CHAPTER - I

INTRODUCTION

The Constitution is a bond of national unity and reflects the ultimate needs, aims and aspirations of its people. When India became independent the immediate need was to achieve unity in its inherent diversity; therefore, the founding Fathers responded through a Federal System of the government in the country, which because of the compulsions of history and tradition had to be Centre-oriented.¹ This led K.C. Wheare to remark that “India is a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features”.²

On August 3, 1949, when the provisions for President’s Rule in the States came up for discussion, B.R. Ambedkar, the architect of the Constitution said, “I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given power to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution, it means this, that the Provinces are as sovereign

¹ Constitution of India, Articles 249, 250, 280, 355, 358 and 359.
in their field which is left to them by the Constitution as the Centre is in the field which is assigned to them".3

Finally, when the Constituent Assembly had completed its deliberations, B.R. Ambedkar replied to the debate on November 25, 1949 and said, “As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. 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 Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution be called centralised. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to the Centre and not to States. But these features do not form the essence of federalism. The chief mark of federalism, as I said, lies in the partition of the legislative and executive authority between the Centre and the units by Constitution. This is the principle embodied in our Constitution”.4

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3 Constituent Assembly Debate, Vol. 12, p. 133.
It has been the lesson of history that whenever one party rule establishes itself with a degree of permanence, the division of powers under federation is weakened. India was no exception to this rule at any rate till 1967. India's federalising process became slightly centripetal, due to the monolithic hold of the Congress Party over the Central government and a major of States till 1967.

For the first time in our history the federal structure envisaged in our Constitution has really come into its own after 1967. Ever since independence, one-party dominant system had provided the stability needed for our political system. That party has lost its unique position and a number of other political parties, with different ideologies and programmes, have come up and have been able to get varying degree of support in different parts of the country.

Since 1967, India came to be called as “a federal State in the full sense of the term”. The situation called for a first step towards the more vigorous practising of federalism with multiple parties and coalitions in powers.

Under such coalition politics there bound to be conflicts between Centre and the State having all together different political parties. How are such conflicts to be resolved? Who can play a vital role? 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 best management of the federal process, as he only occupies the position of a keystone in the arch of federal structure.

During the debates in our Constituent Assembly one of the important members of the Drafting Committee, Alladi Krishnaswami Ayyar, emphasised the role of the Governor in our federal set up, which was almost unanimously accepted: "Such a person is likely to act as friend and mediator of the Cabinet and helps in the smooth working of the government. The central fact to be remembered in that the Governor is to be a Constitutional head, a sagacious counsellor and adviser to the Ministry, one who can throw oil over troubled waters".

It would be a gross fallacy to regard the institution of the Governor as a fait presence like a full moon at mid-day. The Governor is not a decorative emblem nor a glorified cipher. Though under the Constitution his powers are limited, he has an important role to play. With the change in the political map of India where 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. His vigilant presence can make for good government if only he uses what Bagehot described as "the right to be consulted, to warn and encourage".

The effectiveness of the Governor's advice to the ministers and the exercise of his discretionary powers in certain cases will primarily depend upon his impartiality and sense of fairness. It is of the utmost
importance that he should not only be scrupulously fair but be manifestly seen and known to be fair. It is only by such action that he will inspire confidence in all the parties in the Legislature and also win the respect and admiration of the people of the State and the country.

Statement of the Problem

This piece of work is an effort to effectively bring to the forefront the position and role of the Governor in the Indian federal system. As a matter of fact, research on the political institutions never ends. The developments create new issues and new problems. Until all the political activities come to a standstill, it would be naive to say a final word about political institution. Like other institutions, Office of the Governor would go on assuming a new shape and as such, sooner or later, it would demand further inquiry, with this assumption the present research work has been undertaken.

The problem under investigation, i.e., OFFICE OF THE GOVERNOR IN THE INDIAN FEDERATION – A CRITICAL REAPPRAISAL, is taken with a genuine curiosity of investigating critically the position and role of the Governor in relation to both Constitutional theory and practical politics in our federal system.

What role the Constitution has assigned to the Governor in the context of federal process has been a subject of vehement controversy. Opinion may be classified into three main categories:
1. Governor is the representative/agent of the Centre,

2. Governor has a dual role as the representative/agent of the Centre and as the Head of the State, and

3. Governor is the executive Head of the State.

1. Governor is the Representative/Agent of the Centre

The advocate of the first view takes help of the "mode of appointment" and asserts that as the Governor is appointed by the President, naturally, he is a representative/agent of the Centre. But, they forget that the President too appoints a number of functionaries such as Judges of the Supreme Court and High Courts, Members of Public Service Commission, Election Commission and Auditor-General, etc., but no one urges that they must function as an agent of the Central government. One would imagine what would happen to the system of government in India if these functionaries exercise their functions as an agent of the Centre. What is not true with these functionaries cannot be true for the Governor either. Had the founding Fathers of the Indian Constitution intended to make the Governor a representative/agent of the Centre they would have mentioned it in express terms in Article 154 of the Constitution.

The judgement of the Supreme Court in Hargovind Pant vs. Dr. Raghukul Tilak case left no doubt whatsoever. The Supreme 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 does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is immaterial to say that the Governor 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.

2. **Governor has a Dual Role, viz., Agent of the Centre and Head of the State**

Those, who emphasise the dual role of the Governor in our federal process, make the position of the Governor still more confusing. As a matter of fact, the terms “agent” and “Head of the State” are two independent and contradictory things in the sense that the Head of the State is supposed to be “impartial”, whereas an agent is always “partial”.

The proceedings of the Constituent Assembly amply bear the fact that the architects of the Constitution strongly emphasised the concept of the impartiality and independence of the Governor, despite his nomination by the President.

Alladi Krishnaswamy Ayyar’s words are very pertinent, “The

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5 A.I.R., 1979, Sc. 709.
Constitutional head, a sagacious counsellor and advisor to the Ministry, one who can throw oil over troubled waters".  

T.T.Krishnamachari said, “I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future who is to be nominated by the President to be in any sense an agent of the Central Government”. He went to emphasise, “that the person so selected will be a person who will hold the scales impartially as between the various factors in the politics of this State. The advantages of having a non-party man, a non-provincial man have been aptly made out by the Honourable Prime Minister”. 

If the framers intended to give dual role to the Governor, they would have provided in the Constitution itself. It seems, therefore, that those, who emphasise on his dual position, are standing on the wrong premise.

3. **Governor is the Executive Head of the State**

The Governor is the Executive Head of the State. This conclusion is not only logical but also true with the letter and spirit of the Constitution. Accordingly, the Governor has to act on the aid and advice of the Council of Minister using his discretion where the advice is not in accordance with the provisions of the Constitution and in democratic principles. In case of clash between the directions of the

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7 Ibid., p. 459.
Centre and the advice of the Council of Ministers of State, he is bound by nothing except the oath of his Office to preserve, protect and defend the Constitution.

In a speech at New Delhi on April 3, 1970, the former Vice-President of India, G.S. Pathak made this point very clear. He said, "In the sphere in which he (Governor) is bound by the advice of the Council of Ministers, of obvious reasons, he must be independent of the Centre. There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious again, that it is his discretion and not that of any other authority and therefore, his discretion cannot be controlled or interfered with by the Centre".

The Governor is, thus, a creation of the Constitution and the general belief that he is a representative/agent of the President or Centre in the State is an erroneous one.

It is further assumed that, it is due to this misconception, even on the part of some Governors, that most difficulties in regard to the role of the Governors have arisen. The authorities in the Centre considered them to be subservient to their orders, and the Ministers in the State distrust them as agents of the President or the Centre.
In this context it is presumed that exercise of great care and thought in the selection of a person for the post of Governor has not been taken.

The appointment of a State Governor is one of the most burning issues between Centre and State. It has been realised that the Union Government, which enjoys the absolute authority over the appointment of the State Governors, has often appointed its party-men as the Governors of the State. The majority of the Governors so far appointed have been that of the retired or defeated politicians of the ruling party at the Centre. Governorship has also become an Office of political accommodation for political rejects, trouble-shooters, defeated and defected politicians. A more serious development is that many who have occupied Governorship have subsequently returned to active politics. When active politicians are appointed as Governors, it is but natural that the Office of the Governor becomes controversial and major source of federal tension. Since the Governor acts as a link between the Centre and the State, a number of suggestions have been made to improve the mode of Governor’s appointment in order to ease the Centre-State tension in our federation.

With the emergence of coalition oriented politics in the States, especially after 1967, a number of political situations arose which warranted the State Governors to exercise their “situational discretionary powers”. It is an objective of this study to stress on both the Constitution and the political situation obtaining at a particular
time allow the Governor to exercise his situational discretionary power with regard to the choice of a Chief Minister, dismissal of a Ministry, the dissolution of Legislative Assembly and the recommendation of the imposition of President’s Rule under Article 365 of the Constitution (Provided the Constitutional machinery of a State has broken down). The absence of settled conventions coupled with a large area of discretion and personal judgement enjoyed by the Governor in certain contingencies and 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 until healthy conventions are evolved or the guidelines for the Governor’s role provided an effective check, the discretion of the Governor might be misused for political objectives. A number of examples have been cited to point out how the Governors in the absence of these conventions have arbitrarily exercised their discretion to enhance the political prospects of the Ruling Party at the Centre.

Finally, the position of the Governor-Chancellor is still not clear in our federal polity. 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 role of the Governor-Chancellor has to be re-examined dispassionately with a view to determining his position vis-a-vis university.
Review of Relevant Literature

We shall only examine briefly the major works in the field in order to make clear how the present study relates to the previous work or in what distinctive manner it contributes to that literature. The following few works on the subject have been referred.

Dahiya, M.S., in his book, *Office of the Governor in India – A Critical Commentary* begins with the historical background pertaining to the Office of the Governor. Further, he puts forth various Constitutional provisions, intention of the framers, judicial pronouncements and actual role of the Governors in various States, combined with theory and practice of foreign institutions. The author has highlighted the exact Constitutional position of the Governor under the Indian Constitution and how the Governor exploited the ambiguities in the Constitutional provisions to the advantage of a particular party in power and the manner in which the Central government did not act partially in a given situation. Therefore, this work is a valuable contribution to our understanding of the Office of the Governor in India.

Gehlot, M.S., in his work, *The Office of the Governor – Its Constitutional Image and Reality*, explained whether the Constitution permits the Governor to exercise his discretion under Article 163 of the
Constitution or not. It is the opinion of the writer that, with the emergence of coalition politics in the States after 1967, a number of political situations arose which warranted the State Governor to exercise their "marginal discretion" in order to keep the Constitutional machinery in motion. The author also pointed out that the Centre has often appointed its party-man as the Governor of the State, especially, those defeated politician who have weakened or sought to weaken the prospect of the Congress party in the State. In the author's opinion this is the cause of Centre-State tension. He also pointed out that the Governor acted as a "guided politician" of the Union Government in appointing the Chief Minister of the Congress party in the State. Thus, this work is quite useful to our study.

Ismail, M.M.'s, 10 work entitled, *The President and the Governors in the Indian Constitution*. This book contains the text of the lecture delivered by the author himself. This book has confined itself to one aspect of the topic, namely, the relation between the President and the Governors on the one hand and the Council of Ministers on the other. According to the author, there is no express provision in the Constitution obliging the President or the Governors to act in accordance with the advice of the Council of Ministers in all cases and under all circumstances in a Parliamentary form of government adopted by the Indian Constitution.

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Pandey, Chandra Bhushan,\textsuperscript{11} in his book, \textit{Governor – Preserver. Protector and Defender of the Constitution} has cited various provisions of the Constitution under which numerous occasions may arise where the Governor has to act independently without the aid and advice of the Council of Ministers. In such a circumstance the guiding factors before the Governor to exercise his power is his oath which he takes before entering upon his Office to preserve, protect and defend the Constitution and the law. Due to the malicious actions of the Governor, he became terminator and destroyer of the life and spirit of the Constitution.

Siwach, J.R.’s\textsuperscript{12} book, \textit{Office of the Governor – A Critical Study – 1950-73}, makes an attempt to highlight as to the manner in which the Governor of the various States actually used their powers during 1950-73. According to the author, the office has been used as an instrument to topple the non-Congress Ministries on one pretext or the other. A detailed account of the manner of various Governors in appointing Chief Ministers of various States has been nicely elaborated by the author. The writer listed three methods employed by the various Governors in appointing Chief Ministers, namely, List System, Parade System or Physical Verification System and List-cum-Parade System. A critical assessment of the Office of the Governor between 1950 and 1973 has been made by the author.

Gani, H.A.'s book entitled, *Governor in the Indian Constitution* – *Certain Controversies and Sarkaria Commission* highlights the controversies centring round the Office of the Governor since its very inception. According to the writer, it was more evident when different political parties' ruled at Centre and in the States. The author is of the opinion that the controversies regarding the Office of the Governor can be minimised if the recommendations of the Sarkaria Commission are implemented. At the same time, the author hinted that even implementation of the recommendations of the Sarkaria Commission will not wipe out the entire controversies which is basically political rather than a Constitutional.

Vardachari, V.K., in his book, *Governor in the Indian Constitution*, provides an exhaustive survey of legal and Constitutional basis of the various functions and duties of the Governor in the Indian Constitution. As a lawyer, he has cited a number of judicial pronouncements pertaining to the Office of the Governor. In this book, the role of the Governor in relation to Civil Service has been stressed. The need for abrogation of Article 356 has been advocated by the author.

*The Governor Sage or Saboteur.* This book contains seven articles in two parts. The introduction to the first part begins with an

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13 Ajanta Publication (India), Delhi, 1990.
article of an eminent lawyer Soli J. Sorabjee. In his Article, *The Constitution and the Governor*, the lawyer wrote that the institution of the Governor was created by the framers of the Constitution as a means of balancing the pulls and tensions of federal polity. But, the authoritarian Centre viewed the Governor as a device to curtail the autonomy of the State.

The first part of the book, i.e., "The View from Raj Bhavan", contained three articles of three former Governors, viz.,

2. Govind Narian, *Constitutional Obligation*, and

The first part of the book analyses the role and functions of the Governor as prescribed by the Constitution of India and its framers. The three ex-Governors present their views and perceptions about the responsibilities of the Office of the Governor. From their personal experience, they contended that neither law nor convention required the Governor to function as an agent of the Centre. This part mainly deals with discretionary powers of the Governor.

The second part of the book deals with, i.e., the political aspect. This part has four articles. They are:

1. Namboodiripad, E.M.S., *A Spoke in the Federal Wheel*. The writer forcefully argued against the very institution of the Governor. His contention is that the Governor's Office has
become a device to curb the Constitutional prescribed autonomy of the State. He narrated his personal experience of his home State Kerala, in 1952.


These four articles deal with the case studies of actual occurrences in three States—Andhra Pradesh, Jammu and Kashmir and Sikkim. In all these States the Governors were specifically sent by the Centre to dismiss the duly elected governments in 1984.

Our brief review of the literature reveals that there has not been much literature on studies relating to the Office of the Governor in the Indian federation as such. The primary purpose of the present work is to study a critical re-appraisal of the Office of the Governor in relation to both Constitutional theory and practical politics and its impact on Indian Federation in the existing literature.

**Conceptual Framework**

**Governor**

Of all the names given to the holder of the highest Executive Office in British times, only one survives after independence and that is of the Governor. The names of all other high Executives have changed. In place of the person who used to be the Viceroy and Governor-General, there is the President or Rashtrapati. Instead of Executive
Counsellor, there is the Prime Minister, the Chief Minister and other Ministers.

The present day Governor, however, is a legal survivor who has contrived to remain a political necessity – the once supreme chief whose powers have largely passed into other hands, though the tradition and the atmosphere surrounding the institution still remain.

In Travancore-Cochin the Governor was known as Rajpramukh. The Constitution Seventh Amendment Act, 1956, omitted the word. Till 1965, the Governor was known as Sadar-e-Riyasat in Jammu and Kashmir.

**Federation**

One of the ways into which the modern governments are classified into Unitary and Federal forms is on the basis of Centre-State relations. Federation means the union of two or more States. In a federal State, there is, on the one hand, the federal government and on the other, the governments of the constituent States. Thus, "federation is the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent". It is the union of States in which there is a dual State authority.

Dicey defines a federal State as a political contrivance intended to reconcile national unity and power with maintenance of "State

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The end aimed to determine the essential character of federation. For the method by which federation attempts to reconcile the apparently inconsistent claims of national sovereignty and of State sovereignty consists of the formation of a Constitution under which the ordinary powers of the sovereignty are elaborately divided between the common or national government and the separate States. The details of this division vary under different federal Constitutions, but the general principle on which it should rest is obvious. Whatever concerns the nation as a whole should be placed under the control of the national government. All matters which are not primarily of common interest should remain in the hands of the several State.

State Autonomy

State autonomy does not mean the independence or sovereignty of the States. It stands for non-interference of the Centre in the prescribed domain of the States. Autonomy means allowing the States to work independently in the prescribed sphere.

The provincial autonomy means that is a federal form of government, the units should have sufficient and adequate legislative and administrative powers without any interference from outside control and adequate financial resources for implementing and

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executing its plans for reconstructing the society on modern welfare lines without any control of the Central government in any way.

The term "provincial autonomy" means irreducible minimum of political power which has to be granted to the units in order to give them enough facility to develop their own resources according to their own means and needs and in their own way. In realistic term it means, the right and capacity of a political party elected with a majority to the State Assembly on a particular election programme, to put that programme into execution and make its success unhampered either directly or indirectly by the Centre.\(^{19}\)

**Parliamentary Democracy**

Garner states that "Cabinet government is that system in which the real executive, the cabinet or ministry is immediately and legally responsible to the Legislature or one branch of it (usually the popular chamber) for its political policies and acts, and immediately or ultimately responsible to the electorate, while titular or nominal executive, the chief of one State — occupies a position of irresponsibility."\(^{20}\)

Parliamentary democracy is a political system in which a legislature elected on the basis of adult franchise, not only supplies the

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personnel of political executive, i.e., the cabinet, but also hold the latter accountable to it in a formal, Constitutional sense.\textsuperscript{21}

**The Party and Party System**

The party is a group of people, organised for the purpose of providing the political executive through winning an election, mobilising public support for the party-based government, and generally functioning as a channel of communication between the public and the government, with regard to policy-making. Further, when the party sits in opposition by losing the electoral battle, it has the function of keeping a watch over the government, channelise public relations to its policies and to prepare for the next electoral battle.\textsuperscript{22}

Party system is a system in which individual parties function as component units and generate structured patterns, inter-party, interactive relationships. When defined in this way, party system can be classified on the basis of the nature of their structural inter-relationships. For instance, it can be classified party systems broadly into (1) one-party, (2) one-party dominant, (3) two-party and (4) multi-party.\textsuperscript{23}

\textsuperscript{21} Khan, M.G., *op. cit.*, p. 40.  
\textsuperscript{23} *Ibid.*
Objectives of the Study

The main objectives of the study are to examine the position and role of the Governor contemplated by the framers of the Constitution in the Indian Federation. Subsequently, to analyse the position and role of the Governor in relation to both Constitutional theory and practical politics. It is also an objective of this study to examine the nature and extent of the discretionary power of the Governor. Finally, to find an answer to the question why various Governors have acted so differently when faced by similar situations in the federal polity.

Hypothesis

1. The Governor as an Executive Head of the State, is neither an agent of the Centre nor possesses dual role, viz., an agent of the Centre and Head of the State.

2. The Governor has to act on the advice of the Council of Ministers using his discretion where the advice is not in accordance with the provisions of the Constitution and its democratic principles. In case of clash between the direction of the Central government and the advice of the Council of Ministers of the State, he is bound by nothing except the oath of his Office.

3. The partisan role of the Governor tilts the federal balance of power in favour of Centre in normal times and completely upsets during the times of emergency.
Methodology

In order to find out the truth involved in a problem certain steps have to be taken in a certain order, and the ordered steps are called a method. If a research follows a wrong method, the systematic knowledge or the truth cannot be found out. Unless right methodology is followed, thought cannot be arranged in correct order. As a result, the exact truth can neither be discovered nor be exposed. In order to discover the exact truth, the following methodology has been employed in this study:

1. **Documentary Method**

Documentary sources wherein the expressed thought embodied is systematically analysed and useful issues are taken into consideration. The documentary sources include the primary sources, secondary sources and the tertiary sources. Accordingly, the data for the work has been collected from primary sources like – Constituent Assembly debate, Lok Sabha and Rajya Sabha debate, various Commissions’ and Committees’ Reports, etc., and from secondary sources, namely, books, articles, etc.

2. **Historical Method**

Past knowledge is considered to be pre-requisite for present knowledge. This method was used to trace the origin of some of the institutions such as, Office of the Governor, Federalism, Parliamentary
Democracy, etc. Without the knowledge of the past institutions, it is difficult to understand their true nature at present.

**Descriptive Method**

This method is used for collection of data, since mere collection of data does not constitute research, unless the data are properly interpreted to find the causal connections and relations. Thus, this method is employed for the interpretation of the data.

4. **Comparative Method**

In this method the outcome of the issue and its practical relevance to the existing political environment is weighed and subsequent issues are raised. With the help of this method it is possible for the researcher to come to some important conclusion.

The bibliography given at the end of the thesis is quite exhaustive and gives the full idea of the sources consulted. There is a list of abbreviations of some of the terms used in the thesis.

The thesis did not involve any problem of language. Since the main language of the documents examined is English and since non-English material was easily available in English translation, we had no language problem to deal with. Hence, a sincere attempt is made in this work to correlate and to establish vivid observations and view of scholars and writers who are greatly involved in the particular aspect.
Conspectus

The study is divided into ten chapters.

Chapter – I

This first chapter begins with an introduction consisting of, statement of the problem, review of the literature, theoretical concepts, objectives of the study, hypotheses and methodology.

Chapter – II

This chapter deals with the historical background of the Office of the Governor since 1600 to the Independent Act of 1947. The changes brought in the position of the Governor by the subsequent Acts passed by the British Government are discussed.

Chapter – III

This chapter documents the Constitutional position of the Governor as it emerged from the labour of the Constitution makers.

Chapter – IV

This chapter deals with the Governor as an executive head of the State, his power to appoint the Chief Minister of the State and power to dismiss the State Ministry is discussed at length. An analysis of his discretionary powers is also made in this chapter.
Chapter - V

This chapter deals with Governor as a component part of State Legislature, his power to Assent the Bill, promulgate Ordinances and dissolve the Legislative Assembly.

Chapter VI

This chapter deals with Article 356 and its misuse.

Chapter - VII

This chapter discusses Governor as a Chancellor of the University.

Chapter - VIII

An attempt has been made in this chapter to examine the impact of the partisan role of the Governor on the Indian Federal system.

Chapter - IX

In this chapter a critical re-appraisal of the Office of the Governor under the Indian Federation is made.

Chapter - X

The last chapter presents findings of this study and some suggestions for further research.