SUMMARY

Governor is a common political title for the official head of a dependent or component unit in a large constitutional structure. Governorships of one type have existed in the British, French, Dutch, and other empires; those of another type exist in the states of United States and in Brazil and Mexico. In the State Government of India, the Governorship derived from British origins but traced a separate course. The office of the Governor in India is as old as 1665 when, under the Charter of 1661 a Governor was appointed at Madras. It will be beyond the scope of this study if the whole development is explained from the beginning to substantiate the above generalization. We may start with the Government of India Act, 1919, wherein for the first time element of representative Government was provided under this “Dyarchy System” was introduced and the executive government in the Province was split in two distinct parts. In the new system the Governor of the Province played a pivotal role. The system of Dyarchy was a complex system having no logical basis and was rooted in compromise. The system operated in the spirit of harmony, goodwill and co-operation between legislature and executive during the first three years after the commencement of the act, but it soon cracked down after being unsatisfactory and unworkable. Therefore, it became necessary to remove the defects in provincial executive interalia. For this purpose Government of India Act 1935 was passed. This Act went a step further towards the decentralization of powers and conferred a separate legal and constitutional status to the provinces. But this Constitution also was not up to the wishes of the people, the federation at the centre could never come into being and provincial governments could also not function properly and the Governors had more opportunity of interference in the governmental business.

In the course of the efforts to provide a Constitution according to the wishes of the people, a constituent Assembly was established in 1946. Hardly had the Assembly been able to proceed due to the internal differences, when the decision was taken to grant independence to India on 15th August, 1947 by dividing it into two dominions - India and Pakistan. Under the authority of the Indian Independence Act, 1947, the Government of India repealed the provisions relating to the "Discretionary” functions and to the special responsibilities of the Governors. Following the same development the Constituent Assembly provided for the present provisions in which there has been
left no place for any discretion to be exercised by the Governor except in so far as it has been so required by or under the Constitution. This development depicts that historical process, i.e., the transfer of power from one man, whether a monarch or any other head, to the people or to their representatives.

British India was previously divided into fifteen Provinces of which three were Governorship-in-Council, four were Lieutenant Governorship and eight chief Commissionership. The Act raised to the status of Governorship-in-Council five of the provinces formed under Lieutenant Governors or Chief Commissioners thereby raising total number of Governor's Provinces to eight. The provisions of Section 46 of the Government of India Act, 1915, which required that the Governors of three provinces shall be appointed by His Majesty by warrant under the Royal sign Manual were extended to the New “Governor's Provinces” with the additional proviso that in the latter case appointments shall be made after consultation with Governor-General. Therefore, it is clear that under the Government of India Act, 1919 Governors of three Presidencies were appointed direct by His Majesty under the Royal Sign Manual and Governor's of the remaining five provinces were appointed after consultation with the Governor-General.

Although, the Governors were differ in position and status but wielded identical powers in their respective provinces. An instrument of Instructions was issued by His Majesty in identical terms to the Governors of all the eight "Governor's Provinces" laying down the lines and manners in which the Governors were to act in the exercise of their powers and duties.

There were eleven Governor's Provinces as envisaged by section 64 of the Government of India Act, 1935. Till the Act of 1919, the Government of India strictly speaking had been unitary. The Provinces were more agents of the Central Government. The Act of 1935 went a step further towards the decentralization of powers and conferred a separate legal and constitutional status to the Provinces.

The Governor, as the representative of the Crown, was the head of the Province. He was to be appointed by the King by a Commission under the Royal Sign Manual and the executive actions of the Province were run under his name. In the exercise of his executive authority in the province, the Governor was to be, “aided and advised” by a council of ministers who were collectively responsible to the provincial legislature.
The question about the position of the Governor was debated at length by the Constituent Assembly. The drafting committee gave two alternative regarding the appointment of Governor whether the status should have direct elections of Governor’s or have indirect election. A proposal was moved for this through amendment during debates. Speaking in the constituent assembly in favour of nominated Governor, Pandit Jawaharlal Nehru emphasized the need of the nomination of a person who was above Party Politics and educationist or otherwise an eminent person. He stated that:

“It probably would be desirable to have people from outside eminent people, sometimes people who have not taken too grace a part in politics. Politician would probably like a more active domain for their activities but there may be an eminent education or persons eminent in other walks of life; who would naturally, white cooperating fully. With the government and carrying out the policy of the government, at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the public someone slightly above party and thereby, in fact, help the Government. More than if he was considered as part of party machinery....it is obviously desirable the eminent leaders to use the word for the sake of simplicity: in future of hope we’ll not use the word ‘majority’ and ‘minority’ eminent leaders of groups should have a chance to think they will have a far better chance in process of nomination than in election.”

Shri A.K. Ayyer a prominent member of Drafting Committee, while supporting the system of nominated Governor’s underscored the point that not only the persons of undoubted ability will be selected but the provincial cabined be also consulted.

To him the Governor was a constitutional head, a sagacious counsellor and advisor to ministry. After detail discussion, the constituent assembly decide in favour of appointment of Governor by way of nomination and also decided that the Governor should be appointed by the President by warrant under his hand and seal.

Every State has a Governor. It is however, possible to appoint one person as the Governor of two or more States. The President acts in the matter of appointment of the State Governor on the advice of the Prime Minister with whom, therefore, the effective power lies in this regard. The constitution gives a carte blanche to the centre in the matter of appointment of a State Governor. But since the Governor has a dual capacity, he is the head of the State as well as the representative of the Centre in the State. It has
been realized that with a view to increasing the smooth functioning of the constitutional machinery in the State it would be best to consult the State Chief Minister while appointing the Governor, and a convention has grown accordingly. So long as there was one party rule at the centre as well as in the States.

According to Article 155 of the Constitution, the Governor of the State is to be appointed by the President by warrant under his hand and seal. Although there is a term of 5 years given to a Governor, he does not have even the protection that a peon enjoys in Government service and is sometimes foot-balled out or about. The humiliating fact is that the Governor has taken it lying down, by and large. Many have been hungry politicians of the Party in Central power holidaying in the Raj Bhavan plotting for an opportunity for re-entry.

Article 156 stipulates “The Governor shall hold office during the pleasure of the President. Therefore, it is often claimed that the Governor must, as a rule, have a fixed tenure. As Kedia Pandey have observed the constitution has not prescribed the ground for the removal of the Governor. But, surely it is not compatible with a system which claims to be based upon justice and democratic norms. But with the change of the government at the center, they were asked to design and as they paid no heed to it, they have summarily been sacked.

The word ‘pleasure’ is, obviously, very significant, because it is the manifestation of a mental mood which may not have any link with objective factors or proven facts. Thus, neither the matter nor the reason of the removal of the Governor has been determined in the Constitution. He holds office so long the President- rather, the Prime Minister- is satisfied with him. In this way, the issue of gubernatorial dismissal has been kept beyond the judicial ambit. Interestingly, he may also be transferred to another state before or after expiry of normal five year turn. But, on the contrary, he may be reappointed in the similar state if the interest of the central ruler demand.

Governor is a dynamic institution. Though a near complete picture has been portrayed in the constitution of the Indian Republic, this, however, needs to b clarified and or modified in the lights of the debate in the constituent assembly and knew emerging situation. Addressing the Governor’s conference in 1990, the then President Venkatraman stated that Governor is not merely a ceremonial functionary as the political fluidity in some states has put Governor’s to great strain and called for the
exercise of their judgment with extreme care and objectivity in the formation of Governments. To him a Governor is a sagacious and vital link between centre and state in federal unity.

The role of Governors has come in for severe criticism – sometimes, bordering on condemnation – in the context of reports they submit under and within the meaning of Article 356. Many a Governor has not covered himself with glory in that behalf. Notwithstanding the recommendations guiding the discharge of their functions in the state.

Sarkaria Commission Report (to which we shall presently refer) and the decisions of the Conference of Governors, many Governors continue to behave in a manner not consistent with true spirit of the Constitution. This would be evident from the decision of the Supreme Court in S.R. Bommai V. Union of India (AIR 1994 SC 1918). A few observations from the said judgment may be apposite. In his judgment delivered for himself and Kuldip Singh J., Sawant J. commented thus upon the conduct of the then Governor of Karnataka:

“It was improper on the part of the Governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and was written by the said legislators of their free will and volition. He had not even cared to interview the said legislators but had merely got the authenticity of the signatures verified through the legislature secretariat…. We are of the view that this is a case where all canons of propriety were thrown to winds and the undue haste made by the Governor in inviting the President to issue the proclamation under Article 356(1) smacked of mala fides…. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly”

The Governor plays a very important role under the Constitution of India. He is a part of the State legislature. No bill becomes Act without the assent of the Governor. He also appoints the Chief Minister and Ministers or Council of Ministers on the advice of the Chief Minister. He is also empowered by the Constitution to dismiss the Chief Minister and Ministers of the State Cabinet.
When there is abnormal condition in the State Ministry and the Ministry does not function according to provisions of the Constitution he can make a report to the President and recommend President's rule. In actual practice which we call President's rule, in fact, is the Governors rule because all functions of the State machinery during President's rule are exercised by the Governor under the directions of the President.

The Chief Minister is appointed by the Governor Article164. As a matter of a well-established convention the leader of the majority-party in the Lower House should be appointed as the Chief Minister. In normal circumstances the Governor has no doubt as to who is the leader of the majority party in proper person, i.e., leader of the majority party in the House. There is no dearth of examples in India. Infact this had happened in many States after the Third General Election, when there was no recognized leader in the House of either parties claiming majority without having such majority. In such circumstances the Governor may have to exercise his discretion in selecting the Chief Minister.

Unfortunately, in exercise of their discretion Governors have not followed any uniform practice. In some States the Governors had invited the leader of a United Front (Rajasthan, election or after the election. On the other hand, in some States the Governors had given preference to the leader of a United Front over the leader of the single largest party (in the Centre in 1979, Punjab in 1967, Bihar in 1968, West Bengal in 1970, Maharashtra in 1978).

After the Fourth General Election in 1967 the exercise of the Governor's discretion to appoint a Chief Minister became a matter of great controversy.

A controversy has erupted over Governor Syed Sibtay Razi’s decision to invite the leader of the Jharkhand Mukti Morcha, Shibu Soren, to form a government in Jharkhand. The argument cannot be over democratic principles but only with respect to the Governor's arithmetic. In Jharkhand, the B.J.P is the single largest party-just like Mr. Lalu Prasad's RJD in Bihar. It claimed a coalition of 36 including six members of the JD (U). But as the figures added up on the evening of March 1, 2005, the strength of the Congress-led, post-poll alliance was also a clear 36 in an 81-member list of the BJP alliance competed with a 42-member list of the Congress-led combine.

A very controversial question regarding the Governor's discretion is his power to dismiss the Ministry. As at the Centre, so in a Slate, the Council of Ministers is
collectively responsible to the Legislative Assembly and holds office during the Governor's pleasure.

The Committee of Governors, with regard to the appointment of government, has recommended, “The leader of the largest single party in the Legislative Assembly may be invited to head a government if he is able to satisfy the Governor that, in combination with other parties or with the support of other members in the Assembly, he is in a position to command a majority in the Legislature. He has however, no absolute right as the leader of the largest single party or groups to claim that he should be entrusted with the task of forming the government to the exclusion of others. The relevant test is not the size of the party but its ability to command the support of the majority in the Legislature.

The constitutional crisis did not, however, come to an end with this step.

In Rameshwar Prasad and oths v. Union of India, Supreme Court held that “It is a unique case. Earlier cases that came up before this Court were those where the dissolutions of Assemblies were ordered on the ground that the parties in power had lost the confidence of the House. The present case is of its own kind where before even the first meeting of the Legislative Assembly, its dissolution has been ordered on the ground that attempts are being made to cobble a majority by illegal means and lay claim to form the Government in the State and if these attempts continue, it would amount to tampering with constitutional provisions.”

Rameshwar Prasad case has reiterated the principles enunciated in State of Rajasthan and Bommai case with more constitutional conscience. The Court made it clear that Article 356 contains an emergency power and this emergency power should be used not as normal power. “Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355”. By referring Articles 74(1) and (2), the Court held that due to Bommai case Article 74(2) is not a bar against scrutiny of materials on the basis of which the President has issued Proclamation under Article 356. This approach shows objectivity even in subjectivity. Constitutionalism or constitutional system of Government abhors absolutism—it is premised on the rule of law by which subjective satisfaction is substituted by objectivity, provided for by provision of the Constitution itself.
The present circumstances arising between the Governor and the State Government, forcing the State Governments in demanding the abolition of the office of the Governor. It stressed however, “the point needs to be reemphasized is that the Governor should act in his discretion in rare and exceptional circumstances. It becomes his moral and legal duty to uphold the supremacy of the constitution. Since the Centre has given the appointments. It tries the office to protect its interest.

The Governor of state who is the nominee of the Centre is the Constitutional Head of the State. Even then the office of the Governor holds the key position in the state and is a hyphen, which binds the relation of the states concerned with the centre. The office of the Governor is never meant to be an ornamental sinecure in the Indian polity. He is regarded to discharges his dual responsibility towards the State and the Centre. The institution of Governor occupies an important place because it link between union and state especially with a view to have unity and integrity of the nation intact. The Governors are acted more or less as agent of centre, particularly the party in power at centre. The experience of last 60 years amply demonstrates that the Governor cannot play an independent and impartial role in the Union-State relations. They are compelled to dance accordingly Centre’s tune because it is the Centre who give them appointment.