CHAPTER I

INTRODUCTION

Hallmark of parliamentary democracy is its dynamic and evolutionary character. And in a country like India, where bullock-cart vies for space with Benz, such dynamism is all the more pronounced. Since independence, political institutions created under the Constitution have undergone drastic transformation. Office of Governor is no exception to this. Up to 1967, this office had more or less a smooth run, untainted by any major controversy. Nehru’s style of governance and appointment of eminent persons as Governors could be the reasons for the relative absence of Governor-related controversy immediately after independence. After 1967, the Congress lost majority in some States and the Governor’s office began to assume a greater significance. During this period, Governor’s office came under a cloud as opposition began to perceive it as an instrument of Central Government pressed into the service for dislodging the State Governments. The reasons for this sorry state of affairs were authoritarian attitude of Indira Gandhi and her increasing intolerance of opposition Governments in the States that resulted largely in the appointment of politically motivated persons to the post of Governors.

Since late sixties, wrenches in the Centre-State relations had begun to surface. Often, the Governor had a vital role to play in the process. It would not be incorrect to say that beginning from 1967, biased action of Governor was one of the major reasons for the continuous friction between Centre and States. Early seventies
was also a period when political opportunism in the form of political defections for petty allurement became rampant across the States. Indira Gandhi, as already mentioned, was never comfortable with the fact that non-Congress parties, too, had a right to occupy some space in the administration within States. Unethical means were used to emaciate the regional parties. Horse-trading, promise of positions and posts to opposition candidates and promotion of caste-based politics at regional level were some of them. Office of Governor was subject to an extreme misuse in this period with the result that not only was the State autonomy adversely affected, but also the spirit of federalism, so dear to the framers of the Constitution, was crushed to the hilt.

The Governor plays such a critical role in the State that the Sarkaria Commission thought it appropriate to label him as ‘linchpin of constitutional apparatus of the State’. The Constitution bestows upon the office of Governor a duality of the role, which perhaps no other constitutional office enjoys. The Governor functions as the Constitutional Head of the State to which he is appointed and also as the agent of Centre. In both of these capacities, the Governor may not enjoy substantially explicit powers, but he has a lot of discretionary powers, which at times make him a real ‘balancer’ of power in the State. Therefore, what looks overtly innocuous in normal times could turn out to be extremely ominous in fluid situations. So long as the Ministry in the State enjoys majority support, the Governor plays a harmless spectator. Once the Ministry is reduced to a minority or even suspected to be so, Governor becomes a decisive factor and his discretion comes into play,
specifically in view of relative absence of any concrete guidelines as to what he should do in such circumstances. Often, taking advantage of such situations, Governors have played havoc with the State Governments, especially when such Governments belonged to the party or group of parties other than one that was ruling at the Centre. A critical analysis of Governor's actions in the context referred to above is an important objective of the thesis.

In 1994 Supreme Court gave a landmark verdict in Bommai case that decisively changed the course of judicial and constitutional thinking in India. The Court ruled that the Presidential power to promulgate Article 356 in the States was subject to judicial review and the courts could restore the State Assembly dissolved under this Article if they found that action of the President was unconstitutional. The immunity granted to the Governor under Article 361 notwithstanding, the judgement implied that the action of Governor was also reviewable by the Judiciary and could be stayed if it was found to have been initiated in an unconstitutional manner.

The study of the office of Governor after this judgement can be distinctly categorised as pre-Bommai and post-Bommai. In the pre-Bommai period (1960-90), the action of Governor in dismissing Ministries, dissolving State Assemblies or recommending President’s rule was treated as non-justiciable. Likewise, the action of President in promulgating Article 356 based on the report of Governor or otherwise, in any State was also taken as falling beyond the judicial purview. Consequently, the courts refrained from getting embroiled in such cases. Almost all
the judgements during this period invariably dismissed all such petitions that pleaded for quashing of the order of the President to impose President's rule that usually followed the report of the Governor about the failure of constitutional machinery in the State. Even if the court felt that such action on the part of Governor and President smacked of mala fide, it refused to be drawn into the so-called 'political thicket' and did not overturn their decision on the ground that it was non-justiciable. The Calcutta High Court in one case went to the extent of observing that Governor had unfettered discretionary powers that cannot be challenged in any way. In Biju Patnaik case in 1973, the Orissa High Court disapproved of Governor's action of not inviting Biju Patnaik to form the Government in the State, but did not choose to quash it because it held it was beyond its power to do so. There were many such decisions that followed later, and several of these have been dealt with in some detail in the present thesis.

During this period there have been quite a few important studies on the role of Governor. Particularly notable are by M.S. Dahiya (Office of the Governor in India, 1979), J.R. Siwach (The Office of the Governor-A Critical Analysis, 1977), N.S. Gehlot (The Office of Governor, its Constitutional Image and Reality, 1978 and The State Governors in India, 1985), Varadachari (Governor in the Indian Constitution, 1980) and P.L. Mathur (Role of Governor in Non-Congress States, 1988). Besides, the analytical study of Governor by Sibranjan Chatterjee (Governor's Role in the Indian Constitution, 1992) is also noteworthy. Most of these studies combine constitutional interpretation and analysis of empirical situations, though Chatterjee
claims to take an ‘evolutionary approach’ that examines the role of the Governor under Indian Constitution from the perspective of evolution of this gubernatorial office in the fluctuating political framework. H.A. Gani’s critical study (Governor in the Indian Constitution and Centre-State Relations and Sarkaria Commission, both published in 1990) deals with inductively scrutinising the exigencies of Indian Politics, dominated by one-party rule of Congress, in general, and the role of Governor, which at times looked like a puppet show of Centre, in particular.

Report of Sarkaria Commission (1987) factored in a substantial way in the Bommai Judgement. In this judgement, the Apex court quoted at length from this report with a specific focus on the need to bring about the radical changes in the office of Governor for the healthy Centre-State relations. The impact of Bommai judgement was clearly felt on the judicial approach across the country. Allahabad High Court in 1998 stayed the decision of the Governor to dismiss the State Government without allowing floor test and ordered restoration of Kalyan Singh Ministry in Uttar Pradesh. Likewise, in Bihar Assembly Dissolution case (2006) the Apex Court termed the action of then Bihar Governor as ‘unconstitutional’ following his decision to recommend imposition of President’s rule without allowing any party or group to try to form the Government after the elections in the State. The judgement also influenced the outlook of the constitutional authorities. President K.R. Narayanan sent back for reconsideration the proposal, forwarded by the Governor of Uttar Pradesh and duly approved by Union Cabinet, to impose President’s rule in the
State in 1997. Interestingly, the President quoted Bommai judgement in his reconsideration message to the Union Cabinet.

There is thus an obvious trend in the post-Bommai period, as is manifest in the approach of Union Government in the recent years, to tread cautiously on the issue of invoking Article 356, now that the courts have started taking a serious view of such an action. For instance, following Karnataka political crisis in 2010, when the Governor sent a report recommending imposition of the President’s rule in the State, the Union Government did not oblige. Again, when the crisis erupted in Jharkhand Legislative Assembly in 2005 after the Governor swore in Shibu Soren as Chief Minister despite his not having a majority in the Assembly, the Congress Government at the Centre intervened, pressing upon Soren to step down himself. Finally, the Governor invited BJP leader, Arjun Munda, who actually enjoyed the majority support, to form the Government in the State. The Court described the action of the Jharkhand Governor to invite Soren to form the Government as “fraud on the Constitution”. If such harsh observation of the court is unprecedented, the attitudinal change in the Congress was even more so. It looks highly unlikely that if an issue of this sort had arisen in 1970s, the Congress Government at Centre would have behaved in a similar fashion.

From a prolonged single-party rule of Congress to the dawn of coalition era, particularly after 2000, Indian electorate has seen it all. But it has not been a mute witness to huge undercurrents of political change sweeping across the country. Over
years, the voter has begun to grasp how valuable its constitutional option of choosing the Government is. As the democracy matures in the country, Indian voter is realising that the power of his vote, if used properly, can bring about considerable changes within the structure of the governance. Indian voter has been doing that since past sixty four years, in a silent attempt to make the political dispensations cast themselves into a more responsive and responsible mould.

A few good studies concerning Governor were published in this period as well. K.S. Padhy’s (Press and Pliant Governors, 1996) largely deals with the press coverage of the role of Governor with a focus on Karnataka State. B.P. Pandya’s book (Role of Governor and Article 356, 1998), contrary to its title, has only one chapter on Article 356, rest of the pages having been devoted to general analysis of Governor’s role. V.S. Singh (Governance and the Governor, 2008) takes an objective approach, but the book is mostly confined to the review of Governor’s role in the State of Rajasthan. Finally, Mona Shukla’s (Governor in Democracy, 2008) 288-page work has only 132 pages dealing with role of Governor with rest of the book constituting ‘Appendices’ portion.

The present thesis seeks to understand and examine the role of Governor in the changing political context. In this, it does not claim to break any new grounds, but proposes to build on earlier studies, combining both constitutional as well as evolutionary approach to the subject. The approach in the thesis is basically politico-legal. While an attempt has been made to analyse Governor’s action in various
states empirically in the given political background, enough stress has been laid on assessing the judicial interpretation of Governor’s role that certainly had important ramifications for the Centre-State relations. All the relevant legal source material in the form of judgements and observations of Supreme Court and various High Courts has been consulted in depth for the purpose. No study of any constitutional office as important as Governor’s can be complete without reference to the Constituent Assembly Debates, which have been extensively consulted, particularly Vol. II. VII. VIII and IX. Simultaneously, relevant volumes on Lok Sabha and Rajya Sabha Debates have also been accessed. Reference to the journals, magazines, periodicals and newspapers is indispensable to this kind of study; thanks to the Internet facility, much of this data could be located online. Besides, reports of various committees and commissions, directly or indirectly related to Governor, have been studied in detail and referred to at the appropriate junctures in the thesis. Last but not the least, the writings of Governors in the form of books and articles came in handy in understanding the other side of the story. In this regard, mention may be made of Sri Prakasa (State Governors in India), D.C. Pavate (My Days as Governor), Shriman Narayan (Those Ten months of President’s Rule) and a few enlightening articles by Jagmohan Malhotra published in various newspapers and journals.

The thesis is divided into seven chapters. Chapter II very briefly deals with evolution of Governor’s office since British period. Chapter III examines the issues related to appointment and dismissal of Governor under the Constitution. Chapter IV
analyses the role of Governor as constitutional head of the State. Chapter V is the study of Governor’s role as a link between Centre and States. Chapter VI is a brief study of Governor’s office in the light of recommendations of Sarkaria Commission and those of National Commission to Review the Working of the Constitution. Chapter VII sums up the study with concluding remarks.