REVISITING THE INDIAN CONSTITUTIONAL LAW: THE ROLE OF GOVERNOR AND THE GREY AREA IN THE DOCTRINE OF PLEASURE IN THE INDIAN CONSTITUTION

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Abstract *The office of the Governor is not an altogether new concept in the post independent constitutional system in India. Originating as the defender of the British policies in India, the post of Governor has acquired myriad dimensions. Sometimes seen as a part of the "checks and balances" withholding the sacred principle of democracy and at other merely a vestige of a colonial past acting as a puppet of the Union government. These become important especially in the light of emerging concepts of regional parties, coalition politics, en-masse sacking of the state governments and further the recent developments in Uttaranchal and Arunachal Pradesh. The conclusion of this entire journey of the study and research on the topic is as follows: First, the healthy convention of the appointment of Governor by the President in consultation with the state government, is not practiced now which affects the Centre-State relations; Second, there is no security of tenure for the Governor of the State which makes it difficult for him to act impartially and independently in discharge of his functions and exercise of his powers; and, Third, despite the norms and principles laid down by the Judiciary as to the position, powers and functions of the Governor, we have seen continuous breach and distortion of the same. Since Governor of the State is just like a radius connecting the Union and the States in the circle of democracy which makes him one of the most important constitutional functionary, there is a need to remould his constitutional status to best serve the interest of the State, well being of the people and uphold the cardinal principle of rule of law, democracy and federalism.*

1. INTRODUCTION

"A Governor's 'special powers' wouldn't put him in conflict with the ministry. There would be no 'invasion of the field of ministerial responsibility'. The 'special powers' would be limited to sending

a report to the Union President when 'a grave emergency arose, threatening menace to peace and tranquility'."

—Sardar Vallabhbhai Patel (Constituent Assembly Debates)

The office of the Governor is not an altogether new concept in the post-independent constitutional system in India. Its history may be said to be as old as British connection with India. Originating as the defender of the British policies in India, the post of Governor has acquired myriad dimensions. He is sometimes seen as a part of the "checks and balances" withholding the sacred principle of democracy but, on the other hand, as a merely vestige of a colonial past acting as a puppet of the Union government. His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character which makes him act as an important link between the Centre and the State and at times to act as an impartial or neutral umpire.

Apart from the role which he has to play in the Constitutional machinery, what attracts attention is the procedure for his appointment and removal, the term of his office (security of tenure) and the various functions and discretionary powers envisaged in the Constitution of India. These become important especially in the light of emerging concepts of regional parties, coalition politics, en-masse sacking of the state governments, and the recent developments in Uttaranchal and Arunachal Pradesh. This further becomes visible from the kind of radio silence over the dismissal of Arunachal Pradesh Governor. Despite the government's bluster and blunderbuss, it seems to have suddenly retreated into an awkward silence. The answer to this riddle doesn't lie so much in the numerous political calculations and manipulations, as much as they lie in certain vague and ambiguous clauses in the Constitution.

As we seek to reassess the role of Governor, the question we need ask ourselves and to those responsible with policy and decisions in this crucial aspect are:

- What was the role envisaged for Governors by the architects of our Constitution?
- Have subsequent changes in political circumstances, so drastically altered the situation that provisions of the Constitution are neither adequate nor practical anymore?
- Has this august institution already gone so far down the road to rampaging constitutional convention that it has done serious lasting harm to our system and debilitated our political development, or as some optimists put it, these are merely the teething troubles of an idealistic and yet growing political system, which, when the system

does finally come of age, would appear as minor troubles in the growth of chart of a democracy?

- And finally why is it, that of all instruments of the Constitution, this institution has shown the greatest proneness for misuse and erosion of values?

2. APPOINTMENT OF GOVERNORS AT THE ANVIL OF CONSTITUENT ASSEMBLY

The history of the constitutional principles relating to the Governor is enlightening. In the initial stages of the framing of the Constitution of India, it was decided that the Governor should be elected directly by the people on the basis of adult suffrage, for it was their impression that an elected Governor would give stability to the government of the Province. This decision was in conformity with the idea of giving each state the "maximum autonomy" as a unit of federation.

Meanwhile the political situation of the country abruptly changed when the partition of the country became a certainty and the restrictions and limitation expressed under the Cabinet Mission Plan on the authority of the Constituent Assembly disappeared from August 15, 1947. As a result of such change the scheme of loose federation under the Cabinet Mission Plan, however, withered away from the Indian scene and the framers underlined the need of "a strong Central Government". Further, the communal riots, Gandhiji's assassination, the communist upsurge in Telangana, all affected the mood and thinking of Founding Fathers. They therefore gave up the idea of federation of states and decided to make India "a Union of States". Nehru echoed the thoughts and sentiments of the members when he said: "We have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and I think we should always view things from this context of preserving the unity, the stability and security of India."

Shri Brajeshwar Prasad was of the view that, "in the interest of All- India Unity with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained over provinces."

However, members like Rohini Kumar Chaudhary and Prof. Shibban Lal Saxena objected to the provision of appointing Governor by the President. Doubts were expressed that if two different parties were at the helm of affairs at the Centre and in a unit, a Governor might be sent by the Union Government who would not work in harmony with the State Government.

These were the reasons why, in spite of the force of the federalist argument, the idea of elected Governors was given up, and the primary consideration, that of ensuring a smooth working of the cabinet system, was allowed to

prevail. Influenced by the British tradition, the framers of the Constitution also put a great deal of faith in the importance of convention in a parliamentary system; and this was particularly so in regard to the position and functions of the Governor. While introducing the draft Constitution, Ambedkar had quoted Grote, the historian of Greece, to emphasise the importance of diffusion of constitutional morality throughout the whole nation, and of paramount reverence for the forms of Constitution as the essence of Constitutional Morality. Looking at the way our constitutional and political system has worked, one has to recognize that there has been progressive weakening of constitutional and political morality, particularly from the time defections started occurring extensively, and money, lure of office and manipulation became conspicuous features of political life.

3. APPOINTMENT OF GOVERNOR UNDER THE CONSTITUTION

The relevant provisions pertaining to appointment of Governor are envisaged in Part VI Chapter II of the Indian Constitution, as follows:

a) Article 153, which states: "There shall be a Governor for each state: Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more states."

b) Article 155, which states: "The Governor shall be appointed by the President by warrant under his head and seal."

c) Article 157, which states: "No person shall be eligible for appointment as a Governor unless he is a citizen of India and has completed the age of thirty-five years."

In practice, the Governor is appointed by the President on the advice of the Prime Minister/Home Minister. Such an advice is given after taking into consideration the opinion of the Chief Minister of the State concerned. The Chief Minister cannot veto the appointment, but a strong CM can willy-nilly have a Governor of his own choice. Since the Constitution does not prescribe any procedure for selecting a person to be appointed as Governor, uniform policy in this respect could not be formulated as yet.

Before the general elections of 1967 when the Congress party had its ministers in all the states, the CM had virtually a free choice in selecting Governors of their respective states because they were stalwarts within the party. But since then the situation has changed. As the result of the change, the appointment of Governors became a cause of tension between the Union and the State.

Further, this change of set up from a single party rule- both at the Centre and States- the role of Governors has also gained a very different connotation.

The recent developments in Uttarakhand and Arunachal Pradesh have turned the spotlight on the office of the Governor.

The qualifications mentioned in the Constitution are just theoretical or literal. Nonetheless our founding fathers, realizing the importance of the office of the Governor and the role he was expected to play, were very clear and emphatic about the background, the qualities and caliber of the people who would fill the gubernatorial office.

In the words of Alladi Krishnaswamy, the Governor should be a person of 'undoubted ability and position in public life, who at the same time, has not been mixed up in provincial party struggle and factions.'

Shri K.M. Munshi thought it would be better to have a Governor "who is free from the passions and jealousness of the party politics"

Nehru's ideal was to have people from outside – "eminent people, sometimes people who have taken no great part in politics. Politicians would probably like a more active domain for their activities but there may be eminent educationist or persons eminent in other walks of life who would nevertheless represent before the public someone slightly above the party."

But these ideals and belief of the Founding Fathers in these conventions has been sadly belied. There have been frequent appointments of active politicians to the office of Governor and quite a few instances of Governor's continuing their connection with the political party responsible for their appointment and, in some cases, returning to active politics after ceasing to be Governors. An unhealthy practice has grown of offering the post of Governor as a consolation prize for 'burnt-out' politicians or as a stepping stone for those still burning with the political ambition.

In Lok Sabha, Mr. Nath Pai said that, "Appointment of Governor has been abused for boosting up the tottering fortunes of a tottering old party".

Soli Sorabjee expresses his views about the appointment of Governor in following manner:

Whither is fled the visionary gleam?

Where is it now, the glory and the dream?

4. TERM OF THE OFFICE OF GOVERNOR

Finally, the draft Article (now Article 156) came up in the following words:

"Term of the Office of the Governor: (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."

Many members of the Assembly raised aspersions as to this amended provision as in their vision it will reduce the position of the Governor as merely a puppet in the hands of the Government in power at the centre.

Professor Shibben Lal Saxena castigated the absence of safeguards in the forthright terms: "he will be purely a creature of the President, that is to say, the Prime Minister and the party in the power in the Centre. When once a Governor has been appointed, I do not see why he should not continue in office for full term of five years anyway and why you should make him removable by the President at his whim. It only means that he must look to the President for continuing in his office and so continue to be subservient to him...Such a Governor will have no independence and my point is that the Centre might try to do some mischief through that man." How prophetic were his apprehensions!

Surprisingly, there was not much debate in the Assembly on this provision. Ambedkar's reply was brief and his main argument was that it was "quite unnecessary to burden the Constitution with all these limitations express terms. I therefore think that it is unnecessary to categorize the conditions under which President may undertake the removal of the Governor."

Ambedkar's reply clearly indicates that it was understood and necessarily implied that the Governor would be removed only for serious acts like violation of the Constitution or similar grave offences. The truth of the matter is that the undoubted integrity of persons then in Government, and high prevailing standards of public and constitutional morality and atmosphere of idealism ruled out any real risk of abuse of power or of perversion of constitutional provisions at that time.

5. PROVISION IN THE INDIAN CONSTITUTION

The Constitution of India provides for three different types of tenure:

- Those who hold office during the pleasure of the President (or Governor);
- Those who hold office during the pleasure of the President (or Governor) subject to restrictions;
- Those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure.

The Constitutional Assembly Debates clearly shows that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices:

- Offices to which doctrine of pleasure applied absolutely without any restrictions [Ministers (Articles 75, 164 & 239-AA), Governor (Article 156), Attorney General (Article 76) and Advocate General (Article 165)];
- Offices to which doctrine of pleasure applied with restrictions [Members of defense services, Members of Union, Member of All India Services, holders of posts connected with defense or any civil post under the Union, Member of civil services of a State and holders of civil posts under the State (Article 310 r/w Article 311)]; and
- Offices to which doctrine of pleasure does not apply at all [President (Article 56), Judges of Supreme Court (Article 124), Comptroller and Auditor General of India (Article 148), Judges of the High Court (Article 218 r/w Article 124) and Election Commissioners (Article 324)].

In the light of these provisions of the Constitution and the demarcation made as to term of various Constitutional functionaries, it becomes important to examine the concept of Doctrine of Pleasure in the Indian democracy as interpreted by the Hon'ble Supreme Court of India.

6. DOCTRINE OF PLEASURE IN THE APPOINTMENT OF GOVERNOR: JUDICIAL INTERPRETATION

The doctrine has been examined in detail in *B.P. Singhal* v. *Union of India*[1], by the Constitution Bench of the Supreme Court of India. It observed:

6.1. Meaning:

Pleasure appointment is defined as the assignment of someone to employment that can be taken away at anytime with no requirement of notice or hearing.

[1] (2010) 6 SCC 331.

6.2. Origin:

H.M. Seervai, in his treatise Constitutional Law of India, explains this English crown's power to dismiss at pleasure in the following terms:

> *"In the contract for service under the crown, civil as well as military, there is except in certain cases where it is otherwise provided by law, imported into the contract a condition that Crown has the power to dismiss at pleasure..where the general rule prevails, the crown is not bound to show good cause for dismissal, and if a servant has a grievance that he has been dismissed unjustly, his remedy is not by a law suit but by an appeal of an official or political kind...if any authority representing the crown were to exclude the power of the crown to dismiss at pleasure by express stipulation, that would be a violation of public policy and the stipulation cannot derogate from the power of the crown to dismiss at pleasure, and this would apply to a stipulation that the service was to be terminated by a notice of a specified period of time. Where, however, the law authorizes the making of a fixed term of contract, or subjects the pleasure of the crown to certain restrictions, the pleasure is pro tanto curtailed and effect must be given to such law."*

6.3. Scope of doctrine in the Indian Context with respect to removal of the Governor from his office:

There is a distinction between the doctrine of pleasure as it existed in a feudal set up and doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century, feudal set up unfettered power and discretion of crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has power to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good.

The following classic statement from Administrative Law is relevant in this context:

> *"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory powers conferred for public purpose is conferred as it were conferred as it were upon public trust, not absolutely- that is to say it can validly be used only in the right and proper way which parliament when conferring it is presumed to have intended.*

Although the crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that in a system based on rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.

The whole conception of unfettered discretion is inappropriate to a public authority, which possesses power solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed."

It is of some relevance to note that "Doctrine of Pleasure" in its absolute unrestricted application does not exist in India.

6.4. Judicial review of withdrawal of President's pleasure:

When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any condition or restrictions, it follows that the power is exercisable at any time, without assigning any cause.

However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for his removal to the Governor. It is imperative that a cause must exist. If we would not proceed on that premise it would mean that President on the advice of Council of Ministers may make any order which may be manifestly arbitrary, whimsical or mala fide. Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause must exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor before removing the Governor.

The Supreme Court in its landmark judgment in *B.P Singhal* v. *Union of India*[2] made an important observation as to the scope of judicial review in exercise of prerogative power by the President in removal of the Governor:

- Under Article 156 (1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

[2] (2010) 6 SCC 331.

- Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in arbitrary, capricious and unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted but are of wider amplitude.
- A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. Therefore, it follows that change in government at the centre is not a ground for removal of Governors holding office to make way for others favored by the new Government.
- As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was arbitrary, mala fide, capricious or whimsical, the Court will call upon the Union Government to the Court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, mala fide, capricious or whimsical, the Court will interfere. However, the court will not interfere only on the ground that a different view is possible or that the material or reasons are insufficient.

There are certain "silences" in the Constitution which ironically create a furore and raise an infernal din from time to time. The lack of specific provisions regarding how Governors are to be appointed, and how they are to be dismissed or sacked, is one such example. And, this void in the Constitution, especially the vaguely worded term "Doctrine of Presidential Pleasure" as mentioned in Article 156, has resulted in a situation which is nothing short of a "Raj Bhavan Roulette".

7. POSITION OF A GOVERNOR UNDER THE CONSTITUTION

The Governor of a State is a very interesting appointee of our political system. Some view his post as part of the "checks and balances" the Indian democracy is proud of, while some critics consider that the Governors have played a dictatorial role many a times and transcended all the democratic limits. This has made the Indian citizens feel that they are living in a fragile democratic realm which can be shaken effortlessly by the Governor. The Indian Judiciary has also deliberated on the role and position of Governors a number of times

and has tried to give a view which can reduce the escalation between the Centre and the State and is favourable to the Rule of Law.

In *State of Rajasthan* v. *Union of India*[3], a Constitution Bench of this Court described the position of the Governor thus:

> *"The Governor acts as the constitutional head of a State as a unit of the Indian Union as well as the formal channel of communication between the Union and the State Government, who is appointed under Article 155 of the Constitution by the President by warrant under his head and seal. On the one hand as the Constitutional head of the state, he is ordinarily bound by reason of a constitutional convention by the advice of the Council of Ministers conveyed to him through the Chief Minister barring very exceptional circumstances in which an appeal to the electorate is called for. On the other hand, as the defender of the Constitution and the law and the watchdog of the interests of the whole country and the well being of the people of his state in particular, the Governor is vested with certain discretionary powers in the exercise of which he can act independently. One of his independent function is making of the report to the Union Government on the strength of which Presidential power under Article 356(1) of the Constitution could be exercised. Insofar he acts in the larger interest of the people, appointed by the President 'to defend the Constitution and the law' he acts as the observer on behalf of the Union and have to keep a watch on how the administrative machinery and each organ of the Constitutional government is working in the State. Unless he keeps such a watch over all governmental activities and the state of public feelings about them he cannot satisfactorily discharge his function of making the report which may form the basis of the Presidential satisfaction under Article 356(1) of the Constitution."*

In *State of Karnataka* v. *Union of India*[4] a seven judge bench of the Supreme Court held:

> *"The Governor of a State is appointed by the President and holds the office at his pleasure. Only in some matters he has got a discretionary power but in all others the State administration is carried on by him or his name by or with the aid and advice of the Ministers. Every action, even of an individual Minister, is the action of the whole Council and is governed by the theory of joint and collective responsibility. But the Governor is there as the head of*

[3] (1977) 3 SCC 592.
[4] (1977) 4 SCC 608.

the State, the executive and the legislature, to report to the Centre about the administration of the State."

In *Hargovind Pant* v. *Raghukul Tilak*[5], the Constitution Bench of the Supreme Court observed:

> *"It will be seen from this enumeration of the Constitutional powers and functions of the Governor that he is not an employee or servant in sense of the term. It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a Constitutional provision for determination of the term of the office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a break point, be regarded as an employee or the servant of Government of India.*
>
> *He is not amenable to the direction of the Government of India, nor he accountable to them for the manner in which he carries out his function and duties. He is an independent constitutional office which is not subject to the control of the Government of India."*

In *Rameshwar Prasad (6)* v. *Union of India*[6], the Supreme Court reiterated the status of Governor as explained in Hargovind Pant[7] and also noted the remark of Shri G.S. Pathak, a former Vice President that:

> *"In the sphere which is bound by the advice of the Council of Ministers, for the obvious reasons, the Governor must be independent of the Centre as there may be cases 'where the advice of the Centre may clash with the advice of the State Council of Ministers' and that in such cases the Governor must ignore the Centre's advice and act on the advice of his Council of Ministers."*

The Constitution bench of the Supreme Court, headed by K.G. Balakrishnan (J) in *B.P. Singhal* v. *Union of India*[8], has finally elaborated upon the status of the Governor and clearly stated that the Governors are not merely

[5] (1979) 3 SCC 458.
[6] (2006) 2 SCC 1.
[7] (1979) 3 SCC 458.
[8] (2010) 6 SCC 331.

rubber stamps of the Centre in the states, and could not be discussed merely because their ideologies were at loggerheads with the top bosses at the Centre.

> *"It is thus evident that a Governor has a dual role. The first is that of a constitutional head of the State, bound by the advice of Council of Ministers. The Governor constitutes an integral part of the legislature of a State. He is vested with legislative power to promulgate ordinance while the Houses of the Legislature are not in session. The executive power of the State is vested in him and every executive action of the government is taken in his name. He exercises the sovereign power to grant pardon, reprieves, respites or remissions of punishment. He is vested with power to summon each House of the Legislature or to prorogue either House or to dissolve the Legislative Assembly. No Bill passed by the House of the Legislature can become law unless it is assented to by him. He has to make a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the Constitution. The second role of a Governor is to function as a vital link between the Union Government and the State Government. He is required to discharge the functions related to his different roles harmoniously assessing the scope and ambit of each properly. He is neither an employee of the Union Government nor the agent of the party in power nor required to act under the dictates of political parties. There may be occasions where he may have to be an impartial or neutral umpire where the views of the Union Government are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi federal in character."*

Despite the landmark judicial pronouncements regarding the role, position, function and powers of Governors as envisaged in the Constitution, it becomes very important to explore all the possible reasons behind the departures from strictly constitutional norms.

8. CONCLUSION

We are the products of a dynamic time. The makers of the Constitution did make adequate provision according to their perception of values at that time, but also they never intended that their written word would be the last word. In parliamentary democracy like ours, written words are supplemented by conventions and traditions and at the same time added to or modified according to the need of times.

This idea is well reflected in the words of Justice Y.K. Sabharwal in *I.R. Coelho* v. *State of T.N.*[9], as follows: "the Constitution is a living document. Constitutional provisions have to be construed having regard to the march of time and development of law..."

The aforesaid idea is further affirmed by Vivian Bose (J) in *State of W.B.* v. *Anwar Ali Sarkar*[10], as follows: "they are not just pages from a text book but the means of ordering life of progressive people. They are not just dull lifeless words static and hide bound as in some mummified manuscript, but living flames intended to give life to great nation and order its being, tongues of dynamic fire, potent to mould the future as well as guide the present."

In the light of these thoughts it becomes more important to reflect what all possible changes could be done to ameliorate the situation of tussle between the centre and the state and to reduce the misuse of the high constitutional position by any appointed Governor.

The findings of research as to the reasons for the progressive debasement of this important institution can be summarized as follows:

- Positional Insecurity: Under the federal system of government, as adopted by our Constitution, the Governor is the formal or constitutional head of the State and he exercises all his powers and functions conferred upon him by the Constitution with the aid of his Council of Ministers. In this respect, in the words of Dr. B.R. Ambedkar, "position of the Governor is exactly the same as the position of the President." However, as the Constitution itself provides for exercise of "discretion" by the Governor, there is a qualitative difference between the position of the Governor and that of the President because strictly speaking there is no express provision in the Constitution which enables the President to exercise his independent judgment or discretion. In contrast to these, there are several constitutional provisions where the Governor can exercise his own independent discretion even contrary to the advice of Council of Ministers, viz., Under Articles 239(2), 371, 371 A(1)(d), 371 A(2)(f), 371 (1)(b), 371-C, 371 F, 371 (g), Schedule VI (administration of tribal areas) Para 9(2), 18(2) & 3 etc.

Now, as the position stands today, the Governor is the only non-elected constitutional authority who has no truly assured security of tenure. To quote from Soli Sorabjee, "one of the piquant incongruities is that on literal readings of its provisions the Governor emerges as the least secure and the least protected of all the constitutional functionaries. He is the only functionary without any express security of tenure and without any specific safeguards in the matter

[9] (2007) 2 SCC 1.
[10] AIR 1952 SC 75.

of his removal." Seen against the backdrop of this insecurity of tenure and therefore the positional dependence of the Governor on the powers appointing him, the discretionary powers vested in the Governor become charged with an inherent potential for misuse which has time and again been translated into reality.

- The Duality of roles: As the founding fathers of the Constitution had provided for the Governor to be the Constitutional Head of the State as well as the link between the centre and the state he was vested with a curious double role. "this duality of his role is perhaps its most important and unusual feature. It would be wrong to emphasise one aspect of character of his role at the expense of the other, and the successful discharge of his role depends on correctly interpreting the scope and limits of both." The clement of balance envisaged between the twin roles has of late been tilting once too often in the favour of role as representative of the Centre.

- Politicalisation of the institution of Governor: Vested with a quality of role, armed with significant discretion and debilitated by the insecurity of tenure, the institution of the Governor for gracefully discharging its responsibility depends upon the personal qualities of the incumbent. The whole edifice is likely to crumple the moment the appointment to this institution is made on grounds political rather than constitutional fairness. However, in sharp contrast to the expectations of the framers of the Constitution, strategically unacceptable or uncomfortable politicians and loyal civil servants with known political affiliations were opted for the post time and again. Different political parties have misused the role of the Governor at different times for their partisan interests, thus proving that the Indian society has yet to achieve the state of political modernization and political culture.

Realisation of the sources of the inherent weakness in the fabric of this provides good pointers to the suggestions that can be made to salvage the situation.

- As regards appointment of the Governor, both the procedure of the appointment and the qualities of person chosen, need to be prescribed. The recommendations of the Sarkaria commission must be adhered to in this regard. Any person who is a stakeholder in the party politics must not be appointed because experience has shown that despite theoretical severance with the party the Governors remain partymen.

- The most important is providing the Governor with an assured security of tenure, except in cases of "constitutional misdemeanor" where he would be removable by impeachment, these grounds of

impeachment can be identified, defined and the removal be made justiciable. When we have consciously adopted a constitutional democracy with an independent judiciary, we must be prepared to be able to challenge any action which is established to be arbitrary or malafide. In the words of Justice Bhagwati, "No one however highly placed and no authority however lofty, can claim that it shall be sole judge of the extent of its powers under the Constitution or whether its actions is within the confines of such power laid down by the Constitution. It is for this court to uphold constitutional values and enforce the constitutional limitations." Above all the method and reason for his impeachment should, without fail, be determined by the Constitution itself.

- The inclusion of Instrument of Instruction for Governors was earlier opposed on two grounds: First, it would not be needed as convention would develop to make it redundant and secondly, no provision of an authority to oversee its implementation was there; and, Second, the turn of events being what it has been, provisions can now be made to embody an Instrument of Instruction and empower the highest court in the country to uphold it.
- The words "Pleasure of President" in Article 156(1) is vague as "pleasure" is a mental phenomenon. It is manifestation of mental mood which may not have any link with objective factors or proven facts. Although the Supreme Court has defined the term with some judicial parameters but the same has been ignored. Thus the "word of Damocles" of Article 156(1) which hung over the head of the Governor must be removed.
- There is a dire need to affirm the idea of cooperative or consensus federalism. The idea of multi party system can affect the position of the Governor. The more political parties we have, the more political pressure upon the party in power, to reverse its undemocratic decisions. The political parties play an absolutely vital role in making democracy a success and they are the lifeblood of democratic societies.

If there is any need for any national debate now, it must be on the appointment of Governors with credentials of proven integrity, non-partisan approach and a clear understanding of the constitutional role as provided in the Constitution of India.