Chapter-2
THE GOVERNOR CONSTITUTIONAL POSITION
AND FUNCTIONS

The Constitution is a bond of national unity and reflects the ultimate needs, aims and aspiration of its people. When India become independent the immediate need was to achieve unity in its inherent diversity, therefore, the founding fathers responded through a federal structurization of the government in the country, which because of the compulsions of history and tradition to be centre-oriented and Governor to play a key role in the establishing the relations between Centre and State. This led some constitutional writers to remark that India is a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary feature. Whatever be its orientation, the fact remains that the existence in any federal system of two levels of government makes conflict of some kind at some time inevitable. Even if each government is unmotivated by a desire to extend its authority, instances arise where the action of one may impinge upon the competence of the other. Indian political scene amply bears witness to this fact. The first twenty years of the working of the federal apparatus did not throw up very many problems because of the cementing commonality represented by the supremacy of the Congress party at the Centre and the States. However, with the disappearing commonality, in the later years problems began to surface. This led to the expression of extreme views from those favouring Centre's supremacy, on the one hand, to complete State autonomy, on the other. The
problem is not only alive today but has assumed serious proportions, occasionally threatening the strength of the national fibre. In such a situation judiciary can play a role in resolving occasional legal conflicts, but is not expected to run the federal process in day to day functioning. Consequently, the Governor remains to be the only functionary, who can play a definite role in the best management of the federal process, as he only occupies the position of a keystone in the arch of federal structure. He occupies a position, which, if properly exercised in right constitutional perspective, may transform confrontation between the Union and State governments into cooperation. The Constitution of India under Article 153 lay down that there should be a Governor for each States. The Constitution of India adopted in 1950 accepted most of the provisions relating to government mentioned in the Government of India Act, 1935 except the special responsibilities provided to the Governor. The controversy arose as to the mode of appointment of the Governor of States. The Constitution provides for a nominated Governor, appointed by the President by warrant under his hand and seal.1

During the framing of the Constitution the debate on the powers and position of the Governor was first initiated in the Provincial Constitution Committee and in the Union Committee as it was closely linked up with the question of the form of government the country should have, whether it should be Presidential or Parliamentary. After deciding in favours of Parliamentary executive type, the two bodies decided in favours of an elected Governor, because, they thought that an elected
Governor would give stability to the government. The Drafting Committee gave one more alternative to the above Committees that the Governor would be appointed by the President from a panel of names chosen by the State Legislative Assembly, and this suggestion was justified on the ground of the Governors power in comparison with vast power enjoyed by the pre-independent Governor. The Committee of the viewed that the present Governor will have very restricted power in comparison with his predices. The Chairman of the Drafting Committee Dr. Ambedkar was of the view that as the present Governor will have very limited powers so it is not desirable to impose upon the electorate the obligation to enter upon the electoral process which would cause a lot of time, a lot of trouble and a lot of money as well. Sir Alladi Krishna Swamy Ayyar advanced three arguments against the provision of an elected Governor. Firstly, the Governor is merely a constitutional head of the province and that the real executive power has been vested in the ministry responsible to the Lower House in different State. If the Governor is properly functioning as the constitutional head, the expenses involved in going through the process of election is out of all proportion to the powers vested in the Governor under the Constitution. Secondly, there is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier and cabinet responsible to the Legislature which itself has been elected on the basis of the universal suffrage. Thirdly, it is said that the Governor may occasionally have to use his extraordinary powers. This point is more in
favour of nomination then in favours of election. A person who is nominated or appointed by the President with the concurrence of the provincial cabinet is likely to take for greater care than a person who is elected by people. Jawaharlal Nehru felt that if we have an elected Governor that would to some extent encourage that separatist political tendency more than otherwise. He maintained that minority groups will have better chance in the process of nomination than in election. He also argued that nomination is really a more democratic procedure than the other procedure (i.e. election) in the sense that the latter would not make the democratic machine work smoothly.

Under the Indian Constitution the Governor holds more or less the same position in the State as the President in the Union. In the Constituent Assembly there was long discussion about the powers, position and functions of the Governor and different views are expressed. Member of the Constituent Assembly B.G. Kher speaking in the Constituent Assembly had said, "so for as the Governor is concerned we have given him very few powers. But I do not agree with the comment that he is mere-figurehead, a figure-head, is capable neither of good nor of bad and he continued that a Governor can do a great deal of good, if he is a good Governor and he do a great deal of mischief if he is a bad Governor, in spite of the very little power given to him under the Constitution." Pandit T.D Bhargava told the Assembly that it was wrong to preserve that Governor was a dummy, a figure-head. To him he was to exercise very wide powers. Dr. Ambedkar pointed out, that the Governor has certain duties to perform.
These duties are of two types. First, he has to retain the ministry in the office during his pleasure; he has to see "whether and when he should exercise his pleasure against the ministry". Secondly, it is also the Governor's duty to advise the ministry, to warn them, to suggest to the ministry an alternative and to ask for reconsideration. In the absence of the rights or duties of a constitutional head, the Governors of a State would have been an absolutely unnecessary functionary. And the constitutional makers have certainly visualized the Governor not only as a necessary, but also as useful functionary. Alladi Krishna Swamy Ayyar member of the Constituent Assembly visualized the Governor to be a constitutional head, a councillor and adviser of the ministry, one who can throw oil over troubled waters. The position was best summarized up by the Chairman of the Drafting Committee Dr. Ambedkar, in the following words: He is the representative not of a party. He is the 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, honest administration." As a constitutional head of the State, the Governor is expected to play a very useful role. He is supposed to ensure stability, purity and impartiality in the administration, but also to see that the government is carried on the interest of the people and not of a party.
Governor as the Executive Head:

Constitutionally speaking the executive power of State vests with the Governor and all executive action will be taken in his name. But in actual practice he is only the constitutional head of the State and in this capacity he is bound by the advice of the Council of Ministers except where he is required by the Constitution to exercise his discretion. In normal times the Governor is aided and advised by the Council of Ministers and the real power lies in the hands of the cabinet which is the essence of a parliamentary system of government. In his capacity as the constitutional head of the State he is to appoint Chief Minister and the other ministers have to be appointed by the Governor on the advice of the Chief Minister. It has also been laid down that the ministers ‘shall hold office’ during the pleasure of the Governor. Let us understand these provisions correctly. The Governor cannot appoint a Chief Minister in any arbitrary or whimsical manner. He has to be fully conscious of the contents of Article 164 (2) of the Constitution that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This important provision has to guide the Governor in the choice of a Chief Minister.
The Governor occupies a pivotal position in the federal system of India. In the wake of the formation of coalition governments in different States since 1967, the office of the Governor has come in for criticism, particularly with the regards of the powers of the Governor related with the dissolving of the Legislative Assemblies. The manner in which Governors have hitherto used the power of appointing the Chief Minister is no less controversial. The matter of appointment of the Chief Minister may appear to be simple under normal circumstances, but assumes great significance at certain other time. Various political scenarios might emerge themselves before the Governor and depending upon the situation, he has either to act strictly according to the provisions of the Constitution or use his discretion. When a single party secures an absolute majority in the State Legislative Assembly after the elections, the task of the Governor in the appointment of the Chief Minister is simple. He has no other alternative but to call the leader of the majority party to form his ministry.

The task of the Governor becomes somewhat complicated when no single party secures a majority in the State Assembly. Here, the Governor has to appoint the Chief Minister at his discretion, and the exercise of his discretion cannot be called in question in writ proceedings. The criterion that influences the decision of the Governor in such a situation is that the person so chosen should, in his opinion, be in a position to mobilise majority support in the Assembly. The power to appoint the Chief Minister is vested in the Governor but there is an
important qualification attached to this power i.e. he must select a person who commands majority support in the House. This shows that the Governor has no discretion in the matter of appointment of the Chief Minister. But there is a situation where the real impact of Governor's discretionary power comes into light. When at the end of a general elections, no single party obtains a clear majority and when loyalties of the legislators undergo frequent changes making the political picture in the State fluid and confused, or where the sitting government is reduced to minority due to defections, etc. the Governor's role becomes crucial and he has to take a decision after making such enquiries, as he thinks fit, as to the person who will be in a position to obtain a majority support of the House, and invite him to form the government. This is an area where the Constitution does not provide much guidelines to the Governor regarding the method of ascertaining the majority support a party enjoys, though the convention is that the parties or a combination of parties who command the majority are normally invited to form the government. It is here that he has to use his discretion. Since the 1971 Governor used their discretionary powers in appointment of Chief Minister, several times but the most important and significant cases are discussed below as briefly:

West Bengal (1971):

In West Bengal after the midterm election in 1971, the Communist Party of India (Marxist) CPI (M) dominated United
Leftist Front (ULF) has secured 123 seats in a House of 280 and emerged as the single largest party in West Bengal Legislature. The leader of the ULF Jyoti Basu requested the Governor to invite him to form the government on the ground of being single largest party in the State Assembly but the Governor did not heed to his request and invited the Ajay Kumar Mukherjee, the leader of the newly organized Democratic coalition to form the government in West Bengal. Similarly, the Governor of Orissa invited Bishwanath Das the leader of Orissa United Front Assembly party to form government while ignoring the Congress (R) which was the largest single party in the State. Like Kerala and West Bengal in 1978 in Maharashtra the Governor invited the leader of the Congress-Congress (I) coalition to form the government and rejected the claim of the Janata party, which was the single largest party in the Legislative Assembly.

**Kerala (1981):**

When K. Karuna, Karan, a Congress (I) leader was appointed Chief Minister of a minority government of the United Democratic Front (UDF) in Kerala on December 28, 1981. There were widespread demonstrations in the State against the Governor's action in appointing the minority government of Karunakaran. The people of Kerala had to witness the sad spectacle of the ministry try to survive by the casting vote of the speaker before it finally decided to quit. Therefore, the Governor did not give the opposition a chance to form the government when karunakaran lost his majority.\(^{12}\) Thus, a parliamentary
history was created in Kerala Assembly on February 4, 1982 when the speaker exercised his casting vote to defeat a no-confidence motion against the government. The leaders of the opposition parties urged the then Governor, Jyoti Vencatchellum, to immediately dismiss the minority government of Karunakaran, the sole prop of which is the unconstitutional and unprincipled exercise of the casting vote of the speaker.

**Assam (1982):**

In the Assam, when the Governor in early 1982 installed Gogoi as Chief Minister without a clear majority to back him. The Assam Governor, Prakash Mehrotra has refused to accept the claim of opposition of 64 members in its ranks, but asked Gogoi to form the government, though he had the support of only 48 members. The Left and Democratic Front (LDF) alliance denounced the Governor for acting as a party agent and demanded his resignation. Eventually, the Gogoi ministry had to quit office without facing the Assembly.¹³

**Haryana (1982):**

After the Assembly election in Haryana in 1982, the Congress (I) had 35 members and Lok Dal-Bharatiya Janata Party (LD-BJP) alliance had 36 members in a House of 90 members. The Governor invited Devilal the leader of Lok Dal-BJP alliance, to parade his supporters. But suddenly he changed his mind and invited Bhajan Lal, the leader of the single largest
party, to form the new ministry on the ground that the Congress was the single largest party in the Assembly.

**Uttar Pradesh (1993):**

In November 1993 the Assembly elections of Uttar Pradesh (U.P) was held. The Samajwadi Party (SP) and Bahujan Samaj Party (BSP) had forged a pre-poll alliance and contested the elections together. The party positions were: SP (109), BSP (67), Bharatiya Janata Party (BJP) (177), Congress (28), Janata Dal (JD) (27), Communist Party India (CPI) (3), Communist Party of India (Maxist) CPI (M) (1), Uttar Khand Kranti Dal (UKD) (1), and Independents (8). The BJP emerged as a single largest party with 177 seats and SP and BSP-combine with 176 stood second largest party. Mulayam Singh, leader of SP and BSP, staked his claim to form the government with the support of Janata Dal (27), Congress (28), CPI (3), CPI (M) (1), UKD (1) and Independents (4). The then Governor Moti Lal Vora first asked the leader of the BJP Kalyan Singh whether he was able and willing to form a viable government. The Governor Vora also asked Kalyan Singh to submit a list of Member of Legislative Assemblies (MLAs) who were supporting his party and gave one day time for submission of the list. Kalyan Singh did not submit the list and sought one more day to which Vora agreed. But BJP failed to submit any list of its supporters. Thereupon Vora invited Mulayam Singh, leader of the single largest party, to form the government. Though BJP criticized the decision of Moti Lal Vora for not inviting BJP to form the government but it was for
the sake of criticism and completely devoid of merit as BJP has no prima facie evidence to show that it was in a position to prove the majority in the House. As against this, Mulayam Singh Yadav has submitted a list of 240 MLAs and letters from various parties for extending support to his government.

**The Uttar Pradesh (U.P) (1998):**

In U.P. the Bhartiya Janata Party (BJP) and the Bahujan Samaj Party (BSP) decided to share power for six months each. As a result, Mayawati was sworn in as Chief Minister on 21 March, 1997. After six months Mayawati tendered her resignation to the Governor, Romesh Bhandari, and at the same time extended her support to Kalyan Singh for forming his government. Thereafter Kalyan Singh claim to form the government with the support of BSP. The Governor Ramesh Bhandari appointed Kalyan Singh as Chief Minister who was sworn in on September 1997. On October 18, 1997 BSP withdrew its support to Kalyan Singh government. Since Kalyan Singh government was reduced to minority, the Governor asked him to prove his majority, on the floor of the House on October 21, 1997. On October 20, 1997 a split in Congress party took place. Twenty-two Congress Members of Legislative Assemblies (MLAs) formed a separate group, which was recognized by the speaker Kesri Nath Tripathi on the same day in the name of Lok Tantrik Congress. Split also took place in Janata Dal and a group of 2 MLAs were recognized as Janta Dal (Raja Ram). In the midst of unprecedented violence Kalyan Singh government proved
confidence in his government with the support of Lok Tantrik Congress (LTC), Janta Dal (Raja Ram) and an unrecognized group of 12 MLAs known as Jan Tantrik Bahujan Samaj Party (JTBSP) split from BSP.

On February 21, 1998 Lok Tantrik Congress (LTC) and Janata Dal (Raja Ram) withdrew their support to the Kalyan Singh government. Jagdambika Pal of the LTC claimed to form a government supported by 240 non-BJP parties MLAs, which included the SP-BSP and Congress. Party position as on February 21, 1998 was as follows:-

<table>
<thead>
<tr>
<th>Parties</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>BJP</td>
<td>178</td>
</tr>
<tr>
<td>SP</td>
<td>110</td>
</tr>
<tr>
<td>BSP (12 disputed)</td>
<td>66</td>
</tr>
<tr>
<td>LTC</td>
<td>22</td>
</tr>
<tr>
<td>Congress</td>
<td>15</td>
</tr>
<tr>
<td>Bharatiya Kisan Kamagar Party (BKKP)</td>
<td>08</td>
</tr>
<tr>
<td>JD</td>
<td>04</td>
</tr>
<tr>
<td>JD (Raja Ram)</td>
<td>03</td>
</tr>
<tr>
<td>CPM</td>
<td>04</td>
</tr>
<tr>
<td>Samta</td>
<td>02</td>
</tr>
<tr>
<td>Communist Party of India.(CPI)</td>
<td>01</td>
</tr>
<tr>
<td>Samajwadi Janta Party (R) SJP (R)</td>
<td>01</td>
</tr>
<tr>
<td>Independents</td>
<td>13</td>
</tr>
</tbody>
</table>

Strength 426, vacant 1, nominated 1.

Soon after the withdrawal of support Kalyan Singh called on the Governor claiming absolute majority. Ruling out his
resignation Kalyan Singh in his letter to the Governor said, "I am prepared to prove my majority on the floor of the House, if it is so required. The Vidhan Sabha not the Raj Bhavan is the place for trail of strength". He sought time to prove majority in the House and added that it will be unconstitutional on the part of the Governor if he did not grant time. Having satisfied that Jagdambika Pal had the support of 226 MLAs the Governor Ramesh Bhandari rejected the plea of Kalyan Singh to prove majority in the House and dismissed his government under Article 164. He appointed Jagdambika Pal as the Chief Minister who was sworn in as the Chief Minister on the same night.

The decision of the Governor dismissing the Kalyan Singh government and installing Jagdambika Pal as Chief Minister was challenged in the Allahabad High Court by Dr. N.K.S. Gaur, the Higher Education Minister in the Kalyan Singh ministry. The petitioner sought for an interim relief setting a side the order of dismissal passed by the Governor on the ground that in Bommai case the court is empowered to pass such order.

The Governor's order was defended on the ground that the ruling in Bommai case is applicable in case where majority or minority of the ruling party is required to be tested to make a recommendation to the President under Article 356 for the imposition of the President's rule in a State. Since the U.P Governor has exercised his independent power under Articles 163 and 164 of the Constitution to take a decision in an emerging political situation and appointed a Chief Minster to run the State, the Bommai case inapplicable. However, on behalf of
petitioner it was contended that in the Bommai case the Supreme Court had given place to a general constitutional practice about testing the majority or minority status of a ruling party. The principle had its applicability invariably in all situations where the Governor came to the conclusion that a ruling party had been reduced to minority.

**Bihar (2000):**

In the Bihar 2000 Assembly elections were held. No party had absolute majority in the House. The Rashtriya Janata Dal (RJD) was the single largest party and pre-poll alliance group in Bihar Assembly had large number of members then National Democratic Alliance (NDA). Therefore, it should have been called to form the government. But the Governor Vinod Pandey, call the Nitish Kumar to form the government. And the Vinod Pandey swore in Janata Dal (united) leader Nitish Kumar in Bihar as Chief Minister, after the election, when he did not have the necessary numbers to prove his majority in the Assembly. Nitish Kumar was given time to prove his majority, which he failed in the Assembly and had quit. The opposition parties in nationwide protests to the Bihar Governor to discharge his constitutional responsibility by inviting NDA to form the government in violation of democratic norms.

**Jharkhand (2005):**

The Jharkhand Assembly elections were held in 2005. No party obtained absolute majority in the 81 members State Assemblies. The Bharatiya Janata Party (BJP) led National
Democratic Alliance (NDA) formally staked its claim to form the government in Jharkhand, submitting a list of 41 Member of Legislative Assemblies (MLAs), 36 elected on alliance ticket and 5 independents to Governor Syed Sibtay Razi. But the Governor decision to Jharkhand Mukti Morcha (JMM)-Congress combines to form the government in the Jharkhand Assembly. The decision to install a JMM-led government snowballed into a major controversy. The President Abdul Kalam summoned Razi to get a first hand account of developments in Ranchi that led to the swearing in of Shibu Soren as Chief Minister, hours after five independent MLAs had met the Governor and expressed their support to formation of a BJP-led NDA government. The BJP attacked Razi’s decision as a “constitutional outrage.

Meghalaya (2008):

The North-Eastern Hill State of Meghalaya Assembly elections were held on March 2008. No political parties secured absolute majority. The Congress won 25 seats in 60 members House (currently its effective strength is 59) in the recent Assembly polls. It managed to rope in three independents. Against, it the Meghalaya Progressive Alliance (MPA) led by the Nationalist Congress Party (NCP) comprising others regional party and independents. The MPA claims the strength of 31 Member of Legislative Assemblies (MLAs) including the NCP-14, 11 of the regional United Democratic Party (UDP), two of the Hill State People’s Democratic Party, one each of the Bharatiya Janata Party, and the Khun Hsynniewtrep National Awakening Movement and two independents. Both the Congress and new
formed combined the UDP-NCP staking claim to form government. The Governor invited Congress to form government and D.D. Lapang was sworn as the Chief Minister of the State. The Governor also gives him nine days time to prove his majority on the floor of the House. But the Congress led D.D. Lapang ministry was resigned a head of the trust vote after failing to muster majority. The Meghalaya Progressive Alliance (MPA) leader Donkupar Roy was appointed the new Chief Minister on 19 March 2008. Thus, the whole study reveals the facts that different standards have been used in different States almost in the same situation by the Governor of different States in appointment of the Chief Minister of the States.

**Judicial Powers of Governor:**

The Constitution lays down that every judge of the High Court shall be appointed by the President under his hand and seal after consulting duly with the Chief Justice of India, the Governor of the State, and in cases of appointment of a Judge other than the Chief Justice of the High Court. It seems that the Governor of the State is to consulted whenever the President is to appoint any Judge of the High Court of that State. The provision of consultation with the Governor does not mean consultation with the Governor in his discretionary capacity, but that the power of the Governor will be exercised on the advice of the Council of Ministers. The normal procedure followed in the appointment of a Judge of the High Court is that the Chief Justice forwards his recommendation to the Chief Minister who
in his turn forwards his recommendation, in consultation with the Governor to the Minister of Home Affairs in the Central government. Even though the Chief Minister consults with the Governor in regard to the appointment, the final say on that effect rests with the Chief Minister of the State concerned, if the Chief Minister is unrelenting to the name, the Governor is helpless in the matter. And in the case the Governor does not like a nominee of the Chief Minister to be appointed a Judge of the High Court, here also, the Governors become ineffective. Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, as oath or affirmation according to the form set out for the purpose in the Third Schedule. According to the normal practice the Governor administers oath to the Chief Justice of the High Court and in case of other Judges he appoints the Chief Justice of the High Court to administer oath to such Judge on his behalf. The Governor may appoint someone else in his place in whose presence the oath is to be made for good reasons, but a general authorization made by the Governor appointing the Chief Justice is not proper. Appointment of acting Chief Justice results only in an arrangement for performance of duties of the vacant office, hence the appointee cannot make oath in the prescribed forms. A Judge transferred from one High Court to other High Court is required to make an oath before he enters upon his office of the transferee High Court.
Granting Pardons:

Under the Constitution of India, like the President, the Governor of a State has also the power to grant pardons, reprieves, respites or remissions of punishment or to suspend or remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of State extends. The executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws.

The Governor can grant the following:

- **Reprieves**, i.e. a temporary suspension of the punishment fixed by law;
- **Respites** i.e. postponement to the future the execution of a sentence;
- **Commutation**, i.e. changing a punishment to one of a different sort than that originally proposed; and
- **Remission**, i.e. reduce the amount of punishment without changing the character of punishment.

For the first time, the Governor power in this respect became the subject of judicial controversy in the case of Commander Nanavati who was sentenced to life imprisonment by the Bombay High Court. In the case of Nanawati the Governor of Maharashtra granted remission and ordered his release, four years after he was awarded life imprisonment. This order was issued by the Governor in consultation with the Chief Minister.
because of exceptionally good conduct of Nanawati in jail and a distinguished record of service in the Indian Navy.

Recently in 2006, the Supreme Court has rightly ruled that the President or the Governor’s power of pardon, reprieve or remission of a convict’s sentence is in a subject to judicial review. Clearly, judicial review will act as an essentially constitutional safeguard against arbitrary exercise of power by the executive. Significantly, Justice Arijit Pasayat and Justice S.H. Kapadia quashed the remission of sentence granted to a convict by Mr. Sushil Kumar Shinde, the then Andhra Pradesh Governor and now Union Power Minister. The manner in which the convict, a Congress worker was given remission of sentenced was proved that Mr. Shinde was guided by political considerations while exercising his power under Article161. If executive clemency is so brazenly abused by a constitutional authority like the Governor, judicial review is the only remedy to rectify the illegal action and restore the rule of law. The Court ruled that the power of the pardon may be considered as discretion. However, it is not privilege act of grace and is subject to certain standards. The directive that the power of pardon should not be compromised on considerations of religion, caste or political expediency assume significance in the context of the mercy petition filed before President by M. Afzal Guru’s family. The Supreme Court has upheld death sentence of Afzal Guru, accused in the Parliament attack case. The Supreme Court judgment also hold important lessons for both Punjab and
Haryana where the Governor's on the advice of the respective governments, have misused their power of pardon for political considerations. The Punjab and Haryana High Court has issued a notice to the Punjab government for granting pardon to Bathinda based Sandeep Singh, son of former minister Teja Singh, convicted in a double murder case. In Haryana, the Om Praksh Chautala government indiscriminately granted pardon to hardcore criminals, apparently to harass political opponent. The grant of clemency to several convicted criminals in Haryana raises questions about the Om Prakash Chautala government's political motive. Thus, in the present constitutional scheme of things the President and the Governors act on the aid and advice of the Council of Ministers even with regard to the grant of pardon. Thereof they ought intercession, lest the Court declares it as null and void as it did with what Mr. Shinde's exercise of power of political reasons. In addition to the above judicial powers of the Governor, the Governor has also the power to sanction prosecution of a ministers or a member of Legislative Assemblies (MLAs) under the Prevention of Corruption Act. There has been considerable debate whether this power is to be exercised by the Governor on the advice of the Council of Ministers or in his discretion. After Antulay's case where Governor P.C. Alexander has accorded his permission to prosecute the former, a new controversy has arisen in the fodder scam case involving Bihar then the Chief Minister Laloo Prasad Yadav. Bihar Governor A.R. Kidwai was accorded sanction to the Central Bureau of Investigation (C.B.I) to prosecute the Chief
Minister. In Tamil Nadu, Jayalalitha has challenged in the Supreme Court of India the power of the Governor M. Channa Reddy to sanction her prosecution. The Supreme Court said, if the Governor cannot act in his own discretion, there would be a complete breakdown of the rule of law as much as it would be open for governments to refuse sanction inspite of overwhelming material showing that prima facie a case was made out.

**Discretionary Powers of Governor:**

The Constitution also envisages situations in which the Governor has certain discretionary powers. The Constitution provide that there shall be a Council of Ministers to aid and advise the Governor in the exercise of his function except is so far as he is by or under this Constitution required to exercise his functions or any of them in his discretions. If any question arises 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 shall be final, and the validity of anything done by the Governor shall be called in question on the ground that he ought or ought not to have acted in his discretion. The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into by any court. Unless a particular Article expressly so provides, an obligations of the Governor to act ‘in his discretion’ he is to act on the advice of Council of Ministers. The only function in which the State Governor is required to exercise his discretion under the Constitution are para 9(2) of the sixth schedule to the
Constitution regarding the administration of tribal areas in Assam. Article 239 (AB) also authorises the Governor to act independently of his Council of Ministers i.e. when he is appointed by the President to be the administrator of an adjoining Union Territory. The Governor of Nagaland is given discretion in respect of some matters under Article 371-A (1) (b) (d), 2(b) and (F). Implied discretionary power with the Governor can be read in the second proviso to Article 200 under which the Governor may reserve a Bill for the consideration of the President and in Article 356 (1) under which he may report to the President that the government of the State cannot be run in accordance with the Constitution. It may, however, be noted that under all these provisions the Governor is supposed to be acting as the representative of the President and not independently. The Governor can exercise his discretionary powers in some matters such as:

- In the appointment of the Chief Minister the Governor can exercise his discretionary powers only when there is no single party securing the majority. He cannot exercise his discretion in the event of a clear decisive majority of a party or a coalition.23

- The Governor can also use his discretionary power in dismissing the ministry because they hold office during the pleasure of the Governor. At the same time they are collectively responsible to the Lower House of the State Legislature. As long as they
command a majority in the Lower House of the State Legislature and performs their duties according to the oath which they have taken in such conditions there is no scope for the Governor to use his discretion. He can only use his discretion against the ministry when they lose the majority and indulge themselves into corrupt practices.\textsuperscript{24}

- The Governor can use his discretionary power in dissolving the Lower House of the Legislature i.e. Legislative Assembly.\textsuperscript{25}

- The Governor can also reserve a Bill for the consideration of the President in his discretion which has already been passed by the State Legislature.\textsuperscript{26}

- The Governor can make a report to the President when the government of the State cannot be carried on in accordance with the provisions of the Constitution.\textsuperscript{27}

- Finally, he can ask the Chief Minister in his discretion to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by an individual minister and not by the whole Council of Ministers.

Thus, the Governor can exercise his discretion in a particular situation. It was the intention of framers of Constitution that the situational discretion would be exercised not an ordinary circumstance, but under the pressing needs of
the political situation existing at a particular time in the State. In normal times, in the exercise of his functions, the Governor is aided and advised by the Council of Ministers, but in an abnormal situation he would apply his discretion as an agent of the President and inform him about the happenings in the State. Thus, the intention of constitutional makers is that the Governor in exercise of discretion in abnormal situations should preserve and protect the constitutional provisions and prevent any misuse of those provisions.

Governor as a Chancellor of the University:

There is at the head of every University as Chancellor. In most instances, he is the State Governor. His powers are defined in the respective University Act. The Chancellor is the permanent head of the University signifying continuity of control, the mark of evenness and constancy of authority. He is the President of the University court and presides over convocation of the University. An honorary degree can be conferred only if the proposal is confirmed by the Chancellor. The Chancellor has been empowered to call for any information from the University relating to the administration of the affairs of the University. A duty has been further cast upon the Vice-Chancellor to furnish such information or records as desired by the Chancellor. Affairs of the University have a very large concept and each and every matter, which relates to the University, can be subject-matter of inquiry by the Chancellor. The Chancellor is one of the officers of the University. But it does not mean that he is the employee of
the University or government of India or State government. The order of the Chancellor was challenged in the Rajasthan High Court on the ground that the order was without jurisdiction as the incumbent had been a member of the Public Service Commission and under Article 319 (d) he could not accept employment either under the government of India or the government of the State. The full bench of the Rajasthan High Court held that the Governor cannot be called an employee of the government of India or the State government. The decision of Rajasthan High Court was upheld by the Supreme Court of India.

The Governor is ex-officio Chancellor of the University. But he functions in two different capacities. As a Governor Article 154 of the Constitution of India lays down that the executive power of the States shall be vested in the Governor and shall be exercised by him either directly or through officers subordinates to him in accordance with the Constitution. When the Governor exercises the executive power of the State, he may be equated with the State government, but not when he exercises other powers. While exercising the powers as Chancellor he cannot be deemed to be the exercising of the executive power of the State whether as Governor or the State government. The Chancellor is empowered to appoint Vice-Chancellor. The process of appointment is varies. One method through the syndicate or the senate. The other method is recommendation of names by the Committee constituted by the Chancellor. Amongst persons recommended, the Chancellor finally chooses one person to be
appointed as Vice-Chancellor. Chancellor is also empowered to appoint an interim Vice-Chancellor for six months. The term may be extended from time to time but cannot exceed one year. The power to appoint Vice-Chancellor vests in Chancellor in practice the Chancellor consults the Chief Minister in making such appointment. The appointment of Vice-Chancellor is not made on the basis of merit only but other considerations viz, caste, religion, affiliation with the ruling political party play a major role. It is now less academic, more political appointments. The politicalisation of Vice-Chancellor's appointment has badly affected the atmosphere of campus and deterioated the academic standards of the Universities. Recently in July, 2008 by amending vital clauses of Rajasthan University Law Act in the State Assembly, the Vasundhara Raje government it seems has taken a step towards clipping the Governor's authority to appoint and remove Vice-Chancellors to the 10 Universities in the State. The tussle for appointments and removal dates back to October 1, 2005 when the then Rajasthan Governor and now President Pratibha Patil had reportedly appointed N.K Jain as Vice-Chancellor of Rajasthan University (RU) despite reservations by the State government. A similar situation had arisen in Uttar Pradesh in 2006 when the then Mulayam Singh Yadev government passed a Bill inducting a secretary-level official in the sub-committee for appointment of Vice-Chancellors. Mulayam Singh government took this step after Uttar Pradesh Governor T.V. Rajeswar had appointed four Vice-Chancellors without consulting the government.
The Governor as the head of the State has very limited role to play in the administration of the State but as a Chancellor he may play very significant role in the field of higher education of the State. Although he is not the executive functionary of the University but being the head and officer of the University he can issue guidance and instruction to the University for their proper functioning. University functions through different authorities, e.g. Court, Executive Council, Academic Council etc. As the head of the University the Chancellor should keep a vigilant eye over the overall working of such authorities. The Moti Lal Vora Governor of Uttar Pradesh (1993–96) appointed a two man committee which included his Legal Adviser and Secretary to visit each University. The team visited all the Universities and submitted it reports. On the basis of such reports Mr. Vora in consultation with the Chief Minister and officers of the State government introduced many programmers and also helped in improving the financial condition of the Universities.

Thus, the example of Mr. Vora is illustrated to show that in the matter of higher education in the State Governor should not sit as a silent spectator and wait for the State government’s actions. As the head of the Universities he should himself take initiative. Since he is the Head of the State also, his initiative will bring results.
References:

18. Ibid., Article 162.
19. *A.R. Antuley Vs State of Maharashtra*, 1984 2 SCC 18, After the Governor's sanction the Chief Minister was charge sheeted and arrested by the C.B.I. in July 1997.
20. Constitution of India, Article 163 (1).
21. Ibid., Article 163 (2).
22. Ibid., Article 163 (3).
23. Ibid., Article 164.
24. Ibid., Article 164 (2).
25. Ibid., Article 174 (2) (b).
26. Ibid., Articles 200 and 201.
27. Ibid., Article 356.
28. The Chancellor was head of the University. The Executive Council was duty bound to obey his order of injunction. The Chancellor restrained the Executive Council from considering the recommendation of the Selection Committee to preserve the proceeding before him. Vinod Kumar Anand Vs Dr. A. D. Sharma, AIR 1989 1 UPLBEC 238.
29. Har Govind Pant Vs Chancellor of Rajasthan University, AIR 1978 Rajasthan 72 (F.B).