Chapter-6

Judicial Approach vis-à-vis Governor’s Institution In India

The present judicial system in India planted by the Britishers is founded mainly on the English Common Law, which has its own jurisprudence and judicial techniques, which were invented and developed in the course of 800 years by successive generations of English Judges under changing social conditions in England. It is very largely a judge made law. For example the whole process of trial, civil and criminal, has been molded at all stages by the judiciary with the object of eliciting the truth in accordance with the judicial conception of fair play.\(^1\)

The Constitution of India exudes in almost every part an anxiety for maintaining and strengthening the unity of India. The founders designed a Constitution under which the forces of unity will take root and those of disruption wither away. Precisely the same anxiety to forge the bonds of unity is reflected in the provisions relating to the judiciary. The judicial and administrative independence of High Courts have been granted. But the Supreme Court has been given wide appellate powers over the judgments of the High Courts not only in constitutional but also in civil and criminal matters, powers much wider than those of any Supreme Court in any federal Constitution in the world. The long arm of the Supreme Court can overtake, under article 136, judicial or quasi-judicial decision or

\(^1\) Rajeev Dhavan : The Supreme Court of India, N.M. Tripathi, Bombay, 1977, P-XII.
verdict pronounced any where in India accepts those of the Court martial and there are limits to its powers of interference under this Article.\(^2\)

In any system of constitutional Government, the judiciary plays an important role in dispensing justice not only between one citizen and another but also between citizens and the State. In a federation like ours, the judiciary has also an additional function of deciding disputes between the Union and the states and in between the states.

6.1 **Judiciary : an Offspring of the Constitution**

It is a fundamental principal of our constitutional scheme that every organ of the State and every authority under the Constitution derive its power from the Constitution and has to act within the limits of such power. But then the question arises as to which authority must decide what limits on the powers conferred on each organ or instrumentality of the State and whether such limits are transgressed or exceeded. It is cardinal principal of our Constitution that no one howsoever highly placed and no authority however lofty can claim to be the sole judge of its power under the Constitution or whether its action is within the confines of such powers laid down by the Constitution.

The judiciary is the interpreter of the Constitution and to the judiciary is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited

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\(^2\) Union of India v/s Firm Ram Gopal , AIR 1960, Allahabad, P-681
and if so, what the limits are and whether any action of that branch transgresses such limits. It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law, which inter alia requires that “the exercise of power by the Government whether it be legislature or the executive or any other authority be conditioned by the Constitution and the law”. The power of judicial review is an integral part of the constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality.

The Courts in India are not sui generis. They owe their existence from power and jurisdiction to the Constitutin and the laws. The Constitution is the supreme law and other laws are made by Parliament. It is they that give courts their obligatory duties to the courts. One such is the settlement of disputes in which the states are ranged against citizens. Again they decide disputes in which class interests are apparent. The action of the courts when exercised against the State proves irksome to the State and equally when it is between two classes, to the class which loses.³

The Constitution is the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of the Government be it the executive or the legislature or the judiciary, drives its authority from the Constitution and it has to act within the limits of its authority from the Constitution.

6.2 Judiciary: The Guardian of the Constitution

The essence of a federal Constitution is the division of powers between the Centre and State governments. The division is made by the written Constitution which is the supreme law of the land. Since the language of the Constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities at different times; it is but natural that the disputes might arise between the Centre and its constituent units regarding the respective powers. Therefore, in order to maintain the supremacy of the Constitution there must be an impartial and independent authority to decide disputes between the Centre and States and the states *inter se*. This function can only be entrusted to a judicial body. The Supreme Court under our constitution is such arbitration. It is the final interpreter and guardian of the Constitution.⁴

Judiciary not only is the guardian of the Constitution, it also protects the rule of law. The rule of law is the foundation of the democratic society. The judiciary is the guardian of rule of law. Hence judiciary is not only the third pillar but the Central pillar of democratic State of India. It can be described as the watch tower of the Constitution.

6.3 Judiciary: an Independent Entity

Article 50 constitutes “the conscience of the Constitution” which embodies the social philosophy of the Constitution. It plainly

reveals, without any scope for doubt or debate, the intent of the Constitution makers to protect the judiciary from any form of executive control or interference. Simply stated Article 50 provides that there shall be a separate judicial service free from executive control. Judiciary must be free not only from executive pressure but also from other pressures. The concept of judicial independence is a wider concept taking within its sweep independence from any pressure or prejudice. Hence, the independence of judiciary is a basic feature of the Constitution.

6. 4 Judiciary: an Interpreter of the Constitution

The judiciary interprets the Constitution and acts as its protector and guardian. The Constitution has made elaborate provisions for ensuring independence of the judiciary. The Constitution has established a single hierarchical judicial system for the whole of the Country.

Interpretation is the prime function of a Court. The court interprets the legislation whenever a dispute comes before it. Since the will of the legislation is expressed generally in the form of statutes, the prime concern of the judiciary is to find out the intention of the legislature in the language used by the legislature in the statute.

The work of the interpretation of the Constitution is done by the courts through direct as well as indirect judicial review. In direct judicial review, the Court overrides and annuls a law or an executive

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decision on the ground that it is inconsistence with the Constitution. In indirect judicial review while considering constitutionality of a statute as to steer clear of the alleged element of unconstitutionality. Justice Douglas characterizes this practice as “tailoring an Act to make it constitutional” and explain it further thus: “If the construction of the Act is possible that will save it from being constitutionally infirm, the Court will adopt that construction. This practice of saving an Act by construing it to avoid the constitutional issue has sometime been carried a long way.  

There have been two approaches to the interpretation of the written Constitution. The first approach is literal and narrow interpretation of the constitution where the judgment of the court constitutes a mere exegesis of the fundamental text. This approach envisages that the Constitution is treated as any other statute passed by the legislature and the same principles of interpretation have been applied thereto as are usually applied to the interpretation of ordinary laws. This is called the positivists or the Austinian approach. The other is the liberal, purposive, law creative interpretation of the Constitution with insight into social values with capacity of adaptation of changing needs. The courts begin with the premise that the Constitution being the fundamental law of the land should be given a some what different treatment and interpreted more liberally than an ordinary law. Interpretation of law affects only a limited number of persons but interpretation of the Constitution and declaring a law constitutional or unconstitutional affects the entire governmental

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functioning, policy making, and even the constitutional process in the country.7

Judiciary in its adjudicating process has interpreted as well as constructed multifaceted laws. The higher judiciary in the wake of its adjudication process has interpreted and reviewed the Customary laws, Conventional laws, Constitutional laws, Common law, Administrative law, Bye law, Public law, Private law, International Law, Civil as well as Criminal Law. Apart from the above mentioned laws the higher judiciary has steered the nation out of political, social as well as economic hazards by admitting the locus standi of Public Interest Litigation as a vehicle of justice. The provisions relating to institution of Governor has not remained untouched by the High Courts as well as by the Supreme Court of India. The higher judiciary from time to time has entertained and disposed off the petitions relating to gubernatorial affairs in India.

So far as there was domination of one party i.e. the Congress party in states as well in Centre, the disputes relating to gubernatorial affairs were solved at the party level. With the mushrooming of State parties as well as the regional parties, the era of hung Legislatures came into existence. Fractured mandates in the legislatures of the states have provided an ample opportunity for the State Governors to use their unfettered discretionary powers. The hard fact of political party or alliance at the Centre, other than the political party or alliance in the states has added another feather in the gubernatorial affairs. The

7 Ibid, P-29.
Governors in this sort of situations keeps on watching the interests of the party or alliance in the Centre by misusing their discretionary powers. Confrontation of the interests as well as complexion of the Centre and states results into judicial review which is an integral part of the judiciary. Hence the judiciary in this changed scenario has to be activated to iron down the wrinkles of constitutional process from time to time.

6.5 Constituent Assembly and Political Change

While elucidating the gubernatorial affairs, it is pertinent to mention here that every decision making body is influenced by the political change occurring in the country’s scenario. It becomes a prima-facie responsibility of a decision making body to express itself in its decision the remedial expression of political change. A decision making body is supposed to keep its finger on the pulse of society. That is what the Constituent Assembly had to do while deciding the form of office of Governor of post independent era.

During the earlier phase of independence, there was an environment of having the states with sufficient autonomy as well as powers. Constituent Assembly earlier was in favor of having a weak Centre. Consequently the phenomenon of elected Governor remained dominating. There was widespread discussion that whether the Governor should be elected or appointed. But during the course of deliberations of Constituent Assembly, the political events in the Country led to a sharp thought on the appointment of Governor. The outbreak of communal riots, partition and its ghastly aftermath,
assassination of Mahatma Gandhi, the communist upsurge in Telengana, all affected the mood and thinking of the founding fathers. There was deep sited fear in the mind of founding fathers that if the Centre is not sufficiently strong and could not hold constituent units together, things would fall apart and anarchy will be loosed upon the Country. Pandit Nehru was of the view that we have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and we should always think from the context of preserving the unity, stability and security of India.⁸

Hence, the political change during the deliberations of Constituent Assembly changed the mind of founding fathers and keeping in view the radical change in politico-social scenario, they expressed and resolved that the Centre should be strong at all costs. The Governor then was expressed and resolved by the Constituent Assembly to be an appointed as well as nominated entity by the Centre.

6. 6 Indian Constitution: Change and Challenge

The Constitution of India has the commendable role in the transformation of Indian politico-legal scenario. From time to time the suitable amendments in the Constitution have been made to coup up with the change in social as well as political order. For instance, in order to subdue the political pressure and to curb the defection menace in political parties, the Tenth Schedule of the Constitution

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⁸ Constituent Assembly Debates, V. VIII, Lok Sabha Secretariat, New Delhi, 1999, P-455-56.
was added in the form of Anti Defection Law. It is a landmark amendment in the Constitution. The present Constitution is not the same what the Constituent Assembly devolved. It has been amended for the 94th time so far.

6.7 Judiciary: the Embodiment of Socio-Political Change

May it a constitutional law, the statute law or the judge made law; it has to express itself in the form of social change. The law has to couple up with the aspirations of the common masses. The force of social change in the society is bound to affect the politico-legal environment in the country.

Democracy as well as democratic institutions cannot survive if they shrink their shoulders in response to the rising aspirations of the society. Law, legal institutions and legal process have to nourish the promises made to the society by the Preamble of the Constitution.

Law has to give expression to the aspirations and values of a society and the legal process as a whole has to be implemented, in right earnest, the full range of urge of the common man. Our juridical process must rise to the challenge of reorganizing national life and to make law the delivery system of social justice. Our legislative process must drop the techniques of sound and fury signifying nothing and restructure and reeducate itself to be capable of people conscious law making and field level implementing.  

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9 Krishna Iyer, V.R: Law and Social Change, Pub. Bureau Punjab University, Chandigarh, 1883, P-6..
If we peep into the Judge made jurisprudence, we can safely discover that judiciary; particularly the higher judiciary has contributed a lot in the field of expressing itself in response to change in the social order. While keeping his finger on the pulse of the social order, the judiciary in India has pronounced many hard hitting and landmark judgments touching the political, social as well as economic scenarios of the country.

Gubernatorial affairs in the present scenario haves attracted the attention of social culture as well as political culture in India. The activities of Governors in India have become a debatable as well as controversial issue. Judiciary from time to time has pronounced upon the affairs of office of Governor the expression of which has been given in the following case study.

6.8 Arjun Munda v/s Governor of Jharkhand and Others

Governor committed irregularities in appointing the leader of the political alliance, not commanding support of legislators, as Chief Minister of the State of Jharkhand. In Arjun Munda v/s Governor of Jharkhand10 while disposing off the petition, the Supreme Court of India held that “only Agenda in Assembly on 11.3.2005 would be to have a floor test between the contending political alliances in order to see which of the political parties or alliance have a majority in the House and hence a claim for Chief Ministership. We direct the Chief Secretary and the Director General of Police, State of Jharkhand to see that all the elected members of the legislature Assembly freely, safely

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10 SCC 2005 (3), P-152
and securely attend the Assembly and no interference or hindrance caused therein.” Arjun Munda proved his majority on the floor of the House of Jharkhand Assembly for Chief Ministership.

The Apex Court in this case drove the State Assembly of Jharkhand out of the constitutional crises which the Governor has generated. In the eyes of judiciary, Governor disregarded the democratic norms of the political system founded by the Constitution of India.

6.9 Amarnath Ashram Trust Society v/s Governor of Uttar Pradesh

In Amarnath Ashram Trust Society v/s Governor of Uttar Pradesh\(^{11}\) the honorable Supreme Court held that “where exercise of discretionary powers is likely to affect prejucially it has to be exercised bonafiedly and not arbitrarily.” The Apex Court in this case passed the indictment that governors should use their discretionary powers democratically and fairly and far from arbitrary approach.

6.10 State of Karnataka v/s Union of India

The Honorable Supreme Court of India held in State of Karnataka v/s Union of India\(^{12}\) that the polity of ours is the result of historical incidents and the adoption of centripetal force in the Constitutin was the need of the day. The Indian Constitution sets up what, in the words of Ambedkar, one of the prime architect of the

\(^{11}\) SCC 1998 (1), P-591.
Constitution, is ‘a dual polity’ by the expression, he meant, a Republic, both unitary as well as federal, according to the need of the time and circumstances. This dual polity of ours is a product of historical incidents, or at any rate of circumstances other than those which resulted in genuine federations in which the desire for separate identity and governmental independence of the federating units is so strong that nothing more than a union with strict demarcated field of Central Government’s power is possible.

Judicial observation depicted above elucidates unitary convergence in Indian polity which carries the attenuation of central authority which confines in it the portfolios of strategic nature. The states in this set up have independent fields of power to function along with the collaborated field with Central authority. Thus, the political structure of Indian polity comprises three fields of powers, the State, the central and the concurrent. The judiciary in this case has interpreted the centralized Indian polity in the form of division of powers between the Centre and states. This unified structure of Indian polity necessitated the need of Governor to be the Center’s representative in each state.

6.11 M.Kiran Babu v/s Government of Andhra Pradesh

Judiciary has interpreted a vital concept in M.Kiran Babu v/s Government of Andhra Pradesh\(^\text{13}\) that in as much as the Governor is only a nominee of the President and is not elected either directly or indirectly by the people, he cannot claim the legitimate right to govern

\(^{13}\) AIR 1986 Andhra Pradesh, P.281.
the people by himself. The people elect a legislature and a political party to govern them. The Government so elected is responsible to the people through legislature. It is for this reason that Article 163(1) declare that Governor shall act on the aid and advice of the Council headed by the Chief Ministers, except in those matters where the Constitution requires him to discharge his functions in his discretion.

Judiciary in the above judgment is of the view that Governor has no right to govern the people directly or indirectly. Judiciary in this interpretation has given a message to the Governor’s fraternity that they should keep themselves away from the active politics. Active politics is not their domain. It is submitted that when ever the Governors in India foresee an opportunity to govern the State, directly or indirectly, they do not hesitate in availing that opportunity even at the cost of misusing their discretionary powers. The inbuilt intention of the governors is to keep their appointing authority happy which is also his removing authority. In this drive they misuse their discretionary powers

6.12 Mulluae Hlychho v/s State of Mizoram

In ‘Mullae Hlychho v/s State of Mizoram’ a similar view has been expressed by the Supreme Court that powers of the President and Governor are similar to the powers of the Crown under the British Parliamentary system. It is a fundamental principle of English constitutional law that Minister must accept responsibility for every executive act.

14 SCC 2005 (2), P-92.
In this judgment, the judiciary is of the view that the Governor has been adjusted as the constitutional as well as titular head of the State. The Republican set up of this nature has denied the Governor, a close proximity with the State Government. The close proximity with the State Government has already been prevented by the founding fathers of the Constitution by not resolving the Governor as an elected entity.

### 6.13 Shamsher Singh v/s State of Punjab

An overview of judiciary pertaining to Governor’s entity is found in the ‘Shamsher Singh v/s State of Punjab’\(^\text{15}\) in which Justice Krishna Iyer as well as justice Bhagwati depicted the role model of Governor. Justice Krishna Iyer with whom Justice Bhagwati concurred, pronounced that we declare this Branch of our Constitution to be that the President or the Governor are custodians of all executive and other powers under various Articles, shall by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their ministers except in a few well known exceptional situations. Without being dogmatic and exhaustive, these situations relates to:-

- (a) The choice of Prime Minister (Chief Minister), restricted through this choice is by the paramount considerations that he should command a majority in the House.
- (b) The dismissal of Government which has lost its majority in the House but refuses to quit the office.

\(^{15}\) SCR 1978 (1), P-878.
(c) The dissolution of the House where an appeal to the country is necessitous, also in this area the head of the State should avoid getting involved in the politics, must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step.

It is pertinent to mention here that the concept of an elected Governor was also considered in the deliberations of Constituent Assembly. While considering the thesis and antithesis on the subject the Constituent Assembly resolved at the penultimate stage of formation of the Constitution that the Governor will be appointed by the President. The rational behind resolving the appointed Governor in place of an elected Governor was that the framers of the Constitution intended to keep the Governor away from muddles of party politics.

Keeping with the intention of having a non party Governor, the Constituent Assembly at the same time observed that the gubernatorial candidates should be free from party politics. The Constituent Assembly intended that the persons of high caliber and at the same time who have achieved eminence and distinction in some walks of life should be selected for this august office of Governor.

However, it is disgusting to note that a Unites States educated fullbright scholar, Mr. S.M. Krishna was Chief Minster of Karnataka from 1999 to 2004. He resigned as Maharashtra Governor in March 2008 to return to active politics. Another case of this pedigree is that a reputed economist, C.Rangarajan, nominated recently to the Rajya
Sabha. He has also been chairman of the Prime Minister’s Economic Advisory Council, Governor of Andhra Pradesh and Governor of Reserve Bank of India.\textsuperscript{16}

Recently the former Governor of Punjab Lt.Gen.B.K.N.Chibber (retd) on 25/12/08 quit the Congress to join the Bahujan Smaj Party. He had joined the Congress after completing his tenure as Governor of Punjab. He said he was disillusioned with the Congress and had full faith in the policies and programmes of the Bahujan Smaj Party and its leader Mayawati.\textsuperscript{17}

\textbf{6.14 Rameshwar Prashad V/s Union of India}

The observations of the Supreme Court in the context of joining the former governors, the active politics is worth mentioning here. The Honorable Supreme Court recently in Rameshwar Prasad v/s Union of India\textsuperscript{18} observed that “The criteria suggested in Sarkaria Commission’s report for appointment of person as a Governor is:

(i) He should be eminent in some walks of life.
(ii) He should be a person from outside the State.
(iii) He should be a detached figure and not too intimately connected with the local politics of the State ; and
(iv) He should be a person who have not taken too great part in politics generally and particularly in the recent past.

\textsuperscript{16} Hindustan Times, December 10, 2008, P-1.
\textsuperscript{17} Hindustan Times, December 26, 2008, P-3.
\textsuperscript{18} AIR 2006 SC, P.81-82.
Unfortunately, the criteria have been observed in almost total breach by all political parties. It is seen that on one day a person is in active politics in as much as he holds the office of the Chief Minister or Minister or a party post and almost on the following day, or in any case, soon thereafter, the same person is appointed as the Governor in another State with hardly any cooling period.” Ordinarily, it is difficult to expect detachment from party politics from such person while performing the constitutional functions as Governor. The Supreme Court left this aspect to the wisdom of the political parties and their leaders to discuss and debate and arrive at, if possible a national policy with some common minimum parameter applicable and acceptable to all major political parties.

The Governor occupies a very important and significant post in Indian democratic set up. When his credibility is at stake on the basis of allegations that he is not performing his constitutional obligations or functions in the correct ways, it is sad reflection on the persons chosen to be the executive head of a particular State. It appears to be matter of convenience for different political parties to allege mala fides. This unfortunate situation could have and can be avoided by acting on the recommendations of Sarkaria Commission and the Committee of National Commission to Review the Working of the Constitution in the matter of appointment of Governors. This does not appears to be convenient to the parties because they want to take advantage of the situation at a particular time and cry foul when the situation does not seem favorable to them. This is a sad reflection on the morals of political parties of politicizing the post of the Governor.
Sooner remedial measures are taken would be better for the democracy.”

The Supreme Court in its obiter expressed the sorry state of affairs conducted by the political parties in India in the matter of appointment of Governors. The view of the Apex Court is very clear that the politician’s appointment for the office of Governor should be avoided. The judiciary has introduced the concept of ‘cooling period’ which is very essential for a politician to be appointed as Governor of a State. Judiciary in this case has knocked the doors of politicians to chalk out a national policy containing the ethical credentials for the gubernatorial candidate. Political parties should select a Governor who is on merit as per the recommendations of the Sarkaria Commission.

The Governor infact has been planted in the State to nourish the political perspectives, policies as well as agendas of the Central Government. If the Governor will not behave to the satisfaction of the Central Government, he will have to face the ‘displeasure of the President’ in effect and substance of the Central Government. In order to make his tenure safe, he has to act on the dictates of the Central Government, dictates may be constitutional or extra constitutional.

It has become a necessary evil in the political affairs of India that the Governors are used to achieve the political ends of the party in power at the Centre. The position is more aggravated when the party or alliance at the State and party or alliance in the Centre,
belongs to different political complexions. In this scenario both Centre and the State are at logger heads. Judiciary in the above hard hitting judgment has provided guidelines for the political parties which will hold them in selection and appointment of gubernatorial candidates.

6.15 S.R.Chaudhari v/s State of Punjab

Commenting on the responsibilities of the Governor, Supreme Court of India in S.R.Chaudhari v/s State of Punjab\(^{19}\) has enunciated that Governors must forever remain conscious of their constitutional obligations and not sacrifices either political responsibility or parliamentary conventions because of political expediencies. For parliamentary democracy to evolve and grow certain principles and policies of public ethics must form its functioning base. Constitutional provisions and restraints must not be ignored or by passed if found inconvenient or bent to suit to political expediency.

The observations in the above mentioned judgment focus on the phenomenon that the Governor to be appointed in the State should be other than a political personality. That is what the Constituent Assembly as well as the Sarkaria Commission have been stressing on this vital issue that the persons who have achieved eminence in some walks of life and are aliens to the political fraternity should be picked for gubernatorial office. Constitutional Review Committee in its report has also concurred with the Sarkaria Commission’s recommendation that gubernatorial appointee should be of other than political fraternity. The practical implications of the judgment can

\(^{19}\) SCC 2001 (7), P-126.
bring a far reaching effect in reenergizing the office of Governor if political expediencies in democratic environment are discouraged. The judgment has emphasized on the need of improvising the office of Governor on ethical grounds.

Governor minus political interference is the common findings of Constituent Assembly, Sarkaria Commission as well as Constitutional Review Committee. Both Sarkaria Commission as well as Constitutional Review Committee has recommended measures to keep the Governors free from political interference. In other words the gubernatorial affairs require that the Governor should be uninfluenced by the Central Government. Governor is a constitutional functionary and has been assigned an independent status; in other words, he is free to exercise his powers enshrined to him by the Constitution.

6.16 Hargovind v/s Raghukul Tilak

Approach of judiciary on this subtle issue is worth quoting here which has been reflected in Hargovind v/s Raghukul Tilak\(^\text{20}\) that it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of Government of India, nor is he accountable to them for the manner in which he carried out his functions and duties. His is an independent constitutional office which is not subject to control of Government of India.

\(^{20}\) AIR 1969 SC, P-1109.
If we reckon the above description, it elucidates that the office of Governor is not meant to be an ornamental sinecure nor is the holder of office required to be a glorified Cipher. His Character, Caliber and experience must be of an order that enable him to discharge with skill and detachment the dual responsibility towards the Centre and the State of which he is the constitutional head. The duality of role being inherent in his office, would be wrong to emphasis one aspect of his role at the cost of the other. The Governor, being head of the State, must identify with himself with the people of the State, in which he is appointed and his primary concern within the limits of his constitutional constraints is to be the wellfare of those people.

The Governor is an important functionary of the Constitution but his affairs of appointment and removal in India ever since the formation of Constitution remained under the spree of debate. It has become a natural corollary that with the coronation of new Government at the Centre the new aspirants of office of governors are replaced with the previous one. In the opinion of political parties the ideological differences between the Governor and the Centre will not fetch good results so far central policy decisions and implementations are concerned.

The issues of appointment and removal of Governors are the two sides of the same coin. Appointment and removal of Governors in normal circumstances are complimentary and supplementary to each
other. Appointment and removal are concomitant to each other. At the same time if one is prized the other is sacked. The unheard sacking of governors has almost become a political ethos in India.

What is the legal remedy for the arbitrary removal of the Governor from the office? It must be remembered that in removing the Governor, the President acts on the advice of his Ministers. His act in truth is the action of the executive, and is not immune from the judicial scrutiny. In such cases it is possible to challenge the action, not on account of a breach of conventions but on the ground that power of removal, though absolute in terms is subject to an implied or inherent limitation - that it can be exercised only in cases of violation of the Constitution, or other similar acts on the part of the Governor which render him unfit to occupy this constitutional office. Above all any action which is established to be arbitrary or capricious or mala fide can be successfully challenged.21

6.17 State of Rajasthan v/s Union of India

The observation of Justice Bhagwati in State of Rajasthan v/s Union of India22 require to be elucidated here in regards to the above mentioned concept that “no authority however lofty, can claim that it can be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such powers laid down by the Constitution. It is for the Court to uphold the constitutional values and to enforce the constitutional limitations. However, the

legal battle pertaining to this institution is always avoided as a matter of practice”.

It is submitted that the rational behind Court’s observation in the above mentioned case is clear that the judiciary is deliberately avoiding confrontation with Central Government by not interpreting removal of Governors against the sprit of the Constitution.

6.18 Surya Narain v/s Union of India

The President’s pleasure was withdrawn in the case of Governor of Rajasthan, Sh. Raghukul Tilak. His removal was challenged in the Rajasthan High Court. The Rajasthan High Court in Surya Narayan v/s Union of India\textsuperscript{23} upheld the dismissal of Governor of Rajasthan. The Court observed that ‘five year term provided for a Governor under Article 156 (3) is not mandatory. Class (1) of Article 156 is subject to clause (3) of the Article. This means that the five years term can be curtailed by the exercise of pleasure by the President. Thus it lies within the powers of the President to terminate the Governor, in his discretion, before the expiry of the five years. President’s pleasure contemplated in the Article is unjustifiable. It is not regulated and controlled by any provision under the Constitution in the manner as provided under Article 311 of the Constitution relating to civil (administration) Services. The provisions for removal or dismissal of a Governor are an obvious requisition of the unregulated and uncontrolled Presidential pleasure exercisable at a movement without cause and without any stated reasons’.

\textsuperscript{23} AIR 1982 Rajasthan, P-1.
Thus the observations in the above mentioned judgment elucidate that Governor while discharging his functions works as a channel of communication and contact between the State and the Centre; the Governor is an appointee of the President and expressly holds office during his pleasure. The Governor thus has no security of tenure and no fixed term of office. Article 156(1) is controlled by Article 156(3). The President in exercise of his pleasure may cut short the five years term of the Governor. Consequently, the President can ask the Governor to resign or may terminate him from office. The Governor may be removed by an expression of Presidential displeasure before the normal term of 5 years and the Presidential pleasure under Article 156 (1) is ‘unjustifiable’.

Judiciary in the above mentioned case has literally interpreted the provisions relating to removal of Governor from the office. A harmonious approach has been applied by the judiciary in disposing of the petition. In other words article 156(1) and 156 (3) has been interpreted harmoniously, by applying a positive approach towards the law of the land.

One of the piquant incongruities of our Constitution is that on a literal reading of its provisions the Governor emerges as the least secured and the least protected of all constitutional functionaries without any expressed security of tenure and without any specific safeguard in the matter of his removal. The President of India, who holds office for a term of five years, can be removed from the office
by the impeachment for violation of the Constitution after following the elaborate procedure provided in article 61 of the Constitution. A judge of the Supreme Court and a judge of the High Court can be removed from the office on the grounds of proved misbehavior or incapacity and after an address by each House of the Parliament supported by a majority of total membership of the House and by the majority or not less than 2/3rd of the members of the House present and voting has been presented within the same session for his removal, (Article 124(4): 217b).24

Hence, the Governor is the least secure constitutional functionary. The other constitutional functionaries like Judges of the Supreme Court and judges of the High Court are independent in their functional jurisdiction. Their functional independence make them positive in their approach, consequently they exercise their powers fairly and judiciously. Comparatively in the case of Governor, the decision making process is controlled by the Central Government, because of his eclipsed term of five years. Hence, only an impartial and independent office can protect the Constitution without fear or favor.

Judges as compared to the governors enjoy a sufficient independence to protect the rights of the individual and provide equal justice without fear of any kind. Spirit behind independent functioning of the judiciary is the security of tenure. The judges of the

Supreme Court have security of tenure. They cannot be removed from the office except by an order of the President and that also only on the ground of proved misbehavior or incapacity, supported by a resolution adopted by a majority of not less than 2/3rd of the members, of the House present and voting. Parliament may, however, regulate the procedure for presentation of the address and form investigation and proof of the misbehavior or incapacity of a judge. But Parliament cannot misuse this power because the special procedure for their removal must be followed.25

It is submitted that to secure the independence of the judges of the Supreme Court and the High Court a very cumbersome procedure for their removal has been prescribed by the Constitution itself. Comparatively in the case of removal of Governor from the office, President’s displeasure is enough. Resultantly, in order to keep intact the pleasure of the President, the Governor acts on the dictates of his political bosses, in performing this he may have to face the debate, for and against.

6.19 Ranji Thomas v/s Union of India

A public interest litigation came up before a Constitutional Bench of the Supreme Court in Ranji Thomas v/ Union of India26 seeking intervention of the court to restraint the President of India from forcible extracting resignation from the various Governors. The Supreme Court in this case held that the petitioner has no locus to

26 SCC 2000 (2), P- 8,12
maintain the petition in regards to the prayers claiming relief for the benefit of individual Governor.

6.20 B.P. Singhal v/s Union of India

Recently in June, 2010, a five judges Bench, headed by Chief Justice K.G. Balakrishnan in B.P.Singhal v/s Union of India held that “though the Governor is appointed and remains in office during pleasure of the President, he or she cannot be removed merely because they are “not in Sync” with the party in power. Disapproving the practice of replacing governors after a new Government comes to power at the Centre; the Supreme Court said that governors of states cannot be changed in an arbitrary and capricious manner with the change of power in the Centre. The Bench also said that the governor cannot be removed only under “compelling reasons” and what the compelling reasons are depends on facts and situations of a particular case. The Bench noted that Article 156 and Article 155 of the Constitution pertaining to the appointment of Governor require interpretation in this regard.

The landmark decision came on a PIL filed in 2004 by the BJP. MP.B.P. Singhal, challenging the removal of governors of Uttar Pradesh, Gujrat, Haryana and Orissa by the previous UPA Government”

The Apex Court in this case of wider import has touched the hypothetical issues of this work. In this long awaited judgment, the

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27 w.w.w. Indian Kanoon. Org, site visited on 16. 9. 2010.
judiciary has expressed its opinion that act of removing the governors, before the completion of the term of five years, is arbitrary as well as capricious.

6. 20 Observations of Justice H.R. Khanna

The precious observations of Justice H.R. Khana is worth quoting here that experience tells us that the apprehensions then voiced are not ill founded, for on a number of occasions grave charges have been leveled that the power has been used for partisan ends and extraneous considerations. The discretionary power has been used on many occasions. In quite a number of instances, serious allegations, not without substance, have been made about utilizing the services of the Governor for the imposition of the President’s rule with a view to further the interests of the political party in power at the Centre. In some cases the conduct of Governor has been manifestly improper and unfair.

Another matter which has come to the fore in recent years is the blatantly partisan and unconscionable attitude shown by some of the Governors in the matter of appointment and dismissal of State Chief Minister. Needless to say such acts besmirch the image of the office of the Governor and drag the institution into bitter and unseemly controversies. Attempts to use the Governor as tool to get ride of Chief Monsters, politically inconvenient or belonging to other parties, must be shunned at all costs as also the attempt to make the
Governor align himself with interest of the party in power at the Centre.\textsuperscript{28}

Justice Khanna has out rightly expressed his views pertaining to gubernatorial affairs in India in the changed scenario. His observations state that governors in India are used and misused by the Central Government to topple the ministries in the states belonging to other parties. In researcher’s opinion, the Governor in this state of affairs keeps himself in a defensive position. He cannot afford to defy the dictates of the Centre, the reason being that he has got the appointment to look after the interests of the ruling party. He is not in a position to have confrontation with the ruling party or alliance, if so his five years tenure can be cut short by the appointing authority at any time. Hence, the changed political as well as social scenarios are knocking the Constitution that Governor should enjoy a safe tenure of five years so that he can manage his affairs in proper and fair manner.

\textbf{6. 21 Observation of Justice V.R. Krishna Iyer}

‘Law has to give expression to the aspirations and values of a society and the legal process as a whole has to implement in the right earnest, the full range of the earnest of the common man. “It would be tragic” observed Friedman, “if the law were so petrified as to unable to respond to the unending challenges of evolutionary and revolutionary change in society.” He rightly adds that “law is not ‘a brooding omnipotence in the sky’ but a flexible instrument of the

social order depending upon the political value of the society which it purports to regulate”.

It hardly needs a mention or emphasis that strictly positivistic approach to law is out of date. Those engaged in the study of law, making of law, interpreting and applying and implementing the law have to have a broader concept of its mission and have to enlarge the understanding of its functions and forms. This alone can effectuate the role of law and rule of law in the society. In the contemporary Indian society we are witnessing a revolution of rising expectation. If democracy is to survive and has to have a solid and social foundation; law, legal institutions and legal process have to serve as the effective instrument of ushering the era in which the promise contained in the Preamble and the Directive Principles of State Policy of our Constitution remain not only an ephemeral dream for distant future but become an operational reality’.  

In this scenario of change and transformation, metaphysics of early Greek philosopher, Heraclites is worth quoting here. Heraclites was the theoretician of change. ‘Every thing alters and changes, he insisted. The only permanence was not some stuff or substance that remained constant but rather the principle of law of change. Only the universal principle that everything changes remain unaltered.  

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If we peep into the antecedents of jurisprudence, it can safely be unveiled that law may be of any kind and nature, its scope and form always remain moving and changing in the directions in which the socio-political forces direct it. Judiciary is not an exception to this universal principle of change.

6.22 Conclusive Remarks

Judiciary in the march of its adjudicating process has touched the different aspects of gubernatorial affairs in India. If we scan the above mentioned citations, we can out rightly discover that judiciary has highlighted the status of governors in Indian Republic that Governor is not a glorified cipher but has dual personality which represents Centre as well as State in which he is appointed. The judiciary has also interpreted that Governor is a constitutional as well as a titular head of the State apart from his discretionary powers enshrined by the Constitution. Judiciary has expressed its strong resentment that active politician are appointed by the political parties or alliances to this august office of high repute. Judiciary in this context has also pronounced the personality traits necessary for the gubernatorial candidate.

It is submitted that there is a considerable change in judicial approach so far as the appointment and removal of Governors is concerned. In Surya Narain v/s Union of India31 the approach of judiciary is positivistic. The judiciary in this case has upheld the removal of Governor by assigning a harmonious approach to Article

31 AIR 1982 Rajasthan, P-1.
156. In contrast to it, the Supreme Court in B.P.Singhal v/s Union of India\(^{32}\) expressed its opinion that governors cannot be removed in arbitrary manner with the change of political party at the Centre with the remarks that Article 155 and 156 of the Constitution require interpretation in this regard. Hence, the approach of judiciary is also in favor of Governors that they should enjoy their term of five years independently and free from political interference.

\(^{32}\) Ibid, Note-25