Central Government. And in our parliamentary form of government, the Constitution clothes the Governor with those powers as the head of the State and he is to exercise them in his own judgement and not under the directions or the guidance of the Centre.

A Governor should exercise such powers, if absolutely based on his own decision, with great caution. His decision must not be influenced by any sense of being an agent of the Centre. The true constitutional position of the Governor is that he is the head of the State. He has to act according to the aid and advice of his

\textsuperscript{38} Vol. IX, CAD at 132-35.
Council of Ministers using his discretion wherever the Constitution allows him. In case of clash between the advice of the Centre and the State, he is bound by the oath of his office. The experience in the past demonstrates that the Governor cannot play an independent and impartial role so long as he holds Office of the Governor. Governor holds his office entirely during the pleasure of the President. As soon as the President withdraws his pleasure the tenure of the Office of the Governor completes. Some security regarding the tenure of the Office of the Governor is must. He should not be left purely on the mercy of the President. If the tenure will safe then he may work independently without the fear of removal or transfer. The advice conferred by the Prime Minister and Council of Ministers is mostly biased and based on the political thought of the ruling party that leads to dismissal of Governor appointed by previous government or the opposition party. Some safeguards are necessary to ensure his independence. The tenure of his office of five years should not be disturbed except very rarely and that too for some extremely compelling reasons. The guidelines provided by the Sarkaria Commission relating to the security of tenure of the Office of the Governor should be considered at the time of his transfer or removal.

Hence, for the proper functioning of a parliamentary form of government, it is compulsory that there should be a Governor, as the head of the State and he should act in the interest of the people. It is submitted that Governor can act in the interest of the people and perform his functions as a link between the Centre and the State, if his appointment is not politically motivated. Only those
persons should be appointed as Governors who are known as persons of ability, integrity, nobility and standing.