
Role of the Governor in India: A Critical Analysis

Dr. Seema Sharma¹, Dr. Pankaj Tyagi²

¹Associate Professor, Department of Law, MMH College, Ghaziabad, U P, India.

²Associate Professor, Department of Law, MMH College, Ghaziabad, U P, India.

Abstract

In India, there is a concept of cooperative federalism. The two governments that are union and state work collectively. They are not independent in their spheres. This is the reason that the governor has a unique position in linking the two sets of government. Governor is required to act as a bridge between Union and State. He has to communicate the state's aspiration to the union as an elder brother and brings issues of national significance at the state level. At present, the position of the Governor has been reduced to a retirement package for aging politicians, and political considerations have come to trump the constitutional requirements of an appointed (as opposed to 'elected') Head of the state.¹ The continued practise of changing Governors with a change in the Central Government has called into doubt the office's neutrality and integrity. Sometimes demands have been raised to abolish the post of Governor. *Sarkaria Commission* and *Punchhi Commission* have given some recommendations/ guidelines regarding appointment of the Governor.

Keywords: Governor, Union, States, Sarkaria Commision, Punchhi Commision.

Introduction

The federal polity of India visualises two levels of Government, at the Centre and the States respectively. Our Constitution is more solicitous about the "Union" than about the States. At the time when the Constitution was being drafted, our country was facing war in Kashmir, disturbances in Telangana and Razakar troubles in Hyderabad. All of them seemed to have threatened the very survival of the infant Republic. Moreover, India is country of many religions, castes, sects and a disharmony among them might disturb the peace and order of the country. Keeping all these factors in mind, our Founding Fathers favoured a strong Centre for the unity and welfare of the country. Growth of the nascent democracy and the survival of the republic were thought to be much more important than the fears of misuse of this power by the Central Executive. For strengthening the unity and integrity of the Country, Indian Constitution provides a special kind of federation. Some jurists call it quasi federalism and some call it co-operative federalism. Indian Constitution is unique in its nature having the features of both federal and unitary. The founding fathers of the Constitution were aware of the fact that in the past the

absence of strong Central Government has always led to aggression and conquest from outside and this was equally responsible for revolts in the Country. The members were convinced of the fact that if the newly won political freedom and unity were to be preserved, the Centre should be strong enough, to defend the Country, both against external and internal disruptions. Hence, the Centre was endowed with monopoly of control over defence, external affairs, adequate control over finance and extensive powers to be exercised, when the emergency is in force.

Every government either Central or State is supreme in its own sphere. Governor is the executive head of the State. Article 153 of the Constitution provides that there shall be a Governor for each State. It is also provided that the same person may be appointed as Governor for two or more States.

Appointment of the Governor

Governor is appointed by the President on the recommendations of the Central Government. Article 155 of the Constitution provides that the Governor of a State shall be appointed by the President by warrant under his hand and seal. The only qualification mentioned in the Constitution, for the appointment of Governor is that he should be a citizen of India and must have completed the age of thirty-five years. The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the first schedule and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor

Constitution does not prescribe any mechanism to evaluate as to who is the fit person for the appointment as the Governor because much of the criticism against the Governor can be avoided, if his selection is made on principles, which ensure the appointment of right type of person as Governor. *Sarkaria Commission* and *Punchhi Commission* have given some recommendations/guidelines regarding appointment of the Governor. *Sarkaria Commission* recommends that the President should appoint the Governor of a State, after consultation with the Chief Minister of that State. In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155 of the Constitution. Commission has also given some recommendations that who shall be fit person for the appointment as Governor. The person who is to be appointed as Governor should fulfil the following criteria:

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

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto. It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or of a combination of other parties. Commission also recommended that the Vice President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. Such consultation will greatly enhance the credibility of the selection process. The consultation should be confidential and informal and should not be a matter of constitutional obligation. But in reality, irrespective of the guidelines and recommendations of the *Sarkaria Commission*, the party in power at the Centre does not follow any uniform policy in regard to the appointment of the Governors. Former Union Law Minister in UPA Government, Sh. H.R. Bhargava was sworn-in as Governor of Karnataka on June 29, 2009. Former Orissa Chief Minister, Sh. Janaki Ballabh Patnaik was sworn-in as the Governor of Assam on December 11, 2009. He had served as Chief Minister of Orissa for two terms. *Punchhi Commission*, which was set up in April 2007 under the Chairmanship of Justice Madan Mohan Punchhi suggests that the nominee for the Governor not have participated in active politics at even local level for at least a couple of years before his appointment. It has also recommended that the State Chief Minister should have a say in the appointment of Governor.

Removal of the Governor

In the normal circumstances, the Governor holds office for a term of five years which will be counted from the day of entering in his office as Governor. The day of entering is the day on which the Governor undertakes or subscribes an oath which is a condition precedent to entering into the office. But in the exceptional circumstances, he may resign or may be removed from his office before the completion of five years. Regarding the tenure of the office of the Governor,

Article 156 of the Constitution provides that:

- i) The Governor shall hold office during the pleasure of the President.
- ii) The Governor may, by writing under his hand addressed to the President, resign his office.
- iii) Subject to the foregoing provisions of this Article, a 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. Or, in other words, Governor stands in his office even after the expiration of his term of five years, till his successor takes or subscribes an oath before entering in his office as Governor.

Only the President has the power to terminate the Governor at any time from his office. The use of words “during the pleasure of the President” in Article 156 of the Constitution denotes that Governor can be terminated at any time when the President withdraws his pleasure. This Article does not mention any ground on which the pleasure of the President may be withdrawn. Hence, the power of the President regarding removal of the Governor is extreme.

Dr. B.R. Ambedkar had in mind, when he provided that the Governor shall hold office at the pleasure of the President, meaning if the President withdraws pleasure, the Governor goes, he said that he would do it not ordinarily, not as a matter of routine, he would do it for corruption, for bribery, for violation of the Constitution or for any other reason which the President, no doubt, feels is a legitimate ground for the removal of the Governor.²

Hence, some members were aware that leaving the Governor on the mercy of the President is not good and may be misused. The Governor is removed when President withdraw his pleasure. The High Court of Rajasthan, in *Surya Narain Choudhary v. Union of India*³ has held that the five years term provided for a Governor under Article 156 (3) is not mandatory. Clause (3) of Article 156 is subject to clause (1) of this Article. This means that the five year term is subject to the exercise of pleasure by the President. Thus, it lies within the power of the President to terminate the term of the Office of the Governor at his pleasure.

For the removal of the Governor, the Constitution does not provide the system of impeachment as it is provided for the removal of the President. About the removal of the Governor. H.M Seervai stated that Governors holds office during the pleasure of President and can be removed by him at any time during their term of office. It is not necessary to provide for the removal of Governors by impeachment or by a process analogous to impeachment.⁴

Pleasure of the President has weakened the position of the Office of the Governor as after 42nd amendment, the President is bound by the decision of Council of Minister in matter of Article 156. And he is increasingly being subject to the whims and fancies of the Central Government. The Central Government has many times shortened the tenure of a Governor for political reasons. The post of such a high constitutional validity has become a puppet in the hands of the Central Government under Article 156. The removal or shifting of Governors in States begins with the change of government in the Centre. Every time when a different political party comes in power in the Centre calls for change of Governor under Article 156(1).

In 2004, Governors of four States, namely Babu Parmanand (Haryana), Kidar Nath Sahani (Goa), Kailashpati Mishra (Gujarat) and Vishnu Kant Shastri (Uttar Pradesh) were dismissed from their respective States by the UPA Government headed by Dr. Manmohan Singh (which had assumed office after March-April Lok Sabha Elections, 2004) without giving any valid reason except for that “the ideologies of respective Governors were different from that of the Central Government.” They all were appointed during the tenure of previous government of National Democratic Alliance (NDA). The court has also ruled that the compelling reasons for removing Governors would depend upon the facts and circumstances in each case. The court will interfere if Union Government does not disclose any reason for the removal or if the reasons disclosed are found to be irrelevant, arbitrary and whimsical or malafide. Court has also ruled that no interference, however, would be done on the ground that a different view is possible or that the material or reasons are insufficient.

Sarkaria Commission has given some recommendation regarding removal of the Governor, which are as follows:⁵

- I. The Governor's tenure of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reasons.
- II. Save, where the President is satisfied that in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it.
- III. When, before expiry of the normal term of five years, a Governor resigns or is appointed as Governor in another State or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the circumstances leading to the ending of the tenure.

Punchhi Commission also criticizes arbitrary dismissal of Governors, saying, "the practice of treating Governors as political football must stop". It has suggested that there should be critical changes in the role of the Governor including fixed five year tenure as well as their removal only through impeachment by the State Assembly.⁶

Constitutional Position of the Office of Governor

The constitutional position of the Governor in relation to the Legislature and administration is the same as that of the President. Governor is the formal head of the State and the real power in the State is exercised by the Chief Minister. Article 163(1) of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So, Governor exercises his functions on the aid and advice of his Council of Ministers except where he is to exercise his discretion. Therefore, generally Governor acts on the aid and advice of the Council of Ministers but sometimes he can also use his individual judgement, where Constitution so provides.

In *Ram Jawaya Kapoor v. State of Punjab*⁷, the Supreme Court held that, "the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive government. In *Samsher Singh v. State of Punjab*,⁸ the Supreme Court made it clear that except in sphere where the Governor is to act in his discretion, the Governor acts on the aid and advice of the Council of Ministers in the exercise of his executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers.

In *Hargovind Pant v. Dr. Raghukul Tilak*,⁹ the court held that 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

and servant of the Government of India. He is the head of the State and holds a high constitutional office which carries with it an important constitutional functions and duties

The founding fathers of our Constitution made the Central Government strong so that it would be able to put a check on the disintegrating forces and can act to safeguard the sovereignty, integrity and stability of the Country. The Central Government has many over-riding powers over the State Government. It has been given a dominant voice in the affairs of the State.

Article 160 of the Constitution states that the President may confer on a Governor function in any contingency not provided in the Constitution. Article 164(1) of the Constitution provides that the Chief Minister shall be appointed by the Governor. Article 200 of the Constitution states that when a Bill has been passed either by both the Houses or the House as the case may be, it shall be presented to the Governor and he may reserve it for the consideration of the President. The role of the Governor as a strategic instrument without reference to the States makes the States meek and weak. The Governor as a strange intermediary for the President to assent or withhold assent to legislative bills passed by the state legislatures makes the state power subordinate to the central authoritarianism. So this power of the Governor should be restricted to the Concurrent list.

In the proclamation of the emergency in the State, the report of the Governor about the functioning of the constitutional machinery of the State plays an important role as Article 356(1) provides that, “if the President on the receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.” Article 167 of the Constitution provides that it is the obligation of the Chief Minister to keep the Governor informed about the affairs of the State so that the Governor may inform about it to the President. Article 257 of the Constitution provides that the executive power of the State shall be so exercised as not to prejudice the exercise of the executive power of the Union. It is the constitutional obligation of the Centre to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. In order to the fulfilment of these obligations, it is necessary that the Centre should have its own representative in each State, who has a duty to defend the Constitution, protect democracy, promote national objectives and national integration and also preserve national standards of public administration. He is the Governor by whom the Central Government completes its constitutional obligation. Hence, Governor is the representative of the Centre in the State. Being the appointee of the Central Government, in exceptional circumstances the Governor becomes the agent of the Centre and Centre misuses the discretionary powers of the Governor for the fulfilment of its political goals. And at this time it appears the post of the Governor should be abolished. Because at this time he does not act as the head of the State and for the welfare of the State but only as a puppet in the hands of the Centre for providing political benefit to the party in command at the Centre.¹⁰

In case of *S.R. Bommai v. Union of India*,¹¹ it was recommended by the Supreme Court that the power of Governors to order confidence motions from incumbent governments should be taken away so that Rajbhavans do not become mini-legislature for toppling governments.

In the *Bihar Dissolution case (2005)*,¹² the dismissal of the Bihar government recommended by the Governor on the ground of preventing further horse-trading, was held unconstitutional by the Supreme Court. It held that the Governor Buta Singh's reasoning that some legislators were being induced with offers of money and other allurements were his own opinion and perception, without any material to back them up, that much matters under Article 356 could not be decided on a mere perception, that the union council of Ministers was "destructive of the democratic system", and the 'the court would not remain a silent spectator to such subversion of the Constitution.

In *B.P. Singhal v. Union of India*,¹³ the Apex Court held that although the Constitution empowers the Central Government, acting through the President, to remove a Governor without providing any cause, such a power cannot be exercised in an arbitrary, capricious or unreasonable manner, and any such decision providing for the removal of the Governor can be the subject of judicial review.

In the case of *Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*,¹⁴ the Governor summoned the House a month earlier than the scheduled date. Consequently, the incumbent CM failed to prove his majority in the House giving Governor the chance to dissolve the Assembly and recommend for President's rule. The Apex Court ruled that the Governor can not summon the House at his discretion unless the CM has lost the majority. It held that the Governor's power under Article 174 is subject to the aid and the advice of the Cabinet. The court also observed that Article 163(2) merely grants the Governor the power to make use of the discretionary power bestowed on him by the Constitution-not to convert his office into an "all-pervading super constitutional authority. Relying on the *Sarkaria* and *Punchhi Commission Reports* on Centre-State relations, the Court ruled that the Governor's exercise of discretion must be tested upon the touchstone of objectivity, and by no stretch of imagination can it be stated that the Governor has unlimited discretion.

The question whether the ministry in a State has lost the confidence of the Legislative Assembly or not should be tested only on the floor of the house and nowhere else, says the *National Commission to Review the Working of the Constitution* (NCRWC) in its Report in 2002 (the same view has been seen taken by the Supreme Court in *S.R. Bommai case* in 1994). The Commission suggests that the problem of political breakdown would stand largely resolved if the Chief Minister of a state is also elected on the floor of the House (along with the speakers) and the removal of the Government only by a constructive vote of no confidence.

Concluding remarks

In this context, the role of the Governor assumes significance as an intermediary who could play a vital role in that conflict management. The Governor plays the role of an intermediary in two important ways. Firstly, as the only functionary who can play a definite role in the best management of the federal process. Secondly, he occupies a position, which if properly exercised, in the right Constitutional perspective, may transform confrontation between the Union and State Governments into one of co-operation. But there are many instances where it has acted as centre's agent, specifically with reference to Article 356 and Article 201 of the Constitution,

A Governor should exercise such powers, if absolutely based on his own decision, with great caution. His decision must not be influenced by any sense of being an agent of the Centre. The true constitutional position of the Governor is that he is the head of the State. He has to act according to the aid and advice of his Council of Ministers using his discretion wherever the Constitution allows him. In case of clash between the advice of the Centre and the State, he is bound by the oath of his office. The question whether a Government retains or has lost the confidence of the legislature should be tested on the floor of the House and not in any assessment by the Governor in his discretion. The role of Governor has been explained in detail by the Apex Court in *Bihar case* (2005) and *Nabam Rebia Case* relying on the recommendations of *Sarkaria* and *Punchhi Commissions*. The experience in the past demonstrates that the Governor cannot play an independent and impartial role so long as he holds Office of the Governor. Governor holds his office entirely during the pleasure of the President. As soon as the President withdraws his pleasure the tenure of the Office of the Governor completes. Some security regarding the tenure of the Office of the Governor is must. He should not be left purely on the mercy of the President. If the tenure will safe then he may work independently without the fear of removal or transfer. The advice conferred by the Prime Minister and Council of Ministers is mostly biased and based on the political thought of the ruling party that leads to dismissal of Governor appointed by previous government or the opposition party. Some safeguards are necessary to ensure his independence. The tenure of his office of five years should not be disturbed except very rarely and that too for some extremely compelling reasons. The guidelines provided by the Sarkaria Commission relating to the security of tenure of the Office of the Governor should be considered at the time of his transfer or removal.

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