CHAPTER VI
CONCLUSION AND SUGGESTIONS

6.1 Conclusion

6.2 Suggestions
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Under the Indian Constitution the Governor has been given widest powers, if these are accepted in reality he can become a dictator. But in fact the Governor is the Constitutional Head and the power given to him by the Constitution are exercised by the Council of ministers in his name. In the parliamentary system it is impossible to think that the Governor will act as a dictator.

In regard to the status and role of the Governor generally there are two opposite views. In the first view the Governor is accepted as the Constitutional Head of the State in the other view he is more than a Constitutional Head. As the representative of the Centre he plays an important role in the administration of the State. We will have to study both the views to understand the actual status of the Governor.

(A) The Governor as the Constitutional Head

The Constitution has provided for a parliamentary system of Government in the States similar to that of the Centre. In parliamentary form of the Government the powers are vested in the cabinet Headed by the Chief Minister which is responsible to the lower house of the legislature. Therefore the cabinet is the real Head and the Governor is only a Constitutional and nominal Head of the State.

According to Article 167 (i) of the Constitution, certain situations have been mentioned by the Constitution and it is expected that the Governor would act according to his discretion, in these special
circumstances, leaving these issues there will a Council of ministers to advise him in other matters.

The Constitution doesn't specifically mention the discretionary powers. The Governor only of Assam and Nagaland have been given this type of powers. Therefore it can be said that generally the Governor is the Constitutional, nominal and titular Head of the State and his powers are not real. No action of the Governor can be challenged in the Court on the ground that he had acted or not acted under discretion.

Many members have described the Governor's discretionary powers as dangerous when they have been left ambiguous and a not clearly defined.

In the words of Dr. A.M. Payli "the crux of the matter as expressed by many members of the Constituent assembly is that the Governor should not be given any discretionary powers it was a reaction against the provisions of the Act of 1935 by which the Governor was given this type of powers, therefore it was reasonable for the members to be suspicious but this doubt or fear was baseless. Under the Act of 1935 a fully responsible Government was established in the States and actual powers were vested in the Governor and he was a symbol of dictatorship, as against this the present Constitution establishes a responsible Government and gives Constitutional status to the Governor, therefore it is useless and unreasonable to compare the Governors position in the British period with the present position.

Under the present Constitution the Governors will act according to the advice given by the ministers. The Governor's position was different according to the Government Act 1935, at that time the Governor could take certain decisions according to his discretion, that means he could act without the advice of his ministers.

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In the present Constitution of India the discretionary powers and the power to take personal decisions have been taken away from the Governor. In this system the Council of ministers responsible to the legislative assembly has been given the duty to assist and advice the Governor as such the question of Governor acting against the advice of the ministers doesn't arise. If the Governor disregards the advice given by the ministry then the principle of collective responsibility cannot be given a practical shape. It has not been mentioned clearly in the Constitution, that the Governor should only act on the advice of his ministers but in the parliamentary, system it is imperative that the Governor should accept the advice given by the ministers as they are responsible for the administration of the State and the real powers to govern the State is in their hands. Therefore though it is not written in the Constitution yet the Governor will have to act according to the advice of the ministers.

Dr. Ambedkar had said "In the constituent assembly that the principles on which the administration of the State is based, the Governor should accept them compulsorily, and should not do any such act in which he has to use his discretion or take a personal decision", supporting this view Shri A.K. Ayyar had said "the Governor is only a Constitutional Head.

The way the framers of the Constitution rejected the proposal for the election of the Governor and instead chose the mode of nomination indicates, that they wanted the Governor to be the Constitutional Head. Dr. Ambedkar had said that the powers of the Governor should be nominal and limited so that his position becomes ornamental and there would be no unnecessary expenditure of the public money on the election. Many people who had acted as the Governor's said about their position that the
Governor is a Constitutional Head who should perform his duties on the advice given by the Council of ministers.

Shri Prakash who was the Governor of Madras had said "I am fully convinced that I had nothing to do except being the Constitutional Head of the State"

Sarojani Naidu had described herself as “a bird in the golden cage". Shrimati Vijayalaxmi Pandit the former Governor of Maharashtra had said that. "If someone accepts this office he is not charmed by the post but only by the salary”.

Dr. Pattabhil Sitaramayya, the then Governor of M.P. had said "that the Governor's main task is to recieve the visitors and invitees and arrange parties for them and to be a good host" Dr. P.K. Sen said "the Governors main job is to manage the administrative system officially by co-assistance and cooperation and not to control it and create obstacles. Their main work was to send a fortnightly report to the President but they did not know what to include in the report. Similarly S.P. Modi the former Governor of U.P. had said that, the Governor has nothing to do except being a titular Head.

If is clear that the Governor is not a despotic ruler his powers are not real, but that doesn't mean that the office of the Governor is not important. Dr. Ambedkar had said about the significance of the office of Governor that "the Governor has not to do anything by himself, his main duty will be to give proper advice to his ministers on important matters, such acts will be performed by the Governor not as a representative of one party but as the representative of the people, so that an impartial effective and perfect administration can be carried in the State.
Dr. Payli had written that, "The Governor is an expert advisor of the State-ministry who can convert the distorted conditions in the State into peaceful one."

Clarifying the importance of the office of the Governor B.G. Khare had said in the Constituent assembly that a good Governor can benefit the State whereas a bad Governor can create problems. In the words of professor Payli, "He is such an officer who can play important and effective part in the Governance of the State."

In short we can say that the Governor is the Constitutional Head of the State and he exercises all his powers and discharges his duties with the help and advice given by the Cabinet under the leadership of the Chief Minister of the State.

Some members of the Constituent assembly, Dr. Ambedkar and others opposed this view that it is essential for the Governor to accept and implement the advice given by the Council of ministers. Alladi Krishna Swami was of the opinion that the Governor may have to use his discretion and privileges at times.

Thakur Des Bhargav said that, it would not be appropriate to make the Governor a puppet. Some members were in favor that, "the Governor should play the role of an important link between the Governments of the States and the Government of India. In the first 15 years after the first general elections the Governor had remained mere Constitutional Heads, there were many reasons for this position of the Governor:-

(i) After independence prominent and high level persons were made Governors in the States and in the
administration of the State the Chief Ministers were more influential than the Governors.

(ii) After the general elections the Government at the Centre and in most of the States was of the same Congress party as such whenever a Constitutional crisis arose that was resolved by the Congress High Command, if a ministry was to be replaced by another ministry it was very easy. Therefore the Governor had no occasion to use his special powers to face the special situations.

(iii) The Governors were responsible to the President and acted according to his directions, that is of the Central Government as the President was only a Constitutional Head and the opinion of the Prime Minister was considered to be Supreme.

(B) The Governor more than a Constitutional Head

In the first instance the Governor has been shown as the Constitutional Head of the State and is regarded as a mere showpiece, he is like a rubber-stamp for the ministry, a link between the President and the State Government, but it does not mean that he has no role to play in the State administration. In reality a capable Governor is not a rubber stamp and plays an important and active role in the administration of the State, specially by exercising his discretionary powers. On many occasions the Governors have exercised more powers than as of the Head of the State.
The makers of the Constitution believed that in normal circumstances the Governor will perform the role of a Constitutional Head, but in special conditions he may be required to use his discretionary powers, and his position will be more than a Constitutional Head. The position of the Governor in the State administration is highly respected and honorable, being away and above party politics, his status enhances further.

It is the words of M.B. Payli, "the Governor is a useful advisor to the State administration who can create peaceful atmosphere in the turbulent situations."

In the smooth functioning of the State administration the role of the Governor is most important, therefore it would be a mistake to consider the Governor only as a Constitutional Head, in fact he is the Constitutional Head, but even then he is more than that, from this angle the office of the Governor should be studied from the two angles.

(i) What role the founders of the Constitution wanted to assign to the Governor.

(ii) In different circumstances how the holders of this office played their role.

From the study of the day to day deliberations it is clear that as per the intention of the Constitution makers in normal circumstances the Governor will act as a Constitutional Head, but in exceptional circumstances his role would be of more importance.

Though in the State administration his powers are not real, but his position is very respectable, being above party politics he is impartial. The real rulers of the State (Council of ministers) can
always get advice from him wherever is needed. Due to his non-partisan personality the Governor is in a position to bring stability in uncertain State administration and unstable party politics. If a Governor is in fact wise an active person then, he could be very useful in sorting out the differences between the ruling party and the opposition. The Governors role is very important in running the State administration effectively and smoothly. According to K.M. Munshi "In certain circumstances the Governor can discharge his duties in an effective and profitable way."

Emphasising the importance of the office of the Governor Dr. Ambedkar writes, "When the Governor has not been given special powers, it is his duty to give proper advice to the Council of ministers in respect to certain important issues, such work will be performed by him not as a representative of any particular party but as a representative of the public", so that an efficient independent, corruption free, administration could be carried in the State.

Keeping in mind the Governor's this important duty as an object Shri B.G. Khair had said in the Constituent assembly "A good Governor can give many advantages and prove to be a boon where is a bad Governor can prove to be a curse". Yet he has been assigned very few powers under the Constitution.

It is correct that in ordinary circumstances the Governor acts according to the decisions of the cabinet and does not use his discretion. In normal circumstances his position is the same as described by Dr. Ambedkar, "The Governor is not a representative of a party but he represents the State and its people, his main job is to see that the administration is in the hands of expert and honest
persons, and they discharge their duties perfectly. If he does not get information about certain matters regarding the State administration, the Governor has been given the right to seek information from the Government"

From the study of the powers of the Governors it is clear that he is a Constitutional Head of the State, but he can act according to his discretion in special circumstances. The question arises; can he misuse the discretionary powers. As long as he acts according to the provisions of the Constitution he will not misuse his powers and exercise them wisely. There is no doubt, that there is no control on his power of discretion either of the State ministry or of the State assembly, but he will be under constant fear of being dismissed by the President. If he disregards the advice of the Council of ministers the President can dismiss him. particularly in a situation when the Governments at the centre and the State are from the same political party.

The substance of the matter is that in normal circumstances he acts as a Constitutional Head, and in extra ordinary situations like war, internal turmoil or failure of the Constitutional machinery he will act as a representative of the President. In such conditions his powers will become real; even then he will be under the control of the President, therefor he can not have full control in any circumstances.

As a Constitutional Head he has the right to give advice, encouragement and warning to the State Government. He will warn the Government and get information about all the matters and affairs. He is not an active politician, his position is above party
politics, and therefore he is a perfect adviser and guardian for the State Government.

In the words of Dr. P.K. Sen "The role of the Governor is to make the Government machinery able, by his friendly cooperation and not by interference, help in going on smoothly."

He is the representative of the central Government and a deputy of the President. In the words of Dr. M.B. Payli he is a link which relates the federation and the States and determines the relations between the State and the union. He is an essential part of the Constitution who fulfils an objective and provides essential services.

While expressing his views Durgadas Basu has written that the Governor is a titular Head. If he is active and good then he would establish good relations and contacts with the ruling party and can make it agreeable for some good actions and works

(C) The role of the Governor in the changed political system - In last few years the office of Governor has become an issue of disputes and controversies. The recommendations of the Governors of many States for President's rule after dismissing the popular Governments and inviting the parties which did not have the clear majority, to form the Government, on these occasions the Governor did not act independently and in non-partisan manner, for which they had to face criticism, day by day the position of the Governors has deteiorated and more controversies have been created. The Governors are now facing a new situation while the centre is ruled by one party whereas in most of the States some other party comes to power. The Governor is a Constitutional Head who performs
according to the wishes of the State ministry. In normal circumstance he will behave in a normal manner, but in abnormal conditions he can adopt the opposite attitude. In a federal State he is a representative of the central Government, simultaneously his appointment and dismissal is in the hands of the President who will act according to the directions of the Central ministry as a result there would be a possibility of political conflict and crisis.

Now, the question arises in the changed circumstances how the Governor should act. In the absence of conventions the Governors had to face many types of problems. The position of Governors became controversial, which resulted in decline of their respect and prestige. It is possible that in the context of relations between the Centre and the States the Governors are facing difficult situations. It is therefore necessary that in the changed political circumstances, parliamentary conventions should be developed in regard to the behaviour and functioning of the Governors. In the context of new situation there is need for fresh thinking. Whatever may be the conditions it will be expected of the Governor that he should carry out his responsibilities with honesty and full faith, and preserve and defend the Constitution.

(D) Letter Containing directions for the Governor

After the fourth general elections in different States the Governors acted in a different ways, particularly in respect of the appointment of ministers, to summon the house and dissolve it and the failure of the Constitutional machinery
and such acts of the Governors were subject of comments and criticism. Different actions by the Governor in similar situations gave birth too many Constitutional questions, though everybody agreed for the necessity of directives but it is very difficult to prepare definite guidelines for this.

It is a fact that if damage to the prestige and honour has occurred in the political system established under the Indian Constitution, it is definitely the office of the Governor.

In the words of Inder Malhotra "If we leave aside the views of the general public, the Governors themselves do not view with respect, their office". They have lowered down the position of the Governor more by their own conduct, in the realm of controversies, which was already degraded and has been lowered further. It also gave birth to the demand that the office of the Governor should be abolished. As the Constitution has established the parliamentary system at the State level, therefore the office of the Governor cannot be abolished, but it is essential to follow certain conventions in respect of the appointment and conduct of the Governor to maintain good relations between the centre and the States according to the parliamentary system, if this is not done in time then there will be a great danger to the polity.

After his long experience as a Governor, Hari Vinayak Pastkar had once said, "That the role of the Governor is to contribute for the development, and effective and stable administration in the State"

If we look at the background of the office of the Governors then we find that in the early days, around 1600, he was appointed as an agent to look after the financial and the commercial interests of the East India Company, till 1947, when India became independent, he had been functioning as the representative of the company and the British
Government, but his powers have constantly changed. In 1935 the
Government of India act came in to force the position of the Governor
was not that of the formal Head of the State but he had enormous
powers. He has been made as the Constitutional Head of the States in the
Indian Constitution to act with the help and the advice of the Council of
ministers

It would be seen from the discussions in the constituent assembly
regarding the Institution of the Governors that the office would not be
allowed to become the centre of power struggle. The Governor will have
to act on the advice of the Ministry. At the time of the framing of the
Constitution, it was envisaged that the President, on the advice of the
union Council of ministers will appoint such persons as Governors who
are capable, efficient and have special identity in the public life and the
society, so that the persons holding such office discharge their duties in
the proper way keeping themselves above party politics, here it was
expected that the concerned State Government will be consulted before
the appointment of the Governor, but after the independence it has
become the objective of the political leaders and parties to achieve power
at any cost, the opportunistic, unprincipled and immoral politics got
support. The importance of the Governor remained confined to the
protection of the political interests of the ruling party, though his position
was that of a Constitutional Head. The Governor is the Constitutional
executive of the State and the Council of ministers, Headed by the Chief
Minister is the real executive and governs the State in his name. He is an
essential part of the legislature but all his powers are exercised infact, by
the Council of ministers, even then his position is the most honorable in
the State administration, being above party politics he is impartial and
therefore the cabinet, according to the needs takes his advice for the betterment of the State administration.

He is not an active politician, he is a good adviser and acts as the guide to the State Government, because of his independent personality he provides stability to the State administration. By the review of the powers of the Governor, it is clear that he is the Constitutional Head of the State and acts on the advice of the Council of ministers in the ordinary times but in extraordinary circumstances he can act according to his objective and subjective discretion.

The question arises that can he misuse and abuse his powers of discretion, as long as he acts according to the provisions of the Constitution he will not to do such a thing. Therefore in no condition he can become a despotic ruler or a dictator.

In reality in parliamentary Democracy the position of the Constitutional Head depends upon the personality of the person holding the post, his wisdom and capability to handle the situations, whatever may be the provisions in the Constitution the Governor’s position remained that of a mute spectator initially.

But after the general elections of 1967, non Congress Governments came into existence the dignity of the Governor and Chief Minister could not remain unaffected by the changing equations in the power stretchers, the Governor broke the Constitutional norms, in removal and formation of the Governments in the States and acted in a partisan manner to protect the interests of the parties they were affiliated.. If the Governor’s office is objectively examined then it is clear that most of the Governors do not have either knowledge of the provisions of the Constitution or they act in such a manner purposely.
Shree Prakash used the correct language, he described himself as the agent of the Centre. The Constitutional Head and the agent are two different contradictory conditions, impartiality is vested in the denomination constitutional Head, while the agent denotes a partisan representative. Innumerable illustrations of such things can be given.

The number of doubts and the views given in favor and against indicate that there is a dilemma between the view whether the Governors office is useful or not, it has been most often suggested that the office of Governor is unnecessary expenditure incurred by the party in power at the Centre particularly the coalitions where confluence of extreme opposites may be there. In-order to accommodate its defeated politicians or to oblige its supporters.

Governor’s office is necessary or not or this post should be kept or not many opinions have been and can be advanced in this context. Many people feel that the Governor’s office is necessary because the States are Centre-Oriented, and there is parliamentary form of Government, during the Constitutional crisis this is considered essential. One of its reasons is also that according to Constitution the office of Governor is essential, some people consider it as essential so that better relations can be maintained between the executive and the legislature in the State.

Shree J.D. Sethi considers Governors as an important link in the relations between the Centre and the States though he is of the opinion that many Governors have not carried out their duties honestly and acted to benefit the Central Government, it can be said the office of the Governor is a dignified office which was maintained by many Governors during the period between 1950 and 1960, but after the fourth General elections this Institution become a subject matter of criticism and controversies. One reason for this is that the people who are appointed on
this office were not there because of their eligibility but because of their party affiliations, gradually the Centre also developed the tendency to use the Governors as a tool and technique to protect the interests of the Centre. In number of areas these Governors ignored the established traditions and gave decisions which have not been given earlier in similar circumstances, an allegation has been leveled that many Governors took as many as decisions either in the favor of the Central Government or the Congress party. To illustrate, in 1974, in Gujarat despite the demand of the people, the Governor Vishwanthan did not dismiss the Congress-Government of Chiman Bhai and did not dissolve the assembly, later on after the visit of Central Law-Minister Shree Gokhale to Gujarat and the conclusion drawn by him that there is stalemate in the States administration and nothing is being done as per the law, the Governor made the recommendation for the President’s rule, but by that time a lot of damage had been done. The Central Government did not hesitate to remove popular Governors and the Governors appointed by the opposition parties.

If the honorable and the dignified office of the Governor has to be maintained then it is essential that only efficient persons should be appointed on this post, also it should be ensured that the Centre should not interfere unnecessarily in their functioning and allow them to function as per the Constitution and established conventions. Leaving aside some exceptions the politicians should not be appointed on this post and instead retired Supreme-Court and High-Court Judges, efficient public servants, well known educationists, intellectuals and scholars should be appointed. The conduct of the Governor and his personality should be beyond suspicion one has to proof his chastity in view of the public of the State.
On 28th January 1988 the violent incidences that took place in the Tamilnadu assembly, were because of the partial report prepared by the then Governor Khurana about Janki Ramachandran. In order to bring Jailalita to power Khurana committed mistakes after mistakes, as a result of which he lost the trust which was expected form person of his stature. In Andhra Pradesh Governor Kumud Ben Joshi on many occasions by issuing Statements in favor of the Indian National Congress supporters made her self unpopular in the circles of the ruling Telegue Desham Party, there was a powerful demand in the State for her removal. It is difficult to say that the retired Government officers would have proved to be good Governors.

There have been good and bad Governors. The question is about the individual, if a person with character and principals is made the Governor he will be impartial and effective. But in the past and present the Central Government has thought of appointing such persons as the Governors whom it wanted to keep away from the mainstream politics or to reward the favorites, as a result of these parameters, mostly wrong persons got the post of the Governors. The third view point which emerges along with these two view points is that such persons were appointed as the Governors who blindly acted on the wishes of the Centre. This view point has become more strong from the time the Centre started the dangerous game of dismissing the State Governments through the Governors.

The time has come that the criteria of appointing the Governors ought to be changed, as propounded by the Sarkaria Commission the appointment of Governors should be done with the advice and consent of the concerned State Governments, and the persons having worked as Governor should not be appointed for any other Government work later
on, so that they can discharge their duties without any fear, while sending Governors to the States the recommendations of the commissions and the committees should be kept in the mind and implemented. It is necessary to check the devaluation existing in the existing of the Governor. The Governor should use their discretionary powers after fair and due consideration. The Governor should not keep themselves imprisoned in the raj bhawan, but should go to the people and understand their problems and make efforts to draw the attention of the State Government to see to these problems.

Generally the role of Governor has been very effective in some States, like Madhya Pradesh but in most of the times they have also been a target of criticism.

It would be appropriate to say in the end that the Governor is the Constitutional Head of the State. He is the dignified part of the Government. His post is of high status and non partisan. He is an essential and useful part of the parliamentary system of the Government. To make the office of the Governor effective, there is a need of development of the healthy parliamentary conventions, but also it depends on the holders of such office and their conduct; it is dependent on the Governor that how he proves himself useful, responsible, non-controversial and impartial in the changes occurring in the political equations.

The essential idea of having a nominated Governor was too have a person as the Head of the State who should maintain himself on a higher plane and would hold the scales without any political considerations, and, if necessary, to stand up on his own against the State Government as well as against the union Government. The Governor not being elected by the people of the State as a whole should keep himself off politics. As an impartial umpire his work is to see that the game of politics is played
fairly according to the rules, leaving the politicians to fight out the disputes amongst themselves. He should not conduct himself in a manner which suggests that he is inclined to support one party at the expense of the other. The rigors of Article 356 can be mitigated once the public is convinced that the Governor is in a position to exercise his own Judgement unfettered by pressures from the Centre. His role is just similar to that of the Ombudsman.

This problem involves two inter connected issues. The first is the appointment of the Governor and the second relates to his removal from the office. In order to give true meaning to the office of the Governor it is imperative to choose a proper person for filling the office, it should not be treated as a last refuge of politicians who are either rejected at the polls or pushed out by leadership by more dynamic rivals in the party, nor should the Governorship be treated as a sort of cold storage and trenching ground of garbage of politicians who could be brought back to active politics when deemed expedient. If a Governor became an active politician and even partisan, like Ajit Prasad Jain, Sampurna Nand, and Gopala Reddy, Governorship forfeits popular confidence and dignity of the office disappears. They really surrender themselves to their benefactors at New Delhi. It is therefore, highly desirable that outstanding persons in the political, social and educational life of the Country, with an unimpeachable reputation of honesty of purpose and conviction, and who are not controversial figures should be appointed to this August office.

Shri Girja Shankar Bajpai, H.P. Modi, K.M. Munshi, Mrs. Sarojini Naidu, Shri Prakash and Kailash Nath Katju, who adorned the Raj Bhavans in the early period after independence, are some of the shining examples of the Governors who exercised the most healthy influence in an unseen manner over the administration and the affairs of their States,
they functioned as elder Statesman outside the clash of party or parochial interests, though they were also political appointees. Even in near recent times Nawab Ali Yavar Jung, Governor of Maharashtra, had an insight bearing in mind that evoked the affection of all and his advice was always adorned and valued. C.P.N. Singh, who earlier served in Punjab and was recalled early in 1980 to Uttar Pradesh after years in retirement, had a reputation, despite his known feelings of a man with a mind of his own and who dropped out and excused authority. Pavate chopped and minced no matters and was straight forward and frank, he commanded unequivocal respect and administration from the Akali Jan sangh Coalition Government in Punjab. But there is a qualitative change in the caliber of the present day Governors, not because most of them are political appointees, but because some of them are ‘utterly and incorrigibly unfit for anything except to use their Raj Bhavan opportunity as a rest cure’. Political appointees in the past were neither physically nor mentally fit, but carried their own fads to become the norms of their official residence and style of life. The Tamil Nadu Governor, Prabhudas Patwari brought the office of the Governor into contempt with antediluvian ways, he disregarded the rules and norms that go with the name of the place and position and rigidity introduced his own philosophy of life in the Raj Bhavan.

The tenure of the office of the Governor is equally important. A Governor holds the office for a period of five years or he may be removed earlier as he holds office during the pleasure of the President. It has been rightly suggested that independence of the Governors in the performance of their duties and functions can be secured if the term of office is not extended beyond the prescribed period of five years, and they are not eligible for any future assignment after their retirement either under the
union or a State Government. Holding the office at the pleasure of the President, which really means the pleasure of the union ministry, the lure to get extension and the attraction of an equally lucrative and prestigious assignment after retirement induces a Governor to become subservient to the Centre or the Union Government. Accordingly, a provision in the Constitution should be made for a rigid term of five years only and he must not be removed from the office unless it is for proved misbehavior.

It is also of fundamental importance that healthy conventions may be evolved to guide the Governor in the exercise of his discretion in the undefined field. It is equally important that a healthy code of conduct should be prescribed to enable the Governor to independently discharge his responsibilities to the President under Article 356 and 357 and other emergency provisions.

Asoka Sen has suggested that the body of Constitutional experts committee should be set up representing the Parliament, the State legislatures the union Government and the State Governments “which should be charged with the duty of drawing up a code of conduct guiding the President and the Governors in the exercise of their respective functions under the emergency provisions of the Constitution as well as an normal times.

In the present context when political loyalties are shifting fast and when multi party Governments and Governments of different political parties are operating at the centre and the States, it would be desirable to define the powers of the Governor. Situations may arise where Governor may find that to be faithful to the Constitution and the laws and his oath of office, he has to take his decision independently though seeking advise from think tank.
The exact role and the position of the Governor in the body politic of the country figured prominently in the deliberations of the Constituent assembly, while none advocated that he should be an autocrat, it was widely felt that he should be invested with adequate powers to ensure the maintenance of high standards of the Government, this view in the past was upheld by Jawaharlal Nehru and Sardar Vallabhbhai Patel. In the memorandum on the principles of a model provincial Constitution prepared by the Constitutional adviser, it was provided that there shall be a Council of ministers to aid and advice the Governor in the exercise of his functions “except in so far as he is by under this Constitution required to exercise his functions or any of them in his discretion.” In a note appended there to, the Constitutional adviser observed that while for the most part the Governor would act on the advice of his Ministers, there were certain functions which even a responsible Head had to exercise in his discretion, namely the choice of the Chief Minister, the dissolution of the legislature (in certain events), and so on.

The office of the Governor was never meant to be an authority that is of ornamental sinecure without any job to perform. He is not required to be an inert cipher and his character, caliber and experience must be of an order that enables him to discharge with skill and detachment his dual responsibilities towards the Centre and towards the State executive of which he is the Constitutional Head. There is no substance in the assertion of Late Mrs Vijaya Laxmi Pandit, who resigned from the Governorship of Maharashtra, that the office of the Governor should be abolished, she felt that the only thing that could influence a person to accept Governorship was the salary that the office carried. She also expressed her dissatisfaction with everything that the Governor and the

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92 Vijaya Laxmi Pandit, the then Governor of Maharashtra
Raj Bhavan stand for sometimes the criticism has been even indecorous. A Chief Minister once described the Governors as "nothing but expensive irritations". Commenting upon the observations of Mrs. Pandit, Sri Prakash replied "it would indeed by a pity if any office is maintained in democracy that serves no useful purpose and it will be the greater pity if the only thing that can induce any person to accept the office is its salary". Sri Prakash held that "the only feeling that "even the President is not so". The question of abolition of the office of the Governor does not arise, even if it is abolished the day to day duties pertaining to the office of Head of the State, that is the ceremonial constitutional and dignified functions, will have to be performed by someone in some innovative way.

In the beginning things went smoothly and relations between the Governors and the Chief Ministers were good and cordial, the relation between the Governors and the Union authorities too were good they extended to the Governors the regard and consideration consistent with the dignity of their office. The people at large gave them the same respect and courtesy as in the past, but soon they were relegated to a position derogatory to their power and position. When the defeated generals of a victorious Army are raised to the position of authority and dignity as a consolation of their electoral and other discomfiture, it was small wonder that such men were least concerned with their duties and obligations and readily surrendered themselves to their benefactors in New Delhi. Shri Prakasa wrote that Jawaharlal Nehru "not only dealt with the Chief Minister over the Heads of the Governors, but in some cases, to my personal knowledge, he gave authority to non officials, to do things in the Raj Bhavans, which were the Governors residence and over which he was supposed to have full authority. In the beginning the Central Ministers

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93 Shri Prakash, former Governor of Maharastra, Assam and Bihar
took the place of the old executive Councilors of the viceroy whose place in the warrant if precedence was below to the Governors. The Prime Minister however, decreed that the Governors except in their own State were lower then central Cabinet Ministers.

It is on record that many of the Chief Ministers even ignored the Constitutional obligations under Article 167 to keep their Governors fully informed about the affairs of the State. Under the color of “aid” and “advice”, Chief Ministers arrogated to themselves the power to nominate the Judges and the Vice- Chancellors. Complaints to Jawaharlal Nehru, on the occasion of the annual conference of the Governors and otherwise too, “about the high- handedness” of the Chief Ministers, yielded no results. Every time, wrote K.M. Munshi, the matter was mentioned at the Governors’ conference Jawaharlal Nehru laughed it out.” Thus in anguish, Munshi described his job as Governor “to run a hotel and entertain guests.” The obvious result was that the Chief Ministers were, if not encouraged over, were certainly allowed to keep in direct touch with the central authorities on the Heads of the Governors.

The whole purpose of the Governorship was, thus nullified and the intention of the Constitution makers that the Governor was to be a link between the Union Government and the States was defeated and the main actors in this drama were Nehru and the Chief Ministers themselves who were active participants in the various committees of the constituent assembly where provisions of the Constitution were actually hammered. But with the coming into power of non Congress coalitions, professing different ideologies and pursuing different objectives, after the general election in 1967 in a good many States, and more especially what happened in Bengal, it dawned upon the union Government and others to

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94 K.M. Munshi, Member of Constituent Assembly
properly assess and appreciate the role of the Governor in a federal polity as in India and the peculiar and diverse conditions obtaining in every State essentially influenced by the people and their behavior as electors and their representatives. One of the former union Ministers who had then become Governor of a State exhorted other Governors “to recover their Constitutional status” as the centre and the States were no longer controlled by the same party. Dharam Veer, the Mysore (Karnataka) Governor, also said that it was the responsibility of the Governor to see that the Government of the State “is run in accordance with the letter as well as with the spirit of the Constitution”. When political complexions of political parties changed on account of shifting loyalties it becomes very necessary that the Governor should be very vigilant in order to ensure that the Government is run by a party or coalition of parties which have the majority in their favor, he has to ensure that by taking shelter behind certain Constitutional lacunas a minority Government does not continue to function indefinitely. He has also to exercise considerable discretion at the time of the formation of a Government. If there are multi party groups coming together this discretion has to be exercised very carefully to ensure that the group or the party which wants to form the Government is really in majority and can form a stable Government. For the functioning of the Constitutional Government in a State, the Governor is the kingpin on which the entire machinery of the State must revolve.

Apart from being the symbol of the State, the Governor is the representative of the people. There should at least be one functionary in the State to whom all the parties and interests can look up for disinterested advice, guidance and support, and no one can perform this function better than the Governor whose office, in some of its

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95 Dharam Veer, the then Governor of Mysore, Karnataka
responsibilities, has been conceived and created for this purpose. Generally speaking, a Governor is an elderly person who has had experience of life in various spheres and departments of national activity and ordinarily he is capable of giving advice. In India reverence to age is a part of culture and as such, the Governor can prove to be the best instrument of reconciling the differences between the Government and the opposition on a good number of occasions and measures and thereby ensure political stability in the State. Kailash Nath Katju, who had been the Governor of Bihar and Orissa States, succinctly said, “Non possession by you of any political powers makes no difference at all, I think the Governor of a State under the Constitution can easily gain that respect and affection from the people under his care, if he himself leads a dedicated life”. But it needs to be reemphasized that if the Governor is to judiciously exercise his functions and duties, the President should appoint only those persons who are truly worthy of the office. Dharam Vira appropriately said that the “time has passed when the post of Governor was considered to be a sinecure for political pensioners, inconvenient politicians or aging civil servants, it is now obvious, he added that a Governor “should be chosen with great care and should be a person who in times of emergency can deliver the goods”.

But whatever care may be taken, promoted politicians seldom forget their past prejudices and rivalries they often make political Statements which highly damage the office they hold.

To sum up, in theory and practice the office of the Governor of a State ought to be far apart. The country has seen Governors playing politics with impunity. Ram Lal, while in the Hyderabad Raj Bhavan

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*Kailash Nath Katju, the then Governor of Bihar and Orissa
*Ramlal, the then Governor of Andhra Pradesh
has been a classic example as also Jagmohan, in Srinagar. However, it was a game of politics at the behest of others, that saw a major indignant ground swell against the Congress (I) in the States of Andhra Pradesh and Jammu and Kashmir. There are others who have been occupying Raj Bhavans and playing politics locally or back in their own perishes. Of late, one who made and played politics with least concern for propriety was the Rajasthan Governor Vasantrao Patil, he came down from Jaipur, and camping in his son’s House in Bombay, demanded that the Maharashtra Chief Minister S.B. Chavan be dismissed. Patil had proclaimed to newsmen in Bombay that he did not see any incompatibility between the position of a Governor and his recent role in Maharashtra. “I am a Congress (I) man first and Governor next” was his rationale.

Two results emerge from this analysis and both are closely interconnected. The integrity of State politics is vital for the political health of the country and a major corrective effort is necessary to remove the distortions that have overcome an office of great Constitutional importance the office of the Governor. During the past more than sixty five years the office of the Governor has been misused and generally the Governors had been made handmades not only by the centre as well as the States, not only the prestige of the office suffered a serious decline but politics in the States became yet more unstable and unprincipled. The conventions of the parliamentary system of Government are much the same for the President as they are for the Governor and so substantially, are Constitutional provisions in so far as they deal with their position as Head of a State in parliamentary democracy. Importantly, there is another aspect of the Governor’s position and it is the federal aspect, his position

98 Jagmohan, the then Governor of Jammu and Kashmir
is a dual one; he is appointed by the president on the advice of the union government and holds office at his pleasure, at the same time, he is the Constitutional Head of a member State of the federal union the eyes and ears or confident of the union government and the conscience keeper of the State Chief Minister at one and the same time.

It was abundantly made clear in the Constituent assembly, particularly by T.T. Krishnamachari, that the Governor “who is to be nominated by the President, is not to be in any sense an agent of the Central Government”. He emphasized this point and made it unambiguously clear “because such an idea finds no place in the scheme of Government we envisage for the future”. This has since been confirmed by the report of the Committee of Governors (1971). The committee emphatically held that the Governor as Head of the State has his functions as laid down in the Constitution itself and is in no sense and agent of the President, not even when the Government of a State has been taken over by the President under Article 356, but numerous instances are there that prove that most of the Governors have all these years, especially since 1969, been used as agents of the centre and they had very often been used against Governments of opposition in the States.

It is also hard to believe that the Constitution framers had even in mind to place the Constitutional Head of the State in so delicate a position and leave him unprotected against arbitrary dismissal by the Centre, arbitrary dismissal really makes a mockery of federalism, as the Governor is the Head of a member State. Federalism is based on equality of status and coordinates powers between the two sets of Government.

It is therefore, necessary to correct the present imbalance in regard to the Governor’s office by giving him greater independence vis-à-vis the

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99 T.T. Krishnamachri, Member of Constituent Assembly

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Centre, and the crux of the problem is that there is something fundamentally wrong with the procedure of appointment of Governors. In view of the Statement made by Giani Zail Singh, the then Home Minister, in March 1980, that it is “proper for all political appointees including Governors to resign immediately after a change of Government at the Centre; at least democratic traditions demand it.” It is significantly necessary that the Governor’s appointment should not be left to the caprice of the union home ministry nor should it be left to the predilections of the State chief minister.

In Lal Bhadur Shastri Memorial Lectures at Poona University on “conflict between the centre and States”. K. Subba Rao, former Chief Justice of India, suggested that the Governors “should be appointed by the President in consultation with Ministers but on the advice of a High powered body and he should be removable only on basis of a verdict of misconduct pronounced by the Supreme Court. A Governor so removed should not be eligible for any central and State Government position.” It is a bit cumbrous and seems radical reform. Nath Pai, Member of Parliament suggested that the appointment of a Governor should be subjected to ratification by the Parliament. The proposal merited serious consideration, but the Government was in no mood to accept it. An innocuous proposal is to give the Governor a fixed term in office and make him removable only for proven misconduct. This simple reform alone will make the Governor far more independent then he is today. It will also enable him to be more candid in his dealings with the Chief Minister and pointing out the lapses in the State administration.

Many States of the Country are facing the problem of regionalism,
casteism, naxalite problem and separatist tendencies, like Jammu Kashmir, Chattisgarh, Assam etc. India is surrounded by seven countries, the two super powers Russia and China nearby, and there are disputes with the neighbours like Pakistan, Bangaldesh, Nepal, and Srilanka. The problem of international terrorism is posing dangers to the security of the Country, besides the situation of the States is affecting internal as well as external security and unity and integrity of the country, in such a situation it is the Institution of Governors which has to play an effective role. Strong and impartial Governors are needed in present times and circumstances to ease the situation. In the 47th Governor’s Conference, President Pranav Mukharjee,\textsuperscript{103} said, that the Governors must work within their constitutional limits and help and support their Governments for educational reforms, environment, and change in climate in the State.

After thorough study of the subject and analyzing related aspects of the Institution of the Governors in India, analysis and explanation of the facts, data and principles based on social, legal, political and philosophical premise, the researcher found that her hypothesis has been proved positive.

On the basis of gross observations and conclusions the researcher has formulated certain suggestions which would be effective in improving the position and functioning of the Governors of States. In the light of a comprehensive observation the researcher suggests certain measures, in the Indian system the Governor’s position is special and keeping in view the Indian politics and after reviewing all the matters related to the office of the Governor some suggestions can be put forward.

\textsuperscript{103} Pranav Mukherjee - President of India
6.2 Suggestions regarding the Institution of the Governor

1. In India there is parliamentary form of Government, the office of Governor is very essential and important, as the constitutional Head of the State it can not be abolished but has to be reformed and maintained, it is to be seen so that the functioning of the institution improves, for that purpose, the legislature, executive, judiciary, media and all the political parties should come forward and make collective efforts to make the reforms. The media should play a creative role and enhance awareness to begin a healthy debate, the Government should inculcate the consent of all the parties after calling an all party meeting and by forming a committee to prepare a draft for the amendment in the Constitutional provisions relating to the Governors with the consultation of the legal and constititution experts keeping in mind the judicial directives, the draft should be presented in the parliament and a detailed discussion should take place in both the houses and rising above party politics the changes should be made in the constitution, for the improvement of the position and the functioning of the constitutional office of the Governors.

2. The President should establish a standing committee consisting of such members who are impartial popular and eminent for selection and recommending the name of the Governor, including the Vice President, Speaker of loksabha and the leader of opposition in both the houses of parliament to select the Governors, one more committee consisting of legal experts, members of parliament and eminent persons from public life should be constituted, to assist the first committee, advice of this committee regarding the appointment of the Governor should be considered by the President.
3. The list of the candidates of Governorship should be approved by the National development Council. The list of the proposed names should be prepared of the people from field of education, art, literature, sports, social work, science, legal luminaries, retired defence personnel and intellectuals, names of such persons should be included in the list of the candidates for the Governorship who can understand the problems of the people and can get respect from the other political parties also.

The persons with known expertise and having honour and status should be appointed as Governors. In the words of V.M. Tarkunde, "Persons with dignity should only be appointed as Governors".

Generally it has been noticed that persons who are to be kept away from active politics are appointed as Governors, even if their political life has been controversial or tainted, this is not in the interest of the office of the Governor as well as the political system. In present conditions it will not be appropriate to say that the politicians should not be appointed as the Governors, but it can be definitely said that only such persons should be appointed as Governors who are well versed in administration, education, social service or any other field where while working they had earned a name and fame and are capable of understanding the Constitution. They rise above party politics and have the efficiency of taking independent and impartial decisions. It should also be ensured that persons discarded and rejected by the people in the elections should not be accommodated in this glorious and esteemed office.

4. Such persons should be appointed as Governors, whose personality and conduct is exemplary, retired, veteran overaged politicians who
are supporters of ruling party at the Centre should not be appointed. People having non controversial life.

Neutral, impartial, non partisan, dignified and dynamic personalities should be appointed as Governors who can perform their Constitutional duties perfectly. The age factor is to be kept in mind physically and mentally fit people are only to be appointed.

5. As far as possible the will of the Chief Minister of the concerned State should be respected, regarding appointment of the Governor in the State, to avoid undue tensions. Recently it has been seen in many States that there have been rifts and disputes between the Governor and the Chief Minister, efforts should be made to avoid this and therefore, this practice should be adopted compulsorily in every case that the person who is appointed as the Governor, is acceptable to the Council of ministers, therefore before appointing the Governors, the Central Government should consult the Chief Minister of the concerned State.

6. The healthy tradition of appointing a Governor from outside the State should be implemented strictly.

7. Five year term of the Governors should be strictly provided generally subject to certain exceptions. The Governor should not be removed from his post unless serious charges are leveled against him, for the misuse of the powers. Grounds for premature removal from the office should be laid down, such as corruption, bribery, sedition, proved misbehavior, inefficiency and violation of the Constitution. There should be no removal on the basis of political ideology opposite to that of the central government.
8. The Governor should be given the causes for dismissal and must be given a chance for giving a representation, and the matter should be examined by a high power committee.

9. After completion of the tenure as the Governor, he should not be made a minister again, and not be allowed to enter active politics after the end of tenure.

10. The Administrative reforms commission in its report has suggested that a person should be appointed as Governor only once, in some cases it has been noticed that in order to grab the post of Governor second time, some Governors surrendered to the unjust directions of the Central Government. Therefore by adopting the practice of appointing the Governor once, the conflicts can be controlled. No person should be appointed as the Governor, more than once.

11. The appointment of the Governor should be made by rising above the party politics. The defeated politicians should not be appointed as the Governors. No political appointments and no political removals are to be made. The politicization of the Institution is to be stopped and banned forever.

12. The demand of transfer of the Governors from one State to another during his tenure should not be fulfilled.

13. The State Government should not accede to the demand for the recall of the Governor by the Centre, unless certain extra ordinary circumstances demand such an act.

14. The sphere of the activities of the Governors should be increased, so that their responsibilities could be corelated with the common people's problems.
15. In the recent times conditions have become such in which the dismissal of the Governor and the transfer in fact have resulted in controversies between the State and the centre. The central Government by adopting limited role in respect of Governors should keep as far as possible the post of Governor beyond political controversies.

16. Complete foolproof guidelines cannot be laid down in respect of contingencies arising in future. Infact, in the present context the Governor himself can use his discretion as the last option, it is necessary that only such persons who have knowledge about parliamentary democracy should be appointed as Governors and should be kept away from political pressure and allowed to carry out their Constitutional responsibilities freely. Governors own conduct can earn them respect from all quarters. They should be allowed to function impartially. Once appointed by the President as the Governor, there should be no undue pressure on them. The Central Government should not unnecessarily interfere with the functioning of the Governors and use them as tools to implement its agenda and destabilize the opposition ruled State Governments by using them as pawns.

17. The discretionary powers of the Governors should be coded and revised specially, and proper guidelines should be given, for their excercise.

In December 1970 "Bhagwan Sahay Committee" in its recommendations has Stated that "whether the Council of ministers has the confidence of the House or not should be decided on the floor of the House and not in the Raj Bhawan".
It is simple to follow this recommendation. If the Governor has any doubt about the majority of the Chief Minister then he should advice the Chief Minister to summon the assembly as early as possible and prove the majority. The Ministry can be dismissed only when the Chief Minister disregards the advice of the Governor.

If the party positions are not clear in the assembly and there are many claimants for the post of the Chief Minister then the Governor will have to use his discretion in selection and appointment of the Chief Minister, but in every condition he should summon within 3 days the session of the assembly and ask the Chief Minister to prove his majority, to give more time to prove majority gives the chance for horse trading, and this condition will give birth to political tension and chaos.

18. The Governor should use his wisdom and take the decisions independently. The occupants of the Governor’s office should keep in mind that they owe their allegiance to the Constitution of India and should rise above party politics and discharge their Constitutional obligations perfectly. It is incumbent that by providing an impartial leadership they should contribute for the development and welfare of the State.

19. The Governor should not indulge in competition and should not misuse the powers as Chancellor of Universities.

20. The Governor should not implement the Centres agenda and should not be biased towards a particular party.
21. The Governor should not interfere in day to day functioning of the State. The Government also has to see that the extravagance of the Governors is stopped.

It has become essential, in the interest of our constitutional system, to retrieve and restore the glory and dignity of this office of Governor. Let's hope it happens as earlier as possible.