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CHAPTER - I

"If there is one place on the face of this Earth where all the dreams of living men have found home from the very earliest days man began the dream of existence, it is India"

- ROMAIN ROLLAN

INTRODUCTION

1.1 Genesis

(A) India as a Nation

The Sub continent of India stretching from the lofty Himalayan Mountain ranges in the North the patkai, the Chittagong hills in the East, the kirthar ranges in the West, and Kanyakumari in the South, surrounded by the Arabian sea in West, the Bay of Bengal in East and the Indian Ocean in the South which included Pakistan and Bangladesh of today was known as Aryavrat or that is Bharata varsha, the land of Bharata a king famous in puranic tradition and epics.

The name India was applied to the territory by the Greeks and it corresponds to the Hindu of the old Persian epigraphs, it is derived from the Sindhu (Indus) the great river which constitutes the most imposing feature of that part of the sub continent which seems to have been cradle of its earlier known civilization, closely connected with Hindu are the later designations and denominations as ‘Hind’ and ‘Hindustan’ as found in pages of the medieval writers. The greater part of the Sub Continent had been knit into almost
one political unit in 19th century, but from 15th August 1947 two self-governing Dominions were carved out of it known respectively as India and Pakistan which did form parts of the British commonwealth.

Inhabited by the Hindus the Muslims the Christians the Sikhs the Parsees the Jews and others a pluralistic society having different paradoxical Cultures, as a developing economy having a unique politico social structure and various political ideologies the land extra ordinary rich in natural beauty and natural resources, the paradise of the world if any where exists that is Kashmir is an integral part of the Country.

(B) History of India

History is a record of the achievements of man. The history of India like the annals of every other country begins with an account of the times when men first settled in this land, according to the records the earliest settlers of India have been divided into two classes viz – Paleolithic old stone and Neolithic (new stone age also known as prehistoric age. The ancient Indian history begins with the archaeological excavations carried at Mohenjo-Daro, Harappa, Sind Baluchistan and Punjab have proved that some four or five thousand years ago a highly civilized community known as Indus valley civilization flourished in these regions in the same period which witnessed the growth of ancient civilizations in Egypt and Babylonia. The ancient history of India after it was termed as the Aryan civilization or the early Vedic age people who evolved this culture are known
as Aryas or Aryans and the literature of the Aryans was called the Vedas.

The history can be divided into early Vedic and later Vedic civilisation, the Epic age or Mahakavya kaal in which Ramayana, Mahabharata and Bhagwat Geeta were written.

The History of India can be divided into three phases are as under:-

(i) The Ancient History
   (a) The Mauryan empire
   (b) The Gupta empire

(ii) The Medieval History
   (a) The Sultanate Period
   (b) The Mughal Period.
   (c) The Hindu Kingdoms.

(iii) The Modern History

(i) The Ancient History

The first phase of the Indian history is known as the ancient and is the Golden era of Indian history. Which is dominated by the great rulers of the the Maurya and the Gupta dynasties.

(a) The Mauryan empire

In the fourth century B.C one of the most illustrious and most extensive empires was formed in India, the new Indian leader who bore the name of Chandragupta Maurya, was the founder of the Mauryan empire, his successors Bindusara and Asoka,
were great rulers of ancient India. Ashok was one of the greatest king of the history of the world.

(b) The Gupta empire - 320 AD (510-511)

After the fall of Mauryan empire the new dynasty known as Gupta dynasty came up, Chandragupta I, samudra Gupta, Chandragupta II, C. Vikramaditya (380-413), kumargupta and skandagupta were the famous kings of the dynasty. The Gupta period has been regarded as one of the most glorious periods of the Indian history and is also referred as the classical age of ancient India. After the fall of the Gupta empire India became weak as there was no strong ruler to keep the Country united, as the result the Arabs and the Muslims invaded India.

(ii) The Medieval Indian History (The Sultan’s and the Mughal’s) the advent of the Arabs

The second phase of the Indian history also known as medieval is dominated by the Muslim rulers. The history can be divided into two parts:-

(a) The Sultanate Period

The Slave, the Khiliji, the Tughluq the Sayyed and the Lodi were the main dynasties of the Sultanate Period. Qutub-Din Aibak, Illtutmish, Razia Sultan, Allauddin Khilji, Ibrahim Lodhi, Feroz Tuglak were the famous Sultans.
(b) The Mughal Period

The history of India from 1526 A.D. to 1556 is mainly the story of the Mughal Afghan contest for supremacy in this land, the invasion of Timur, who occupied the province of Punjab accelerated the fall of Delhi sultanate one of his descendents Babur laid down the foundations of new Turkish dominion followed by his son Humayun, who was defeated by Sher Shah Suri in Bihar Sher Shah Suri established the Afghan power in India, though short régime by ousting the newly establish Mughal authority – the empire did not long survive after his death.

Humayun restored the Mughal dominion and after him his 15 year old son Akbar succeeded him followed by his son Jahangir (Salim) and his successors Shahjahan and Aurangzeb. The death of Aurangzeb was the signal of the destruction of the mighty Mughal empire Bahadur Shah Zafar was the last Mughal ruler.

(c) The Hindu Kingdoms

The Rajputs of Rajasthan Marwar and Amer, the Ranas of Mewar, the Chouhans, the Sisododias, and the Bundelas were the famous Hindu kingdoms; Maharana Pratap and Pritvi Raj Chouhan were the great rulers daring soldiers and successful military conquerors. Shivaji was the great Maratha ruler a great warrior and a patriot. The Nawabs of Hyderabad, Oudh, Mysore Arcot and Bengal and Tipu Sultan
occupy an important place in the Indian history. The Jats the Sikhs the Bahamani Kings of the deccan and Yadavs all were powerful warrior communities of India.

(ii) **The Modern Indian History (The advent of the European Powers)**

The beginning of the 18th century which includes today's India, Pakistan and Bangladesh were under the Mughal regime, but the disintegration of this mighty empire led to many small independent States and the political situation of India became very weak, anarchy was prevalent throughout the Country, taking the advantage of this situation the foreign aggressors entered India mainly the European powers with their commercial interests came to India.

The Third phase of Indian history also known as Modern history is the advent of the Europeans and the consolidation of the British power in India. Vasco de Gama found a new route to India and reached the famous port of Calicut.

The European powers the Portuguese, the Dutch, the English East India company and the French East India company came to India for trade, after conflict between the rivals the British East India Company won, gradually the British East India company started from Bengal, Bihar and Orissa but its colonial and imperialistic policy established its control over the whole country, and led to the rapid expansion
of the British dominion in India. The discontent against the British East India Company led to the revolt of 1857, the great leaders Nana Sahib, Tatya Tope, Rani Laxmi Bai of Jhansi and Mangal Pandey played a vital role in the first war of Indian independence, unfortunately the revolt failed but the effect of the rebellion was that the control of the Indian Government was finally assumed by the crown from the company by the Act of 1858, all the powers exercised by the East India company were vested in the Secretary of State for India and his council, he was member of the British cabinet and directed and controlled the affairs of the Government of India. The Government of India consisted of the Governor General and his council and the provincial Governments were under them.

(C) The Period of National Awakening

Most important phenomenon in new India is the growth of national consciousness which ultimately found active expression in the formation of the Indian National Congress, Muslim league and other bodies of the kin.

In spite of political convulsion and economic retrogression the British rule in India gave a remarkable outburst of intellectual activity in the Country and a radical transformation in her social and religious ideas took place, the changes came from the introduction of the English education which led to the reawakening. Ravindra Nath Tagore, Devendra Nath Tagore, Keshav Chandrasen, Raja Ram Mohan Rai, Swami Dayanand Saraswati,
Ishwarchandra Vidyasagar, Swami Ramakrishna Paramhans, Annie Besant, Swami Vivekananda, were the great social reformers who made efforts for the eradication of the social evils like, sati system and child marriage and encouraged widow remarriage, women education and upliftment of the backward classes, they worked for the emancipation of women and enlightenment of the society. The Arya Samaj, Ramakrishna Mission, Prathna Samaj, Brahma samaj, Theosophical society all contributed in creating awakening among the people of India, as a result many social and religious reforms took place.

**D) The British Colonial Rule**

The control of the British parliament over the Government of India from 1858 exercised through the Secretary of State led to the tyrannical rule the atrocities committed against the people and the denial of Self Government by way of suppression, oppression, humiliation, torture, inhuman treatment and the policy of discrimination followed by the Britishers led to great dissatisfaction among the Indians against the British rule. The Indian National Congress was established by A.O. Hume in 1885, an organization chiefly with the aim of criticism of the Government policy and demand for reforms. In the beginning the Government had a sympathetic attitude towards the congress, but, later on the views changed and the Government started hating the congress, consequently the peaceful reformist and cooperative policy of the congress failed.

In 1915-1916 Mrs. Annie Besant, and Bal Gangadhar Tilak established the All India Home Rule League for achieving self Government for India. The movement was launched and got
immense public support. In 1919 the khilafat movement was started collectively by Hindus and Muslims, the Rowlatt act passed by the British parliament was severely opposed — a public meeting was held in Jallianwala bagh in Amritsar Punjab on 13th April 1919 General Dyer ordered firing, and more than 1000 innocent people were killed. In 1920 Gandhiji started the Non Co-operation movement but due to the chauri chaura incidence it was suspended.

In March 1930 the Civil disobedience movement was started by Gandhiji, he began the Dandi march and broke the salt law with his satyagrahis, the movement spread over the whole country, the boycott of foreign goods and intoxicants took place but Gandhiji was arrested and the agitation came to an end. During the II world war the congress supported the British Government with the hope that they would grant independence to India, but after the war came to an end they declared imperialistic swarajya and so the policy of the Congress changed completely in its Mumbai session, the Congress passed the resolution of Quit India on 8th August 1942 the movement began, Gandhiji was arrested but the movement expanded and became a mass movement.

(E) The Achieving of the Independence-1947

In view of the crucial scenario the British Government realized that the colonial rule cannot be maintained any more, the Indians opted for violence and showed their protest against the British rule the movement shook the roots of the British regime in India, As a result, England sent the famous Cabinet Mission to India in March 1946, to consult the Indian leaders’ for making a constitution for India. The mission comprised of 3 members of the British cabinet lord Pathic Lawrence, Sir Stafford Cripps and Mr.
A.B. Alexander, there were prolonged negotiations between the members of the mission and the leaders of the Indian National Congress.

Lord Mountbatten was appointed the Governor General of India, after prolonged negotiations with the Congress and the Muslim league he put forward his famous June 3 - Plan in which he suggested the partition of the Country, into India and Pakistan that is the Two Nation Theory. The scheme was accepted both by the Congress and the Muslim League. The terms of the Mountbatten plan were put in the form of a bill which was passed by the British Parliament on July 18th, 1947 as the India Independence Act. The Act provided for the establishment of two Dominions of India and Pakistan from August 15, 1947. The Act terminated the British authority over India and gave full authority to make its own Constitution and India became Independent. The 250 years of slavery, oppression, discrimination, and the atrocities of the British colonial rule finally came to an end, the country achieved swaraj and a new era of self reliance and self determination began.

(F) Role of Mahatma Gandhi and other Leaders in the Freedom Struggle of India

Mahatma Gandhi known as the Father of the nation was born in Gujarat and went to South Africa for his higher studies there he had to face many problems due to the policy of racial discrimination and was humiliated many a times, he returned to India with the degree of Bar At law and started practicing, here he came in touch with Gopal Krishna Gokhale who became his political guru and persuaded him to enter politics. He entered
politics in year 1915 finally, and started the agitation in kheda and champaran gradually his influence increased tremendously, he played a very important role in the national struggle and become the most powerful leader, and lead the country to achieve Independence in 1947 with the weapon of satyagraha and non violence, together with the moderates the militants and the revolutionaries. The contribution of the other great leaders Bal Gangadhar Tilik, Lala lajpat Rai, Vipin Chandrapal, S.N. Bannerji, C.R. Das, Arvind Ghosh, Veer Savarkar, Dr, Rajendra Prasad, Pandit Jawahar Lal Nehru, Pandit Madan Mohan Malviya, Chandra Shekhar Azad, Ramprasad Bismil, Maulana Abdulkalam Azad, Ashfaqullah Khan, Firoz Shah Mehta, Dada Bhai Naoroji, Bhagat Singh, Sukhdev, Khan Abdul Gaffar khan, Annie Besant, Subhash Chandra Bose, Aruna Asaf Ali and the sacrifices of thousand of martyrs and the masses of India the peasants labourers, businessman, doctors, engineers, lawyers, writers, poets and the social workers the rich and the poor people belonging to all the strata’s of the society, all religions castes and various regions, man and women throughout the Country, helped unitiedily in achieving the Independence of India.

(G) The Framing of the Constitution

After becoming independent on 15th August 1947 the task of framing the Constitution for the Country began, the constituent assembly was formed in November 1946. The important members were Dr. Rajendra Prasad, Sardar Vallabh Bhai Patel, Maulana Abul Kalam Azad, Dr. B.R. Ambedkar, Gopal Swami Ayangar, Acharya Kriplani, T.T. Krishnamachari, Govind Ballabh Pant, H.N. Kunzru, Dr. S. Radhakrishnan, Dr. Jaykar. Liaquat Ali Khan,
Dr. Sachidanand Sinha, Alladi Krishnaswami Ayyar, Shri H.S. Gaur, Abdul Ghaffar Khan, K.V. Shah, Masani, Pt Jawaharlal Nehru, K.M. Munshi, Sir B.N. Rau, Sarojini Naidu and others.

After great deliberations and discussions the draft Constitution of India was prepared, amended and was finally approved, the constitution was adopted on 26th November 1949 and it came into force on 26th January 1950. The Constitution declares India to be a Sovereign, Socialist, Secular, Democratic Republic.

1.2 Significance of the Institution of the Governors of States

"The Governor is like a torch which can be used for the light in the darkness, as and when the darkness rises, the utility of this torch will be known".

-C.M. Poonch

The Indian Constitution is the supreme law of the land, having paramount importance, it is a mixed blend of many other working Constitutions of the world, it establishes constitutionalism, rule of Law and democracy it is federal with a unitary bias. The nation comprises of twenty nine States and is known as the Union of India. Though the Institution of the Governor was established initially by the British regime in India, after the independence the Indian Constitution makers understood and accepted the Constitutional, political and social necessity of this office for the States of independent India, and agreed to keep the Institution of the Governors in the new Constitution in a distinct form and fashion, as it was not possible to incorporate the provisions relating to the nature and office of the Governor in the way as it was provided under the Government of India Act. 1935. Since the Union of India and the States were intended to adopt the parliamentary system of Government and every parliamentary system requires a Constitutional Head thus, to satisfy
this formal requirement the Governors’ were to be kept in the States. The idea of nominated Governors was taken from the Canadian Constitution.

Another reason of maintaining this old Institution was the emergence of unexpected and disruptive situations, and other like problems in the years 1947-49, which endangered the unity and integrity of the nation, the problems emerging due to partition, food grain problem, problem of planned development and the problem of narrow provincialism and communalism and others sought the attention of the constituent assembly to establish a powerful and strong center to strengthen the national unity, and for that purpose there was a need to create an office under the Constitution to be appointed as the representative of the center in the States, who would work as a golden bond to establish harmonious and cordial relations between them, and help in protecting and strengthening the nation’s unity and integrity, and this could only be the Institution of the Governor who would be able to perform this task with all best assistance.

The Indian Constitution is a Federal Constitution to a very large extent with subsidiary unitary features which establishes a dual polity – a two tier Governmental system with the Central Government at one level and the State Government at the other. The Constitution also establishes the parliamentary form of Government the essence of such Government is that the President is the Constitutional Head of the State and the real executive powers are vested in the Council of ministers, headed by the Prime minister at the national level. The pattern of the Government in the States is also the same as that of the union the State executive consists of the Governor, who is the Constitutional Head and the Council of ministers Headed by the Chief Minister; is the real executive and actual ruler of the State. Article 153 creates the office of the Governor who is the nominal
titular or the ceremonial Head of the State as the President is of the Union, the executive power of the State is vested in the Governor and all executive acts of the State are to be done in the name of the Governor. According to Article 153 of the Constitution the Governor is formally appointed by the President of India on the aid and advice of the Council of ministers and the Prime minister. The central Government has absolute powers to appoint the Governors for the States. He she is the nominee of the centre and has to play a crucial dual role one as a Constitutional Head of the State in normal circumstances and one as a representative of the union in abnormal situations. The Governor of a State plays a multifaceted role, he is a vital link between the centre and the States and it is his duty to keep the centre informed about the affairs of the State which help the centre to discharge its Constitutional functions and responsibilities towards the State.¹ But the role played by the Governors in different States in the past and the present and their functioning has been dissatisfactory and has made the office controversial and a bone of contention not only between the centre and States but also between the ruling and the opposition parties and has become an issue of litigation in the courts enormously with the passage of time.

The misuse of this office is at massive level since 1967. The party in power at the centre misused this office to serve its vested interests as a result many controversies came up. Many objections have been raised regarding the qualifications, the procedure of appointment, the tenure and the procedure of removal from the off and the so called discretionary powers and above all the role played by the Governors since the commencement of the Constitution till today. Some of the States argued that there is no need of this office therefore it should be abolished without

¹ Dr. M.P. Jain Indian constitutional Law 2010 page 465
any delay. The Governors have caused gross Constitutional improprieties and made mockery of the Institution as well as democracy. It is therefore proper time that the Institution and the role of the Governors should be thoroughly researched investigated, debated and discussed, and necessary amendments should be made in the Constitution to incorporate the directions given by the Courts and the recommendations of various commissions and committees formed by the Government from time to time to give suggestions regarding the Institution to protect the independence and impartiality of the Governors and to restore the high dignity attached to this August office by the Constitution, specially to check the misuse of the Governor’s powers i.e., under Articles 163, 164, 174 and 356 of the Indian constitution which provide for their discretionary powers and also focus on the criteria of appointment of the persons as Governors, securing their tenure and to check their removal on the basis of ideological affiliations, while this office has been one of the most prestigious institutions that we have devalued, the most in 65 years.

Cooperative Federalism and harmonious Centre-State relations are very much essential for maintaining the Unity and integrity of the nation and for the security and the development of the country. The Institution of the Governors which is link between the center and the States has become very controversial and could not live up to the expectations of the founding fathers of the Constitution as well as the Indian masses. The whole problem lies with the failure of the Governors to perform their functions and duties in a perfect manner. The abuse of powers and the politicization of the office are also very much responsible for the crisis. In the provisions of the Constitution itself regarding the qualifications, the procedure of appointment the tenure, the mode of removal and the powers of the Governor there are many inconsistencies and ambiguities. A long
Journey has been completed in almost 65 years and this Institution has been the cause of much criticism with filth and storms between the centre and the States. So long their existed one party rule at the centre and the States no difficulty ever arose but due to the rise of local parties in the State politics and governments of the opposition parties being installed in the States and the hung parliaments at the centre the balance of smooth relationship has undergone changes facing turbulent challenges, what is now most wanted is the confidence in the Governor by the centre and the States both, which has become now a fairy tale in which we don’t believe in and is a childish fiction. Many illustrations can be added to show and get a proper inference that politically socially and Constitutionally the Institution of the Governors according to Jurist’s Constitution expert’s politician’s, bureaucrats, Judges, lawyers, Journalists, academicians, scholars and other intellectuals has lost its utility altogether and if it has to be retained at the cost of the expenditure defrayed on the Governor which is recovered in the form of :he taxes, the money earned by the honest and hard labour of sweat, than it does need incisive surgery. The Institution craves for severe amendments so as to ascertain and recast the role of the Governors in the State administration in general and in the perspective of Article 356 specifically. Some measures are to be evolved without delay in our Constitutional Jurisprudence to reform the Institution, as the Governor is not an employee of the Central Government but is an Independent and essential Constitutional office for the political system of the country and on its functioning depends the success of the federal polity

In the early stages of the drafting process, it was thought that Governors might be directly elected. under this scheme Governors would also have some powers to exercise, the assembly finally rejected the idea
of elected Governors, believing no doubt correctly, that there would be friction between them and the popular ministries. The decision to provide for nominated and not for elected Governors was frequently couched, however, in terms of ensuring the executive’s efficiency that the change might affect the federal structure by centralizing further.

The whole basis of the Constitutional structure was harmony between the legislature and the executive. So if the choice of the Governor was left to the President and his Cabinet they might choose a person of undoubted ability and position in public life who at the same time had not mixed up in provincial party struggles of factions; a person who was likely to act as a “friend and a mediator” of the Cabinet and help in the smooth functioning of the State Government. Alladi Krishnaswmi Ayyar stressed the position of the Governor as a Constitutional Head a sagacious councillor or and a advisor to the ministry, he hoped that the convention would develop where by the Government of India would consult the State Government for the selection of the Governor, supporting the argument Jawaharlal Nehru had expressed the fear that, apart from the expenditure of time and money in the election of Governors would encourage a “narrow, provincial way of thinking and functioning of each State.” It would be better if a Governor was not intimately connected with local politics and functions in a State, but a more detached figure, acceptable to the State no doubt, but not known to be a part of its party machine.

The Governor under the Indian Constitution is a dubious functionary; he is a ceremonial figure as the Head of the State and has solemn functions in that capacity, some of them are really effective powers. As a rule, the Governor is bound by the advice of his cabinet, he
cannot be Janus-faced, looking in both directions; he cannot be a central spy or an agent to carry out the union's mandate.

Unfortunately the Governor is in a very embarrassing position being appointed by the Centre but obedient to the State cabinet, he is a pathetic functionary, sometimes asked to perform pathetic functions by the Centre and has to be an independent authority, the allegiance being wholly to the Constitutional obligations, and to act on the advice of the Council of ministers. He may, as in England, caution, encourage or otherwise give advice, but ultimately must abide by his Cabinet's recommendation for action, that is why sometimes it has been said that a Governor is a glorified cipher.

But this is not wholly true; they do have power to ask for information, explanation and reconsideration. If wisely used, these functions plus the power to refer bills to the President, for consideration and assent, may make the Governor a factor to be reckoned with.

So it is clear that the Governor is more than a glorified cipher. He reigns, but he does not rule. He advises, but is bound by the advice of his ministers. He is an elder Statesman but not an authority as the executive Head of the State. Such is the contradictory controversial delicate Constitutional balance.

(A) Position of the Governor compared with that of the President of India

Though the Governor is the executive Head of the State just as the President is the executive Head of the union, a Governor's position compares unfavorably with that of the President, for the following reasons:

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1 Acharya Durga Das Basu Commentries on Constitution of India 2009 page 6082

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(i) A Governor is appointed by the President while the President is elected.

(ii) The Governor may be removed at any time by the President on any ground, and without reference to the Parliament. The President may be removed only by the means of impeachment by the Parliament.

(iii) While the President has the power to appoint a number of officers and Commissions, the Governor has been conferred the power to appoint fewer officers viz, the Advocate-General, the personnel of State Public Service Commission etc, but even then the Governor has no power to remove the personnel of the State Public Service Commission; they can be removed only by the President on the report of the Supreme Court.

(iv) By reason of his ‘diplomatic’ powers, the President comes in touch with the foreign States and becomes an international figure; a Governor has no such opportunity.

(v) The President is the formal Head of the armed forces, but the Governor has no such status in relation to the armed forces in the State.

(B) President’s Control over the Governor

It is natural that through the power of appointment and removal, the President will secure more control over the Governors of States than was possessed by the Governor General under the Government of India Act 1935, for under that Act, the Governors

3 ibid page 6095
were appointed by the Crown without consulting the Governor-General (Section 48(1)). Nevertheless, it seems that the Governor under the Constitution being a Constitutional Head, the President's control in the day-to-day administration of the State through the medium of the Governor will not be as effective as under the Act of 1935. For under that Act, a large sphere of the provincial administration was taken out of the reach of ministerial advice, by requiring the Governor to Act in the exercise of his "individual Judgement" or in his "discretion", and in so far as the Governor was required to act in his discretion, or to exercise his individual Judgement, he was under the general control of the Governor General and had to comply with such particular directions as may from time to time be given by the Governor-General in his discretion.

But, as we see (under Article 163, post), under the Constitution the scope of acting in his discretion, has been narrowed down, save with respect to such matters, a Governor can Act only upon ministerial advice and the President shall not thus have any power of general superintendence over the State administration as was possessed by the Governor General under Section 54 (1) of the Act of 1935.

The Supreme Court twice has delivered rulings on Governor's Constitutional status. The Constitution embodied the British Parliamentary system, and the status of Governors and the President- corresponds to that of the Monarch in the United Kingdom. More definitely, it ruled unanimously in 1979 that because a Governor is appointed by the President and holds office
at the President’s pleasure, does not make the Government of India an employer of the Governor.

The key factor in the Centre – State relations is the Governor who is a bridge between the union and the State. The President has been empowered to appoint him as executive Head of the State under Article 155.

The executive power is vested in him under Article 154 and exercised by him with the aid and advice of the Council of ministers, the Chief Minister as its Head. Under Article 159, the Governor shall discharge his functions in accordance with the oath, to protect and defend the Constitution and the law. The office of the Governor, therefore, is intended to ensure protection and sustenance of the Constitutional process of the working of the Constitution by the elected executive and giving him an umpire’s role. The Governor plays an important role, i.e., in his dual undivided capacity as Head of the State he should impartially assist the President, as a Constitutional Head of the State Government, in times of Constitutional crisis he should bring about sobriety. The link is apparent when we find that Article 356 would be put into operation normally based on the Governor’s report, he should truthfully and with high degree of Constitutional responsibility, in terms of this oath inform the President that a situation has arisen in which the Constitutional machinery in the State has failed, the Government of the State cannot be carried on in accordance with the provisions of the Constitution with necessary detailed factual foundation.

On the independence of a Governor, G.S. Pathak, a distinguished Constitutional lawyer in a speech at New Delhi on
3.4.1970, said thus- "In the sphere in which he is bound by the advice of the Council of ministers for obvious reasons, he must be independent of the Centre, there may be cases where the advice of the Centre may clash with the advice of the State Council of ministers. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious again, that it is his discretion and not of any other authority and therefore, his discretion cannot be controlled or interfered by the Centre.

The Administrative reforms commission recommended that a person should not be appointed as Governor for more than one term, such a restriction is necessary in order to safeguard his independence and impartiality against being jeopardized by expectations of patronage.

"No person who is appointed as Governor should take part in politics after his appointment, as such not even after retirement. To these may be added the suggestion by Mr. K. Subba Rao, the former Chief Justice of India that a Governor should be ineligible for any other office under Government after retirement and should be irremovable form office on any ground other then proven misbehavior or incapacity after enquiry by the Supreme Court".

(C) Literal Meaning of the Term "Governor"

The term Governor as defined under Merriam Webster, and Encyclopedia Britannica is ‘a person who is the leader of the Government of State, province etc, or a person who is part of group of people who control a large organization or Institution. In easy term it can be said that one who exercises authority especially over
on a group. Governor is an official elected or appointed to Act as ruler, chief executive or nominal Head of a political unit’.⁴

"The Governor is the linchpin of the Constitutional apparatus of the State" reported the Sarkaria Commission in 1988. His role "has emerged as one of the key issues in the union State relations"⁵ the Commission said. The Constitution had given the Governor a clear responsibility as the Central Government’s representative in and its link with the State Government, one of his functions has been to keep the President informed about the local conditions and the developments in the State.

The key factor in the Centre State relations is the Governor who is a bridge between Union and the State. The Governor occupies a very important and significant post in the democratic setup. A person appointed as Governor should add glory to the post and not be a symbolic figure oblivious of his duties and functions, which he is expected to carry out. The executive power of the State is vested in him by Article 154 and exercised with the aid and advice of the Council of ministers and Chief Minister as its Head. He shall discharge his functions in accordance with the oath, and to protect and defend the Constitution and the law. He would be an arbiter when there is a Constitutional deadlock in the State and he would be able to play an impartial role. There would be administrative mechanism through which the Constitutional crisis would be resolved in the State.

It is inurnment of each occupant of every high office to be certainly aware of the power of the office he holds, that is meant to

⁴ Merriam Webster, and Encyclopedia Britannica
⁵ The Sarkaria Commission Report 1987
be exercised in public interest and only for public good, and is not meant to be used for any personal benefit, or merely to elevate the personal status of the current holder of that office.

"While there are many checks and balances provided by the Constitution, the office of the Governor has been bestowed with the independence to rise above the day to day politics, and override compulsions emanating from the Central system or the State system. In a Conference Prime Minister Dr. Manmohan Singh said, "You are the representative of the Centre in the States and hence, you bring a national perspective to State-level actions and activities.

While considering the breakdown of Constitutional machinery of the State, the President normally acts on the report of the Governor, this shows that the Governor’s power cannot be limited to acting on the advice of his ministry, for it may become his duty to report to the President that the ministry was conducting the affairs of the State in such a manner as to indicate, or bring about a failure of Constitutional machinery. Nor is he obliged to allow the imposition of President’s rule if an alternative Council of ministers commanding the confidence of the legislative assembly is available.

The Governor assures continuity in the State administration, as having a fixed tenure he stays in office while the Chief Minister may come and go from time to time. The Governor acts as an representative of the Centre when a proclamation of the imposition of the presidents rule is made due to breakdown of the Constitutional machinery in the State under Article 356. He is thus a key functionary in the system envisaged by the Constitution.
Where a State university act provides that the Governor, by virtue of his office, shall be the Chancellor of the University, and confers duties on him not as Governor of the State but as Chancellor, there is no obligation on the part of the Governor in his capacity as Chancellor, always to act on the ministerial advice under Article 163(3). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers, but he would have to form his own individual judgement. In his capacity as Chancellor of a University, the Governor may be required by the University’s Statute to consult a Minister mentioned in the Statute on specific matter, in such cases the Governor may be well advised to consult the Ministers on other important matters also in either case, there is no legal obligation for him to necessarily act on any advice received by him.

The Governor while sending adhoc or fortnightly reports to the President, should normally take the Chief Minister into confidence, unless there are overriding reasons to the contrary. The discretionary powers of the Governor as provided should be left untouched.

When a Governor finds that it will be constitutionally improper for him to accept the advice of the Council of ministers, he should make every effort to persuade his ministers to adopt a correct course and should exercise his discretionary powers only as the last resort.

It would be neither feasible nor desirable to formulate comprehensive guidelines for the exercise of the discretionary powers of the Governor, a Governor should be free to deal with a
situation according to his best judgement, keeping in view the Constitution.

As regards the other matters however, though the President will have a personal control over the Governor through his power of appointment and removal, it does not seem that the President will be entitled to exercise any effective control over the State Government against the wishes of a Chief Minister who enjoys the confidence of the State legislature, though of course, the President may keep himself informed of the affairs in the State through the reports of the Governor, which may even lead to the removal of the Ministry under Article 356.

(D) Governor holds the office during pleasure of the President

While the Constitution prescribes impeachment to be the mode of removal of the President, it provides for the removal of a Governor by the President, this is another departure from the strict federal principle as in U.S.A., this means that the President may dismiss a Governor at any time on any grounds, and without showing any cause. The courts cannot interfere on the ground that the Governor has been dismissed without sufficient cause.

A Governor is a political appointee and when appointment is made by the Government on political considerations it can also be terminated on political considerations. The President can also dismiss a Governor without assigning any reason, the power of the Central Government to recall a Governor is absolute. During Janata

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6 Acharya Durga Das Basu Commentries on Constitution of India 2009 clause 1 page 6106
regime, the then Prime Minister asked all the Governors appointed by the previous Congress regime to resign.

Sarkaria Commission recommended that the Governor's five year term should not be disturbed except very rarely and that too, for some extremely compelling reasons. A Governor being transferred or his tenure terminated, the Central Government 'may' lay an explanatory Statement before the Parliament. The Commission's analysis of the tenure issue was more telling than its recommendations the ever present possibilities of the tenure being terminated before the full term of the five years can create considerable insecurity in the mind of the Governor and impair his capacity to withstand pressures, resist extraneous influences and act impartially in the discharge of his discretionary functions. Similar recommendations were made by the national commission to review the working of the Constitution.

It was held that a reading of Article 156(1) and (3) together will show that term of five years is not a fixed term, but it is subject to the "pleasure of the President". Since Article 156 is not couched with similar qualifying words of immunity granted to Government servants under Article 310. "Withdrawal of pleasure" comes into operation no sooner it is withdrawn resulting in dismissal or transfer of the Governor without observing the principle of "audi alteram partem" as this maxim has no application, it was held: "under Clause (3) of the Article 156 that it is apparent that the five year term is subject to the exercise of pleasure by President and President of India is the best judge for the exercise of his pleasure to decide as to when and in what

\footnote{V.D. Mahajan – Constitutional Law of India page 213}
circumstances the term of a sitting Governor of a State should be reduced or instead of reducing the term, he may be transferred from one State to another, or may be asked to vacate the office, no reason needs to be given for exercising the pleasure and he need not to be heard.

A chief justice of a State can be appointed as a Governor under Article 155 who can discharge the function of the Governor till a new Governor is appointed. Proviso of Clause (3) provides that, there is no provision such as art 62(1), or 8(1) in the scheme of Governors appointment. On the other hand, Article 153 provides that there must always be a Governor it is, of course, to be expected that a new Governor should be nominated before time but circumstances may come into being which may take the holder beyond his five years term without a successor being narrated. It may not always be possible to appoint a Governor within the term of incumbent. No doubt the provision of art 160 may be resorted to but even that may not be sufficient an interregnum. It is to avoid an interregnum in such cases that the Proviso to Article 156 (3) has been provided. The successor may be appointed under art 155, or an order may be made under Article 160, but whatever be the position, the former Governor continues to hold office till the new Governor enters upon his office. But there may be cases where the neglect in appointment of a Governor may lead to a failure to act according to the Constitution.

In 1961, a number of Governors were allowed to continue for about a year more (till after the next General election) by simply not appointing their successors, though the legality of such action may be not questionable, it is doubtful whether the proviso
was intended to cover such cases of mass extension of the term of Governors, as distinguished from a provision to meet temporary contingencies in particular cases.

Article 157 provides that in the normal term prescribed to guard against the possibility of any adverse political consequences resulting from the same person remaining a Governor for a long time of course there is no bar to a proper person being re-appointed for a further term; but in case of such reappointment, the person so appointed shall get a further term of five years, the subject to the other provisions of the President power under clause (1), but reappointment for a limited or indefinite period does not appear to be warranted by clause (3), even though the courts may be precluded from inquiring into the validity of the title of the Governor who is asked to continue in office under Article 156 (3).

(E) **The Governor under the Indian Constitution has a dual role:-**

**Firstly:-** He is the Constitutional Head of the State, State field.

**Secondly:-** He is the representative of the Central Government in the State, Non State field.

The Constitution makers wanted to establish such a federal structure in India in which on the basis of the concept of co-operative federalism, cordial relations between the centre and the States could be established, and the object of uniformity in the administration and national unity could be achieved, and thus the office of the Governor was envisaged in the Constitution as a means to attain this objective.
Shri K.M. Munshi said in the Constituent assembly "that the Governor is the guardian of the Constitution and that bond which links the State with the centre and helps in achieving the goal of India's unity."  

The procedure adopted for the appointment of the Governor indicates that the Governor is the representative of the central Government and has to play a very important role in the State.

As the representative of the central Government, the Governor has to perform the following duties:

(i) In the Indian Constitution emphasis has been laid on the establishment of cordial relations between the centre and the State Governments, Articles 256 and 257 provide that in this reference the central Government can give necessary instructions to the State executives, the centre can give the responsibility of the security of the national-highways and the means of communications to the State-Government. Under Article 258 the Central-Government can hand over some of its administrative tasks to the State Government and it can give this type of instructions directions and orders to the State Government only through the medium of Governors.

It is the duty of the Governor to see that the State Government is abiding by such orders and the directions. If the Council of ministers disregards the instructions of the President and ask the Governor to

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8 Jain and Fadia, Bhartiya Shashan aivam Rajiniti, Page 457

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Act against the orders and directions of the President than the Governor can reject such advice and can force the State Government to except the orders of the President. If the State Government doesn't Act according to the directions of the Central Government, the Governor can warn the State ministry, considering that it can act against the Constitution he can submit a report to the President of India under the Article 356 of a Constitutional crisis in the State. Whenever the central Government adopts a program or a policy which is of national importance, it is the duty of the Governor to see that the State Government is moving in the correct direction to fulfill the task or not.

(ii) As a representative of the Central Government the Governor has been assigned an important task of giving the necessary information to the President from time to time about the developments in the State and the State administration which also includes suggestions from his side. As before entering into his office the Governor takes the oath of protecting the Constitution, from this point of view the Governor's most important duty is to see whether the State Government is functioning according to the provisions of the Constitution or not, if the State is not being governed according to the Constitution he informs this to the President and on the basis of this information the President's rule can be imposed in the State. The Governor sends to the President such information on
his own and he is not bound by the advice of the State
Council of ministers in the matter. After the imposition
of the President's rule in the State, whatever
administrative legislative and financial tasks are
allotted to the Governor by the President he carries out
all these and conducts the administration of the State
as the representative of the Central Government.

(iii) According to the Article 213, the Governor has been
given the power to promulgate ordinances, but in
certain matters before issuing an ordinance he has to
take the approval of the President. Besides this as a
representative of the central Government he ensures
that the State Government is not following narrow
provincialism but is keeping in mind the interests of
the whole of the union of India. In the conference of
the Governors held on 19th and 20th March, 1976 the
then Prime Minister, Shrimati Indira Gandhi had said
that the Governor's role is very important in getting
victory over narrow provincialism and regionalism.

Probably the framers of the Constitution might
have thought that the Governor's first role will be as
the Constitutional Head of the State and the second as
the representative of the Central Government in the
State, but in practice many a times the second role of
the Governor becomes more important, this happens
especially when there is the Government of one party
at the centre and in the States there is the Government
of one of the opposition party or a coalition
Government of the opposition parties, in practice whenever while playing this double role there is a mutual conflict between the two roles then the Governor has acted as the representative of the Central Government mostly.

K.P. Rao rights in this regard" today in this condition when he is appointed and removed by the centre, the Governor is what the Centre wants him to be, in reality there is nothing that the Governor can do on his own, his role depends upon the people who direct and control him from behind." The opposition parties have generally been complaining that the ruling party at the centre uses the office of the Governor for achieving its political objectives.

According to Shri Ikbal Narayan the Governor has been seen as an instrument of the alleged conspiracy of the centre to remove the non congress Governments in the States in past".

Whenever the Governors act at the instance of the central Government unfairly as a means particularly in the process of formation or downfall of a specific State Government his role is deplorable but generally the Governors have acted to achieve the objective to bring about administrative uniformity and national unity. As a representative of the central Government the role of the Governor has been very important and useful, the need is to maintain balance.
in the Governor's role as the representative of the Centre and as the Constitutional Head of the State.

1.3 Feasibility Suitability and the Utility of the Research

The present topic of research “Feasibility of the Institution of Governors of States in India a Politico Legal Analysis” is related to the study of a Constitutional office of the Governors of States in India, which is very important, politically, Constitutionally and legally and its perfect functioning is very much essential for the good health of the Indian polity, to maintain the supremacy of the Constitution, for the success of the parliamentary form of Government, and the maintenance of cordial relations between the centre and the States, but in recent years the office of the Governor has been highly politicized and not functioned properly and has become a very controversial and disputed Institution. Thus the suitability of the topic is much obvious, the functioning is to be analyzed and measures are to be suggested for, and steps are to be taken to remove the drawbacks of the Institution, as it needs to be reformed and maintained, for it has tremendous feasibility and is very important and essential for the Indian Federal polity. The utility of the topic in present scenario is of very much importance as India is emerging as a world power and co-operative federalism is must for the protection of the national interests and the unity and integrity of the country, which is facing serious challenges externally and internally, due to terrorism and disputes between the center and the States a good political scenario is to be an attempt to focus on, and the Governors can play an active role in this task.
1.4 The origin and development of the Institution of the Governors in India

(A) The Institution of the Governors in Ancient India

The origin of the Institution of the Governors can be traced back to ancient and mediaval India.

In the Fourth century B.C. one of the most Illustrious and extensive empire was formed in India the Mauryas. The Mauryan empire being vast was divided into a number of provinces for the administrative convenience in each province there was a Governor or a viceroy who was a prince of royal blood known as Kumar Mahamatra. The Governors carried the administration of the province. The provincial Government reported the general situation to the centre and received instructions from the latter.

In Kanishkas administrative system the Governors of the States or viceroys were known as satraps they enjoyed vast powers and ruled as the subordinate of the kings.

The Gupta period (300-600) A.D. has been regarded as one of the most glorious periods of the Indian history. It is also referred as the classical age of ancient India.

The Gupta empire was divided into certain provinces which were called ‘Desas’ or Bhukties and were under uparika Maharaj as or Goptns. The uparika was appointed by the king for a period of 5 years, these provincial Governors used to be either the princes or persons belonging to the

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9 R.C Majumdar, H.C. Ray Choudhary, kaliankar Dutt, An advanced History of India, 1978. Page 91 and 137
royal family, they enjoyed wide powers and worked for the public welfare and promoted good governance.

During the rule of Harshavardhan the empire was divided into Bhuktis or provinces and the principal officer the Governor was known as uparika.

The chalukyas ruled over a great part of the Deccan empire. The empire consisted of Rastra, the Desa and Vishay which used to denote a province, the princes of royal family were the rulers of the provinces, the samantas appointed by the king also administered in some provinces.

In the Rajput administrative system also, the kingdom was divided into provinces called Bhuktis and were controlled by the Governors.

In the chola empire the kingdom was divided into a number of provinces (Mandalam), and was under the charge of a Governor who belonged to a high family.

(B) The Institution of the Governors in Medieval India

The establishment of the Delhi Sultanate in 1206 A.D. was a landmark in the Indian history. In the Sultanate administration, the whole country was divided into a number of provinces and each of the provinces was under the control of a Governor, who was known as Naib, wali or mukti. He was appointed by the Sultan and could be removed from the office by him alone. The Governor enjoyed a very prominent position in the provincial administration but the Central Government exercised sufficient control over the Governor.

10 ibid page 267 and 847
The Governor was responsible to the sultan for all the Acts of Commission, he was responsible for the defence of the province and for the maintenance of the law and order, and was not only expected to perform military and revenue functions but also impart justice. He was also the commander of the provincial army and had considerable respect and position in his province.

The Mughal empire was divided into provinces – each province was under a Governor known as Nizam, Naib Subedar or wali, during the time of Akbar the designation Sipahsalar was also used for this official, he was either a member of the royal family or a noble of a high rank appointed by the emperor. The Governor was the emperor’s representative in the province and was responsible for the maintenance of the law and order, control of the local army the realization of State dues and for the provision of justice. The Governor received all their authority from the emperor and stayed in the office as long as they were in good books of the king, there was no minimum age limit for the appointment to this office and the sole criteria for the appointment was the ability, he had no right to declare war without the permission of the emperor and could not inflict capital punishment, without the approval of the emperor, also he had no right to interfere in the religious matters.

The Maratha ruler Shivaji’s kingdom was divided into four provinces, each under a viceroy. The Governor acted according to the orders of the Chhtrapati or the king and
maintained peace and order in the province. He was called mamlatdar and was assisted by eight officials.

(C) **The Institution of Governors under the British regime**

The office of the Governor is not an novel Institution in India it has been inherited by us as a great treasure from the ancient and mediaval rule, where it existed in a different form and later on from the British colonial rule The development of the office haves an immemorial history, and has gradually developed under the different stages. In modern India that is the arrival of the Britishers the origin of the office is traced with the advent of the East India Company in the year 1600 A.C. The Governor and twenty four other members of the committee were entrusted with the control over the trade and commerce of the company by the charter during the period of Queen Elizabeth.

Initially, The Governor acted as an agent of the East India Company just to protect the interests of the British traders, but later on with the transfer of the company’s powers to the Crown, the importance of this office and its powers tremendously increased, and his position and the status was extra ordainarily enhanced, and the Governors started playing a pivotal role in the administration of the States, this continued till the end of the British rule in India.

Under the Charter of 1600, the Governor was appointed to manage, control and direct the business of the company, the main functions of the Governor were to protect the interests of the traders and to discharge the functions of the General Manager of the company by making its business
profitable and to enhance the same. The first Governor was appointed by Queen Elizabeth, but for the subsequent appointments the act provided that the appointment of the Governor shall be made publicly in the annual election of the Company’s court.

Though the Governor was working in subordination to the ordinary court, even then he enjoyed certain legislative and judicial powers in addition to the trade relating powers, all these powers were formally given to the company but in reality they were exercised by the Governor because of his prime position in the executive committee of the Company.

By the Charter Acts of 1609, 1615, 1623, 1657, and 1661, the powers and privileges of the company were enhanced and simultaneously, the importance of the office of the Governor and his powers also enhanced gradually.

(D) The Governor as the Organizer of the Provincial regions

The second era of the growth of the Governor’s office is a transition period, in this period the office entered from trade to administration, and governance of the country and played an important role in establishment of the British empire in India.

“By transition of the Company from a trade union to a territorial sovereign in 17th century the Governor was vested with certain military and non military powers, the Governor was responsible to assure the compliance of such policies by
which the foundation of the British regime would be permanently rooted for ever in India and made strong.\textsuperscript{11}

The Charter Act of 1698 continuously regulated the British rule until the enforcement of the Regulating Act, 1773 which properly defined the powers of the Governor, the governance of the three presidencies Mumbai, Madras and Calcutta were given to the Council appointed by the Governor and the Commission of the Company, in this regard all the powers had been collectively vested in the Governor and the council. Under this system all the decisions were made on the basis of the majority opinion but the position of the Governor was comparatively weaker to the council,\textsuperscript{12} because he was not special but only the first among the equals, neither he could expect anything from his associates nor could he take any action in case of any contingency which occurred. The Council which was formed of highly influential persons and the best employees of the company instead of assisting the Governor in his administrative work was an obstacle in his path, this reality was first time observed by the Governor General, Warren Hastings and he wrote a letter to Governor’s court on 11\textsuperscript{th} November 1773, stating that the powers of the Governor are considered to be very respectful and great but in reality, they are comparatively very weaker to the members of the council, thus he advocated for giving the emergency powers to the Governors and to make the office more powerful, but there was no effect on Governor’s court of this.

\textsuperscript{11} Panchanan Das Mukharjee. Indian Constitutional Document Vol.1, Page 4
\textsuperscript{12} ibid
The Governor was the first among his colleagues till he was related with the council, but there were some extraordinary powers conferred on him and certain privileges granted to him that made him the chief commander of the company. In the presidencies in comparison to the other members of the council, he had the right of having correspondence with the confidential committee of the coordinating court.

(E) Governor as an agent of the Central Government

The third stage of the development of the Institution of Governor starts in the year 1773, with the passing of the Regulating Act, the Act is considered as the basis of subsequent legislations in determining the nature of the Government of India, this act was the beginning of parliamentary interference and centralized policies.\(^\text{13}\) By this time the supremacy of the central Government had been finally established and the Governor was made its subordinate, and was supposed to act upon the directions of the central Government as its representation. The office of the Governor General and his council was established by this act, and was given the power to manage, to regulate control and supervise the Governments of Mumbai, Madras and Calcutta presidencies. The Governor of the presidency was not authorized to enter into any agreement and declare war without the assent of the Governor General and his council, he was expected to seek the advice from and sent the report to the Governor General and his council on matters related to

\(^{13}\) Panchanan Das Mukharjee, Indian Constitutional Document Vol.1 Page 17
the company's commercial interests and of the Government. In case of the violation of the directions of the central Government, the Governor and his council may be suspended.

By subsequent acts the Governor General Lord Cornwallis recommended strengthening of the powers of the Governor. The Charter Act of 1793 empowered the Governor to exercise his discretionary powers in matters of peace and security in the province without the consent and advice of his council and could also neglect his council. In 1807 the Governors of Madras and Bombay were given the power of issuing regulations and the Charter of 1830 provided them the taxing powers. The centralized tendency was still very predominant due to the superintendence and control of the Governor General over the presidencies. The Charter Act of 1833 enhanced the supremacy and control of the central Government in comparison to the previous acts and the power of law making issuing regulations and amending powers were withdrawn from the Governors relating to their presidencies, there after they could merely propose the legal plans and projects before the Governor General and his council, without prior approval of the Governor General and his council, the Governor could not exercise his powers of creating new posts, and sanction any sum of money, he was also bound to abide by the orders given by the central Government, he had to send the copies of all the orders, the proceedings and other official information to the central

14 Anil Chandra Benarjee, Indian Constitutional Law Document Vol.1 1948, Page 19
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Government, when the act was implemented it created differences between the Governors and the Governor General, and there was tension between them consequently. The Charter Act 1853 was passed by which the Governor may nominate one member in the legislative council so as to maintain the importance of the Governor in law making process, but it had no affect on the centralisation tendency.

The Government of India Act, 1854 provided that the Governor General can take over the management of any area of any province and limited the powers of Governor and his council with immediate effect by the proclamation, so that the influence and the control of the central Government could be easily maintained on the Indian matters.

(F) The Institution of the Governor under the British Crown: the age of mutual consensus

The Company transferred the power of Governance of India to the British Crown, by the execution of the Government of India Act 1858. The Prime Minister Lord Palmerstone declared that the proposed act was completely the act of limiting, and mainly transferring the powers to home administrative organization, which would not affect the existing Indian system. But the act provided that the appointment of the Governor in Indian presidencies shall be made by the Governors Court with the approval of the Crown and he shall appoint the Governor by a warrant signed under

16 Panchan Das Mukharjee, Indian Constitutional Document Vol. 1, page 4
17 Anil Chandra Benarjee, Indian Constitutional Law Document Vol.1, Page 16
his hand,\textsuperscript{18} thus, the Governor became a direct appointee of the crown and he was also entitled to neglect his councillors, he was still in subordination of the Governor General, but was empowered to establish direct official relations and contact with the minister for India.

The Indian Council Act 1861, commenced the era of mutual consensus; the Indians were also allowed to participate in the executive council's meetings for law making process, thus the legislative transfer policy was established in India by the act and no doubt the powers and functions of the Governor were automatically enhanced, he was authorized to appoint any person as member against the vacancy in his council and also empowered to make the rules and the trade code. The law making and the amending powers which were withdrawn from the Governor by the Charter Act of 1833 were restored by this act. He was also empowered to nominate the members of the legislative council, to fix the time and place of its meeting, to accept or refuse any bill and to cast the decisive vote on such bills, but he was bound to seek the prior approval of the Governor General and the Council in certain matters, i.e. public debt, public revenue, regularization of the currency, post and telegraph, Indian Penal Code, religion, army and navy and the foreign matters.

All the legislative Councils were expanded by the Morley Minto reforms Act of 1909, and a provision was laid down for sending elected representatives in it, the council

\textsuperscript{18} ibid
was given debating and discussing powers on the matters of public interest so that the members can influence the Governor on the administrative and financial matters, even then, the central Government consistently continued to control the provincial Governments in legislative and administrative matters. The Governor had to take the approval of the Governor General on all the bills passed by his council and he was also bound to follow the directions of the central Government in all the administrative matters. The provincial dual Government policy diarchy provided by the Government of India Act, 1919 was almost unsuccessful in the provinces. By the time the Indian National Congress started demanding for the complete self Government and started the movements for the same, thus the British Government passed the Government of India Act 1935 on the recommendation of the India Statutory Commission 1929, popularly known as the Simon Commission. The chief object of the Act was to give autonomy to every State. The federal Government system and principal of complete autonomy of the State was established by the said Act. The Governor had to perform a dual role.

(G) Relations between the Governor and the Governor General

According to the provisions of the Government of India Act, 1935, the Governor had to follow the directions of the Governor General and had to work under his superintendence, control and guidance, because he was the chief of the union executive. Though responsible
Governments were established in the provinces but still all the powers and the governance of the whole country were in the hands of the Governor General, he maintained his control and supremacy over the States through the Governors who were subordinate to him. The Act provided that whenever the Governor would take the decisions individually and exercise his discretionary powers; he shall be subject to the control of the Governor General and was bound to abide by his directions.19

When the Governors issued any ordinance or passed an Act, they had to send the same through the Governor General for the assent of the Minister for India. Thus, the Governor General acquired very wide powers of influencing and interference in the provincial governance.

According to section 123 of the Act, the Governor General was empowered to issue an order to the Governors to perform certain acts related to the reserve matters as his agents. The Act also provided that in exercising the powers as the Head of the State executive, the Governor shall not abridge the powers and rights of the Governor General as the Head of the union executive, thus for this purpose and to widen the jurisdiction of the chief of the union certain guidelines were laid down for the Governors. It was also essential for the Governor to take prior permission of the Governor General before introducing certain bills in the legislative assembly and certain bills were to be reserved for the assent of the Governor General.

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15 The Government of India Act 1935
In this Act the provision for introducing the federal system of the Government in India was also there so that, the absolute and the arbitrary powers of the Governor General may be restricted, but due to the opposition of the Indian kings it could not be implemented and consequently, the nature of the Indian Government remained to be unitary. The provincial governments and their Head Governors continued to work under the strict control and direction of the Governor General of India.

So the office of the Governor developed with the establishment of East India Company in the year 1600. In the beginning, the Governor acted as the General Manager of the company for the trade and commerce, and tried to expand the trade and made all possible efforts to raise the profit and interest of the company. Later the office of the Governor emerged as a glorious Institution as an organizer, to strengthen the British empire in India. He performed the functions as the agent of the central Government. From the beginning till the end the Governor acted as an loyal agent and representative of the British Government in Indian provinces. Due to the Indian Nationalist movement the position of the Governor changed a little through Government of India Act 1919 and 1935. By the Act of 1919 the partially responsible Governments were established in the provinces but the Governor remained the Head of the quasi representative Government.

By the Government of India Act 1935, the fully responsible Governments were established in all the
provinces but the office of the Governor remained arbitrary as earlier. The Governors were no more officiated as the Constitutional Heads only, but became the real rulers in the States.

(H) The Institution as proposed and adopted by the Constituent assembly

India got freedom in 1947, the Constitution makers of independent India decided to continue the office of the Governor for running the provincial administration, thus they made the Indian Constitution of federal nature and the Governor was made the Constitutional Head of the State’s administration.

The great Constitution experts expressed their opinion on the related provisions and finally, after a long debate and discussions the constituent assembly decided to keep the system of the Governor nominated by the President of India. The office has been given a place of formal executive in the Indian Constitution.

In administration of the States the parliamentary system has been followed like the Union. The Constitution of India provides that at the centre the President is the Constitutional Head of the State; similarly the Governor is the Constitutional Head of the State in the units. The executive powers in States are in fact vested in the Chief Minister and the Council of ministers and they are answerable to the legislative assembly for their works. Governor is the nominal ceremonial Head of the State executive, whereas the chief minister and the council is the
real ruler of the State. All the acts of the State are performed in the name of the Governor he exercises all his powers and functions directly or through his subordinates.

According to Dr. P. K. Sen the main function of the Governor is to provide oil to the State administrative machinery so that it works efficiently, he should not by interference but by friendly cooperation see that its wheels are working properly.

Prior to the General elections of 1967, the office of the Governor had been really a symbol of honor. The position of the Governor was just as a host to welcome the guests in the State.

When Smt. Vijay Laxmi Pandit was offered the post of the Governor of Maharashtra, she refused and said: ‘I am not ready for this honorable Constitutional prison’.  

When the discussions commenced in the constituent assembly relating to the office of the Governor, there was the probability of his election by the people of the State, under this scheme certain discretionary powers could be vested in the Governor, and he could not be treated only as the Constitutional Head, but in that condition, there was the probability of clashes and conflicts between the Governor and his ministers, as a result the assembly gave up the idea of the elected Governors and the powers which were earlier decided to be given to the Governor before designating him as the Constitutional Head of the State, were vested in the President of India. The Central Government was given the

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20 Dr. S.S. Bagga, Bhartiya Rajniti, Page 88
power to appoint the Governor and finally his office was made subordinate to the central Government.

Initially, the idea of the elected Governor was taken up in reference to purely a rigid federal system to be adopted but when a quasi federal system with a unitary bias was adopted then the appointing power of the Governor was vested in the Central Government. The benefit of the appointment of the Governor by the center was shown as good for the efficient administration of the State.

Pt. Jawaharlal Nehru Stated in the Constituent assembly that this will help in centralization of the federal structure. He said that the Governor will be loyal towards the center and will be communicating all the activities of the State Government to the Centre and will make efforts to give effect to all the orders and the directions given by the Center to the States through the Council of ministers of the State.

Though the Governor gets the office on the pleasure of the central Government, but he generally works on the advice of State’s cabinet and the chief minister. In running the administration the chief minister and his cabinet are collectively responsible for their acts to the legislature of the State.

The mutual relations of the legislature and the Council of ministers are based on the conventions of the parliamentary system of the Government and it is the duty of the Governor to see that these parliamentary conventions are followed at the State level also.
Dr. Ambedker said that "the Governor can reserve the bills and the decisions passed by the State Government for the approval of the President. So the Central Government can see whether such a bill or the decision is not contrary to the Constitution or the centers policies, In the case of inconsistency the President can refuse to give his assent. In the case of the internal matters of the State his discretion will be controlled by the parliamentary conventions since, there are clear cut Constitutional provisions as to his dependency on the Central Government. He is completely responsible towards the central Government, not only morally but also legally.\textsuperscript{21}

So the appointment of the Governor by the Central Government in such situations is appropriate The constituent assembly could not understand this thing in the beginning, so the election of the Governor was suggested to be made like the election of the American Governors but after the disapproval of the Presidential form of the Government the system of the elected Governor in the State was not logical.

Late Pandit Jawaharlal Nehru strongly opposed the proposal for election of the Governor, his contribution is very important in deciding the present role of the Governor.

Late Smt. Indira Gandhi endeavored to discipline the non Congress ministries in the States by using the Constitutional position of the Governor, there after the role of the Governor became controversial in the Indian politics.

\textsuperscript{21} Dr. Krishankant Mishra, Bharat Ki Rajnitik Pranali, Page 143
The Governors in the disputes between the Central and the State Governments always took the side of the Central Government and gave birth to new tensions, controversies and conflicts.

(I) Discussions and debates regarding the Institution of the Governor in the Constituent assembly

Prior to the independence of India, in 1947, the constituent assembly was constituted in 1946 to frame the new Constitution of India. Dr. Rajendra Prasad was elected as the permanent chairman of the assembly. Many other committees were formed by the constituent assembly to discuss the various aspects of the Constitution i.e. the federal rights Committee, the fundamental rights Committee the minority advisory committee etc. Along with these committees, the provincial Constitution committee was also made by Dr. Rajendra Prasad to work under the chairmanship of Sardar Vallabh Bhai Patel with twenty one members, to prepare an ideal draft of the Provincial Constitution. The committee prepared a draft relating to the office, appointment and powers of the Governor and submitted it to the Constituent assembly on which a lot of discussions took place.

On 29th August 1947, a drafting committee was appointed under the chairmanship of Dr. Bheem Rao Ambedkar for preparing a draft of the new Constitution for independent India the drafting Committee amended certain provisions proposed by the provincial Constitution committee regarding the office of the Governor in the States
and added some new provisions. The said proposals and suggested amendments were discussed in detail in the constituent assembly, realizing the problem, arising out of the partition of the country and keeping in mind the various other problems the drafting committee incorporated many new provisions after making certain amendments in the suggestions made by the Provincial Constitution Committee.22

Three proposals were presented by the drafting Committee regarding the appointment of the Governor. Firstly the election of the Governor on the basis of popularity. Secondly that the legislative assembly of the State shall recommend the names of four persons on the basis of proportional representation and the President of India shall nominate any one of them as the Governor of that State. Thirdly it was also suggested that the election of the Governor should be made on the basis of proportional representation by the lower house or both the houses of the State legislature, the Constituent assembly rejected all the above three suggestions and propounded another procedure of the appointment of the Governor by the centre.23

(J) Why the Governor not to be Elected

Indian Governors were not to be elected like the American Governors rather, they were to be appointed by the President of India like the Canadian Governors. Though, the original draft of the Indian Constitution States for the election of the

22 Ram. B. Shiva Reddy - The Framing of Indian Constitution Page 645
23 The Constituent Assembly Debates, Vol. VIII and IX
Governor on the basis of adult suffrage by the people of the State but that was not accepted due to the following reasons.

(i) It would save the country from the evil consequences of elections fought on the basis of personal issues the expenses involved and the elaborate machinery required for election process would be highly detrimental to the countries progress.

(ii) The Parliamentary form of system was opted for union and the States in the Constitution, the elected Governor and the Parliamentary system does not match together. In case of elected Governor the situation of frequent frictions may arise between the Governor and the cabinet of the State because the cabinet members would also be elected representatives of the people.

(iii) The direct election of the Governor may lead to the problem of leadership during the general elections in the State the Governor might consider himself to be superior to the Chief Minister. Who will be the real ruler the Governor or the Chief Minister, there will be a clash between the two; the Governor could become a candidate for the post of the Chief Minister, again this seems to be wrong.

(iv) If the Governor is elected by the legislative assembly in place of election by the people there will be possibilities of conflict and there will be competition between the Governor and the Council of ministers. There is one more serious drawback in this system
since, the Governor not being elected directly, to be re-elected may adopt unfair means and make efforts to convince and appease the majority party in the house for his re-election.

(v) Initially the constituent assembly was in favor of making the States more powerful than the centre so they thought to give participation to the States people and the State legislative members in election of the Governor but after analyzing the problems of partition and the socio-economic conditions of India they changed the idea and realized that the Unity and integrity of nation can only be protected by making the centre more powerful than the States. The Governor directly elected by the people of State would act as the Head of the State not as the representative of the union Government. Thus the Constitution makers incorporated provisions for the nomination of the Governor by the central Government in these circumstances.

(vi) Certain members of the Constituent assembly suggested that the Governor should be appointed by the President from the list of the names presented by the State legislature, but the suggestion was rejected on the ground that the legislature will act on the basis of groupings in the house for selection of the names to be included in the list, so the person becoming the Governor in this way would not get respect and confidence of all the political parties of the State.
(vii) The role of the Governor is to be an independent and impartial Head of the State and a decision maker in the politics of the State. If the Governor is elected by the public or the legislative assembly there will be a strong possibility that would be the inhabitant of the same State and could not be able to save himself from becoming a victim of local groupings and the party politics of the State, thus it was rightly decided that instead of a elected Head a nominated Governor can better perform as an independent and impartial mediator a decision maker in the State politics. So the system of the nominated Governors’ was adopted which was taken from the Canadian Constitution, where the Governor is appointed by the Governor General. Alladi Krishna Swami gave his opinion on that reference in the Constituent assembly that to establish good administration, and bring about uniformity and to maintain strong and harmonious relations between the Governors and the cabinet it is better for us to follow the system like Canada, so that the union Government would be able to maintain intact its control over the States, it would also discourage the separatist tendancies, and the stability and unity of the governmental machinery of the country as a whole could be achieved only by adopting the system of nomination of the Governors.\textsuperscript{24} The nomination of the Governor by the President has also been criticized too the arguments which were advanced in the constituent

\textsuperscript{24} Payli, Indian Constitution 1975, Page 224
assembly against nomination are also worthy of consideration.

(viii) A nominated Governor would not be able to work for the welfare of the State because he would be a foreigner to the State and would not be able to understand its special needs.

(ix) There was a chance of friction between the Governor and the chief minister of the State if they did not belong to the same political party.

(x) The argument that the system of election would not be compatible with the parliamentary or cabinet system of Government is not strong enough in view of the fact that even at the centre there is an elected President to be advised by a Council of ministers of course the election of the President is not direct but is indirect.

(xi) An appointed Governor under the instruction of the centre might like to run the administration in a certain way contrary to the wishes of the cabinet, and there will be a tussle between them, the system of election would be more compatible with good and efficient Government plus the right of self Government.

(xii) The method of nomination of the Head of the State executive by the federal executive is repugnant to the federal system.

(xiii) At the time of selecting this system it was realized that the Governor shall mainly act as the Constitutional Head of the State and secondally, the representative of the union Government in the State, but practically he
acted merely as an agent of the union Government. It is evident from the report submitted by the Kerala Government and the Tamil Nadu and Gujarat Governments that the Governors considered themselves to be agents of the central Government.

(xiv) The above-stated system adopted for the appointment of the Governors can be criticized, but it would be appropriate to acquaint ourselves with the words of payli where he stated that the system adopted by the makers of the Constitution is better than the initially considered different systems and it does not have any shortcomings.

1.5 Frame Work of Study (Chapterisation)

The Thesis has 6 Chapters. The details of each and every chapter have been outlined as follows.

Chapter – I The Chapter deals with the Introduction, the Genesis discusses India as a nation. The three phases of the Indian history, ancient, medieval and the modern, the British colonial rule, the freedom struggle and the national movement. The Independence of India in 1947, and making of the Constitution, the formation of the Constituent assembly, the discussions and deliberations in the assembly and finally, the adoption and implementation of the Constitution in 1950. The introduction to the topic of research, the institution of the Governors under the Constitution, its necessity, and significance the problems regarding the institution of the Governors. The suitability and utility of the topic of research. The origin and the development of the Institution of the Governors in India, The Institution of the Governors as it existed in the ancient and medieval times, the advent of the British East India
Company in 1600, the Institution of the Governors and its position, under the British colonial rule in India and the development of the Institution under the various stages, the charters of 1600, 1609, 1615, 1623, 1657, 1661, 1668, 1773, 1793, 1807, 1854, 1858, 1909, 1919, and 1935 that is the pre independent era. The Country's independence in 1947. The establishment of the Constituent assembly the debates and the discussions in the Constituent assembly regarding the Institution of the Governors as, proposed and suggested by the drafting Committee, the provisions laid down in the draft Constitution of India, certain amendments made and the Institution of the Governors adopted by the Constituent assembly in the present form.

Chapter - II The Chapter deals with the specific Research conducted.

PART - I

Part I of chapter II deals with the review of the literature the research methodology, the scope of study, objectives of study and the hypothesis.

PART - II

Part II of chapter II deals with the research design, the sample, the tools for data collection and data analysis, the interpretation of data, and the inferences drawn, the testing of the hypothesis and the implications of the study.

Chapter – III The Chapter deals with the Institution of the Governors at the International level. The office of the Governors under the Constitutions of the other countries of the world, namely the United States of America, Russia, Canada and Australia, the powers the functions and the position of the Governors in these Countries. The provisions of the Indian Constitution related to the Institution of the Governors of the States, their appointment, qualifications the tenure,
mode of removal from the office, the powers the functions and the Constitutional position of the Governor.

Chapter - IV The Chapter deals with the problems mainly the functioning of the institution of the Governors in 65 years of the implementation of the Constitution. The problems and the challenges faced by the Institution of the Governors since its inception, due to the ambiguity in the provisions of the Constitution, no proper guidelines for the appointment, qualifications, process of selection, tenure, removal, and the politicization of the office. The people being affiliated to the ruling party at the centre being appointed as Governors and being removed by the change of the Government at the centre and the opposite party coming to power and appointing its supporters as the Governors and the vicious circle going on. The main lacuna in the Constitution relating to the Institution, also problems and the controversies created by the occupants of the Governor’s office, the misuse of the powers by the Governors being political appointees taking the advantage of their position and acting as the agents of the center and degrading the Constitutional office and creating problems. The relevant Articles of the Constitution related directly and indirectly in creating the problem are a grave concern of the research mainly the discretionary powers of the Govern, by the exercise of which the office of the Governors has become a disputed and controversial institution, especially the recommendation of the President’s rule in the States under Article 356 the most disputed and misused power exercised by the Governors in the recent times on their discretion.

Chapter - V The chapter covers the brief analysis of the attitude and the concern of the Government towards the Institution of the Governors and the problems related to it, and the efforts made for finding solutions by
appointing administrative bodies of the experts in the form of Commissions and Committees from time to time, to analyse, and give advice and suggestions for the improvement and the reforms regarding the institution of the Governors, the recommendations of these bodies have been discussed. The Judicial response towards the problem regarding the institution of the Governors and its functioning, the disputes and the litigations related to the Governors are reaching to the Judiciary and it being the guardian of the Constitution has to interfere for maintaining the dignity of the Constitutional office important for the polity:

The Supreme Court of India being the guardian of the Constitution haves a special responsibility on it for resolving the disputes between the centre and the States, and to see that all the constitutional bodies are performing their functions according to the provisions of the Constitution. The institution of the Governor being the most disputed Constitutional institution has been a cause of various litigations, and matters come before the court, the judgements are pronounced, directions are given and the guidelines are laid down by the honorable Supreme Court and the High Courts in these matters related to the the institution of the Governors have been discussed in the chapter.

Chapter – VI The last VI Chapter deals with the conclusion and suggestions. After the thorough study of the subject and analyzing the related aspects of the institution of the Governors, and the research conducted, findings and the conclusions were drawn and after the explanation of the facts data and the Principles based on the political legal and the Constitutional premise the researcher found that the hypothesis has been proved positive on the basis of the study and the conclusions. The researcher has formulated certain suggestions and recommendations
which would be effective in dealing with the problem relating to the
institution of the Governors in the light of a comprehensive observation
and analysis regarding the office of the Governor the researcher suggests
certain reforms and changes.