CHAPTER – X

CONCLUSIONS

The Office of the Governor is as old as the establishment of the East India Company in 1600. It was the most vital institution to safeguard the vested interests of the British Empire in India. From the passing of the Regulating Act of 1773 to 1935 Act, the Office of the Governor remained the centre of the authority. However, some steps were taken to establish self-governing institutions form 1861 to 1935. The “Dyarchy” and “Provincial Autonomy” were the main characteristics of the Government of India Act, 1919 and 1935. Notwithstanding the centralised position of the Governor was never undermined and the Governor remained by and large a real head rather than a Constitutional head of the Province in British India.

In spite of all these the founding Fathers of our Constitution preferred to retain the Office of the Governor. At the beginning the framers of the Constitution thought of an elected Governor. It was their impression that an elected Governor would provide stability to the government in the province. But the idea of an elected Governor in each province was dropped and the proposal of nomination by the President was finally accepted by the Constituent Assembly for the following reasons.
1. An elected Governor would cause instability in the provincial administration by generating a clash between the Governor and the Council of Ministers;

2. The method of nomination would provide a fair opportunity to the President to choose a person of undoubted integrity and ability in the public life for the Office of the Governor;

3. The practice would keep the Governor above the party politics in the province;

4. The Governor would be a Constitutional head who may strengthen the Parliamentary system where the head of the State is required to act on the advice of the Council of Ministers; and

5. It is necessary for the smooth functioning of our federal system under which the nominated Governor would act as a link between the Centre and the State and thereby a clash between the two would be avoided.

Since the Constitution came into operation the President of India theoretically has been exercising this prerogative under Article 155 of the Constitution. So far two conventions have developed with regard to the appointment of the Governor. Firstly, the Central government consults the State government concerned prior to making an appointment of the Governor. Secondly, a Governor is usually appointed from outside the State of his own.
Till 1967, due to the dominance of the Congress party at the Centre and State the convention of consulting the State in the appointment of the Governor had no political significance in our federal polity. After 1967, the era of coalition politics began and the Central government failed to observe the convention of consulting the State in the appointment of the Governor. Governors were imposed on the State without consulting them, which has often created strains between the Centre-State relations. The second convention by and large was duly recognised and fairly followed by all successive governments.

The power of the appointment of the Governor in the Indian States has become a political prerogative of the ruling party at the Centre. The Governors appointed by the Centre have been mostly from the retired and defeated politicians, who very often played a partisan role in handling the political situations in the States.

The Executive powers of the State are vested in the Governor but these powers are, by law and in fact, exercised by a Council of Ministers which is responsible to the State Legislature. The Governor is aided and advised by the Council of Ministers headed by a Chief Minister. As head of the State, it is his duty to ensure that the principle of joint responsibility is observed under Article 159. He is required to 'preserve, protect and defend' the Constitution and the law of the country.
Article 163 provides that the Governor shall have the power to exercise his discretion. The decision taken by him shall be final and the validity of anything done by him in his discretion cannot be called in question. The framers of the Constitution had an idea of giving the discretion to the Governor in a particular situation with a view that he would provide a link between the Centre and the State and would watch that the State machinery was constitutionally carried out by the State government. The framers of the Constitution did not specify the areas where the Governor was to exercise his discretion. However, the Governor cannot exercise his discretion arbitrarily or capriciously. He is required by or under the Constitution to exercise his discretion according to the well-established norms of the Parliamentary system.

The Governor’s discretion under Article 163(1) is classified into two parts. Firstly, the express discretion or Constitutional discretion. Secondly, the situational discretion which the Governor derives under the pressing political situation existing in the State.

Our study reveals that most of the Governors did not try to find a difference between the terms “discretion” and “situational discretion” which is very pertinent.

When Article 143 of the Draft Constitution, which is Article 163 of the present Constitution, was being debated in the Constituent Assembly, B.R.Ambedkar, the Chairman of the Drafting Committee maintained that, “except in so far as he is by or under this
Constitution” those are the words. If the words were “except whenever he thinks that he should exercise the power of discretion against the wishes or the advice of the Ministers”, then I think the criticism made by my honourable friend Pt. Kunzru would have been valid. The clause is a very limited clause; it says, “except in so far as he is by or under this Constitution”. Therefore, Article 143 will have to read in conjunction with such other articles which specifically reserve the power of the Governor. It is not general clause giving the Governor power to disregard the advice of his Ministers in any matter in which he finds he ought to disregard”.

It is an assumption of this study that even in the “situational discretion” the Governor could not act independently. He has to follow certain set of principles of parliamentary democracy. Say for example, if a particular party secures absolute majority in the Assembly and has a recognised leader, it is not possible on the part of the Governor to use his discretion. He is bound to appoint its leader as Chief Minister. irrespective of his discretion and likes and dislikes. If none of the political parties gets an absolute majority, then following the spirit of parliamentary democracy the Governor is required to act on the basis of certain set of principles. Likewise, the Governor has to follow the parliamentary principles in the matters of dismissing the Ministry, dissolving the Assembly and reporting to the President about the failure of the Constitutional machinery in the State.

But our study indicates that most of the Governors did not follow the parliamentary principles and in most of the cases they demonstrated their partisan attitude.

As an Executive Head, the most important function of the Governor under Article 164 of the Constitution is the appointment of the Chief Minister. Governor had an easy time and easy conscience as long as there was a single party at the Centre and States. Problem arose with the emergence of coalition politics in which, no political party returned with a clear majority and the Governor has to appoint somebody who, in his judgement, would be able to command a majority. It is on such occasions that the Governors have been accused, and in many cases with ample justification, of being partisan and as mere tools and stooges of the party in power at the Centre, Bhajan Lal was installed as Chief Minister in Haryana (1982), Shah in Jammu and Kashmir (1984), Bhaskara Rao in Andhra Pradesh (1984), Jagdambika Pal in Uttar Pradesh (1998) can be cited as examples. Many more instances can be given where Governors have violated “the rules of Constitutional morality”.

Some of the Governors while dismissing the Chief Minister and installing another ones in their place assert that under the provisions of Article 164(1) of the Constitution, the Chief Minister continued during the pleasure of the Governor and their actions were, therefore,
Constitutionally correct. Reading pleasure of the Governor as the personal pleasure of the Governor is truly a bizarre interpretation of the Constitutional provisions and makes a mockery of the intentions of the framers of the Constitution.

It must be noted that what some of the Governors did in recent years is neither unique nor something new. In the past too, Governors have abused the authority vested in them by dismissing Chief Ministers enjoyed majority support and appointed in their place individuals who were incapable of demonstrating their majority in the Assembly. The action of Governor, Ram Lal in Andhra Pradesh in 1984, dismissing N.T. Rama Rao as a Chief Minister and installing Bhaskara Rao in his place is a case in point. Further, in the past, Governors have appointed individuals as Chief Minister who had no majority support in the Assembly and denied an opportunity (to form the government) to those who enjoyed a clear majority. The invitation extended by Governor, Tapase in Haryana in 1982 to Bhajan Lal to form the government after the Assembly elections, even when it was clear that the alliance led by Devi Lal had a majority of the seats can be cited as an illustration in this regard.

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2 While dismissing Chief Minister Nar Bahadur Bhandari of Sikkim in 1984, Governor Homi J. Talyarkhan said, "The Chief Minister was dismissed because he ceased to enjoy my confidence".

3 The Governor of Uttar Pradesh Romesh Bhandari dismissed the Kalyan Singh Ministry. On February 21, 1998 without giving him opportunity to test his majority on the floor of the House and appointed same day Jagdambika Pal as Chief of Ministers.
The action of Romesh Bhandari, Governor of Uttar Pradesh, in dismissing Kalyan Singh and installing Jagadambika Pal in February 1998 even led to the judiciary to interfere into the Ministry formation which is a privilege of the Legislature.

Article 174(2) empowers the Governor to dissolve the Lower House of the State Legislature. In practice he acts on the advice of the Chief Minister.

A uniform practice has not been evolved by the State Governors with regard to the dissolution of the Legislative Assembly. They have exercised this prerogative according to their convenience. On so many occasions, the claim of the opposition for the formation of an alternative Ministry had been ignored.

After 1967, with the emergence of coalition government, the question is often raised whether the government which had been reduced to minority on account of defections or split in the ruling camp, had any right to advise the Governor for the dissolution of the Lower House. In the absence of any uniform practice some Governors refused to accept the advice of the State Chief Minister for dissolution and explored the possibilities of forming an alternative government in the States. Some recommended imposition of President’s rule under Article 356.

On the other hand, there were few Governors who acted in the different manner in the similar situation in their respective State.
Article 200 empowers the Governor to assent to a Bill or return it to the Assembly for its reconsideration or reserve it for the consideration of the President. The Governor exercises this power in accordance with the advice of the Ministry. However, the Governor is not bound to follow the advice of the Ministers to a Bill which undermines the dignity and position of the State Judiciary under the Constitution. It is also not obligatory for the Governor to accept the advice of the Ministry for the Bills which go against the laws of the Central government.

Article 201 explicitly reveals that the President has complete supervision over the State legislation yet the Centre should not give an impression to the State governments especially the non-Congress ones that it is encroaching the autonomy of the States guaranteed by the Constitution through the Office of the Governor. The Governor is also not expected to reserve too many Bills for the consideration of the President, as it would cause delay and harassment to the State government. Thus, the use of Governor's discretion to reserve the Bill or send it to the President for consideration should be rare and sparingly.

Article 213 empowers the Governor to promulgate an Ordinance. This power was conferred upon the Governor by the makers of the Constitution only with the objective that it would enable the Ministry in power to promulgate an Ordinance in an emergent situation where the State Assembly is not in session.
It is the constitutional duty of the Governor to help the Ministry in promulgating an Ordinance to cope with the situation. At the same time it is also the duty of the Ministry not to misuse the Ordinance making power of the Governor. But the study reveals that most of the Ordinances have been issued for "administrative conveniences" rather than in emergent circumstances.

Under Article 356 of the Indian Constitution, the Governor is empowered to make a report to the President of India in the event of the failure of the Constitutional machinery in the State. It is yet another area of abuse of the Governor's power. Kerala in 1959 and Bihar in 1999 the Central government was able to receive from the State Governors report stating that the Constitutional machinery has broken down in their respective States. The Governors submitted their reports when both the States governments had majority support in the Assembly.

Evidently, it has come to be taken for granted that the Governor’s discretionary powers are to be exercised at all times at the behest of the Centre.

Researchers have proved that in most of the cases where the Governors have recommended President’s rule it was a political decision actuated by the political consideration of the Centre and not a

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Constitutional decision inspired by the responsibility and obligation to uphold the Constitution. This has deprived the Office of the Governor of its prestige and given rise to mistrust of the State governments.

The practice of Governor's becoming the Chancellor of the State universities was evolved in our country to maintain the autonomy and academic standard in the educational institutions. Since most of the Governors have been politicians, having nothing to do with academic affairs, have utterly failed to cope with the problems relating to higher education in their respective States.

The founding Fathers of the Indian Constitution have set up a Federal polity in India with the necessary division of powers between the Central government and the constituent States ensuring independence and autonomy to them within the spheres allocated to them.

As the Governor is the nominee of the Central government, the Centre has often used him as its instrument in setting up a State government over which it can dominate or remove from office one which proves hostile. The Centre pressurised the Governor to use his discretionary power in such a way which suits its interests. Such use of his discretionary power resulted in the erosion of State autonomy.

Article 356 empowers the Governor to report to the President in the event of the failure of the constitutional machinery in the State. The findings of this study reveal that in most of the cases the
Governors have recommended President's rule because of political consideration rather than constitutional obligation. Under such a President's rule State autonomy is disregarded and the State is administered directly by the Centre. In this context, M.G.Khan has rightly pointed out that "Unitarism takes the place of federalism with the use of Article 356.\(^5\)

In view of the above said factors, it is clear that the role of the Governors is different in different States, as our study shows, there is a complete variation between constitutional theory and practical politics. The makers of our Constitution intended the Governor to be a constitutional head who may strengthen the Parliamentary system where the head of the State is required to act on the advice of the Council of Ministers. He would act as a link between the Centre and the State in our federal system. But our study reveals that the Governor instead of functioning as a constitutional head he acted as an agent of the Centre. On many occasions it appeared that at the instance of the Centre the Governors acted arbitrarily and the constitutional values have been compromised. Therefore, the hypothesis, viz., the Governor as an Executive Head of the State, is neither an agent of the Centre nor possesses dual role is disproved.

Our study further reveals that the central authority controls the Office of the Governor through its power of appointment and removal. The Centre has enough scope to influence the discretionary actions of the Governors. The role of the Centre in coalition politics revealed that the ruling party at the Centre was motivated to serve its political ends in the State through the Office of the Governor. As a result, the Office of the Governor has become the subject of severe criticism. Very often the voices have been raised that the Office of the Governor should be abolished.

But our study reveals that the Governor of a State has a definite place in our constitutional structure. It would be a gross fallacy to regard the institution of the Governor as a faint presence like a full moon at mid-day. The Governor is neither a decorative emblem nor a glorified servant. Though under the Constitution his powers are limited, he has an important role to play. With the changes in the political map of India were ruling parties in the States are different from the party at the Centre, the Governor's role is crucial for the proper functioning of the federation and maintenance of healthy Centre-State relations.

Finding of the Study

The following are the major findings of this study.

The analysis indicates that, of all the functionaries mentioned in the Constitution, the Governor emerges, the most controversial one, and
for the right reasons. That, this is contrary to the expectations of the framers of the Constitution.

The makers of the Constitution expected that the nominated Governor would be a Constitutional head of the State who may strengthen the Parliamentary system, who may act as a link between Centre and State in our federal polity and would be above party politics. But the way the Governors have functioned speaks otherwise.

It is the finding of this study that, the emergence of coalition politics, specially after 1967, provided an opportunity to the Governor to exercise his discretionary powers with regard to the choice of Chief Minister, dismissal of ministry, dissolution of the Legislative Assembly and the recommendation of the imposition of President’s rule under Article 356. The absence of settled conventions coupled with a large area of discretion and personal judgement enjoyed by the Governor in certain contingencies at critical juncture have tended to accentuate Constitutional and political controversies regarding the scope and style of Governor’s functions.

It is the finding of this study that, the Governor in the absence of guidelines, has arbitrarily exercised his discretionary powers to enhance the political prospects of the ruling party at the Centre.

It is also finding of the study that on many occasions at the instances of the Centre the Governors acted arbitrarily and Constitutional values have been compromised.
The assumption that the Governor is Executive head of the State, acts on the aid and advice of the Council of Ministers and in the event of clash between the direction of the Centre and advice of the Council of Ministers, he is bound by nothing except the oath of his Office to preserve, protect and defend the Constitution is disproved.

The study has confirmed that the partisan role of the Governor has tilted the federal balance of power of our federal polity in favour of Central government in normal times and completely upset during the times of emergency.

The findings of this study reveal that the whole controversy that has surrounded to the Office of the Governor due to two factors:

1. the manner in which Governors have been appointed, and
2. the individuals who have been appointed to this august office.

The framers of the Constitution were expected that while appointing the Governor the Chief Minster of the State concerned would be consulted prior to his appointment. Such convention, it was hoped would result in cordiality in the relations between the Governor and the Chief Minister on the one hand and the Centre and the State on the other which is essential for the smooth working of our federal system. But this convention has been violated by all successive Central government.
It is the finding of this study that the violation of the convention of consulting the Chief Minister before appointing a Governor has essentially been caused by the fact that the Central government has attempted to use the Office of the Governor to further its political interests vis-a-vis the States.

As a result, the norms which were required to be borne in mind while selecting the individuals to occupy this Office have been thrown to the winds and active, discredited and defeated politicians have been appointed as Governors.

It is the finding of this study that, when such politicians are appointed, the Office of the Governor becomes controversial and a major source of federal tension.

It is the finding of this study that, the Governor is least secure and the least protected of all Constitutional functionaries under our Constitution. He is the only functionary without any express security of tenure and without any specified safeguards in the matter of his removal. A Governor with the fear of removal cannot function independently and impartially in our federal polity.

Safeguards and Suggestions

Experience has amply demonstrated that the Governors cannot fulfil this role as long as they hold office, entirely “during the pleasure
of the President" some safeguards are necessary to ensure their independence, whether by Constitutional amendment or otherwise.

1. A Governor should not be appointed for more than one term. Instead of making it a convention, it should be expressly provided under the Constitution itself. Similar provision exists in Article 319 in respect of Chairman/members of the Public Service Commission under the Centre or the State governments.

2. The Central government must have "meaningful consultation" with the Chief Minister before selecting a Governor. Instead of incorporating the method of consultation in the Constitution, a healthy convention should be evolved on the issue.

3. The procedure for his removal should be laid down in the Constitution itself, somewhat on the lines of similar provisions prescribed for the removal of a Judge of the Supreme Court or a High Court.

4. Transfer of Governors should be prohibited. He shall be held ineligible for any further appointment under the Union or State government on retirement from his office except as Vice-President or as President.

5. A politician from the ruling party at the Union should not be appointed as Governor of a State which is being run by some other party or a combination of parties.
6. The Union Cabinet would be obliged to give an explanation to the Governor if his tenure was cut short. The Centre should make a statement before Parliament, giving reasons for recalling the Governor.

7. Some guidelines must be evolved through joint consultation between the Centre and the States to be followed by the Governors while exercising their discretionary powers relating to the formation and dismissal of government in the State, dissolution of the State Assembly, imposition of President's rule. It is precisely in these spheres that the Governors have been made the subject of vehement controversy in India.

The acceptance and implementation of the above suggestions would definitely restore credibility, dignity and impartiality of the Office of the Governor under the Indian federal system.