

## Role of Governor in India: A Threat to Federalism

Dr Tayyab Ali<sup>1</sup>

### Abstract

*Being the titular head of the Indian state, the regular businesses of the state are done in the name of Governor, and, thus, any disturbance in relationship may create hindrances in the easy functioning of that state government. In the recent years there is growing distrust between the centre and provincial governments which not only compromises the welfare of the people but also undermines the spirit of the federalism as envisaged by the constitution of India.*

*One of the leading points of contention is the role of governor in the affairs of elected state governments. As the titular head of the state the office of governor was seen as a bridge between the union and the states. However, the instances of alleged misuse by the political parties, of this post to settle political agendas has reduced it to a so called "Agent of the centre".*

*The paper tries to investigate the romantic relationship between the criminal background of a candidate and his appointment as Governor. Moreover, the paper also looks into some of the extra-constitutional considerations like political affiliation of the candidate while deciding for the appointment of a candidate to the position of Governor. This paper, thus, aims to explore and investigate the existing gaps in the current mechanism for appointment of Governor and seeks to propose some practical solution which could be acceptable to all the concerned stakeholders without compromising the "Basic structure of the Constitution". In achieving this aim, the paper would adopt critical analytical approach and will follow the doctrinal research methodology.*

Keywords- Governor, federalism, extra-constitutional considerations, basic structure.

## 1. Introduction

The office of the governor is an essential part of the Indian political system. The office holds a very important role in the Indian polity. The oath “to preserve, protect and defend the

---

<sup>1</sup> Details of authors:

Name- Dr Tayyab Ali, Siddhartha Law College, Dehradun (Uttarakhand)

constitution” is only reserved to just two highest offices i.e. governor and the President. Thus, it can be said that the governor is not just a nominal head, but is a guardian of constitution of India who ensures that the spirit of constitution is always upheld. Over the years, the role of governors has evolved significantly. Mahatma Gandhi once highlighted the importance of this office when he said-

"Much as I would like to spare every paisa of public treasury, it would be bad economy to do away with Provincial Governors and regard Chief Ministers as a perfect equivalent. Whilst I would resent much power of interference to be given to Governors, I do not think that they should be mere figureheads. They should have enough power, enabling them to influence ministerial policy for the better. In their detached position, they would be able to see things in their proper perspective and thus prevent mistakes by their Cabinets. Theirs must be an all-pervasive moral influence in their provinces."<sup>2</sup>

In the early years after independence, governors had a symbolic role as both in centre and the states were dominated by one party i.e. Congress. However, with emergence of new political parties at regional and national level, the role of governor increased drastically. After ruling for almost 20 years since independence, Congress failed to form government in 8 states. Such development converted the role of governor from spectator to balancing the centre and state relations. Between 1967 and 1972, there was a period of coalition government in the provinces, in which there was a lot of instability in the governments because defections were easy. That's why governments were falling. In such a situation, the role of the governor had expanded. He was faced with the challenge of bringing stability in the state as well as a challenging task of following the guidelines of the Central Government, in which the Governor had to balance.

The Sarkaria Commission, which was appointed in 1983 to examine the role of governors, recommended that governors should act as "a link between the Union and the states" and that they should "refrain from interfering in the day-to-day functioning of the state government."

The role of governors has undergone a significant change since the early years after independence. During British era, governors played an active role in shaping the political and administrative landscape of their respective states. They had the absolute power to dismiss state governments and dissolve state assemblies. They had privilege to reject the recommendations

---

<sup>2</sup> Mahatma Gandhi, <https://rajbhavan.gujarat.gov.in/home-content.aspx>

of state governments and reject the bills passed by the assemblies. However, with the passage of time, the role of governors became more ceremonial. Experiences of past instances made the constitution makers to give more power to the elected group of people rather than the nominated single person. However since the time there is regular debate on the office of governor and its role. Where some recommending some reforms while some out rightly demanding the abolishment of the post. Thus this research paper seeks to analyse why the office of governor often cited “Centre’s agent or puppet or the rubber stamp”

## **2. Probable reasons of misuse of office of Governor**

The debate on office of governor broadly revolves around into three aspects i.e. Appointments, Terms and Powers.

### **2.1 Appointment of Governor**

The governor being the head of state and at the same time a nominee of centre should be a neutral seat. Due to the apprehension of separatist tendencies the founding fathers rejected the scheme of election of governor at the state level. It was also thought that it will be unnecessary to waste money in election process to a post which is bounded by the state Council of ministers and thus creating two centre of powers.

#### **2.1.1 Appointments without state’s role**

It is a very serious issue where the appointment for state is made without deliberations with the state itself. The current mode of appointment adopted has been a contentious issue in India. Governor is appointed by the President under article 155 and it is settled law that the president is constitutionally mandated to act as per the advice of the Union Council of ministers as per Art. 74(1). Thus, the role of centre ruled by one political party in the appointment creates an atmosphere of distrust among the states ruled by the party which is different from centre. Hence it is obvious for the state government to see the appointments with lens of suspicion.

This issue has been addressed by the major commissions dealing with the centre-state relations such as Sarkaria and Punchi commission. Both commission in their reports have recommended to entrust the appointments to a committee<sup>3</sup>

*“comprising of Prime Minister, Speaker of Lok Sabha, Union Home Minister and the Chief Minister of concerned state. Such committees are not new in appointments as in order to*

---

<sup>3</sup> [volume II Content.pmd \(interstatecouncil.nic.in\)](#)

*sustain the trust on public bodies various distinct stakeholders are made members of the committees, the recent made through the judgment of Supreme Court on appointment of Chief election commissioner and election commissioners.”<sup>4</sup>*

### **2.1.2 Lack of standard qualifications**

The appointment process is entirely under the jurisdiction of the Union Government, and it has been criticized for being politically motivated. Since the emergence of regional parties, there have been instances where the central government has appointed governors have been affiliated with the ruling party. It is very difficult for states to uphold the sanctity of the appointment when the person appointed by a party to which the political party in state contested the elections yesterday and had defeated it will have any faith on him. Such fear has become true where due to lack of standard qualifications, maximum governors in the states are filled with person sharing the same political background as that of the party in centre.

These appointments of political colours has been recorded by the author when the background of current governors in Indian states have been check. Here are the Findings-

- a. As many as 23 out of 28 states governors were found directly holding an important political office before appointment as governor. Maximum of them appointed to the state ruled by different political parties.
- b. Only 2 being army personnel, 2 being bureaucrats and one being a judge before their appointment as governor

Thus in order to avoid such appointments it is imperative to set some standard qualifications so that the administration of state can be run efficiently. In this regard the Sarkaria Commission recommended some of the qualifications<sup>5</sup> (reiterated by Punchi Commission) which needed to be taken into account while appointments. These are-

- (i) The Governor must be a person of eminence in the opinion of the President
- (ii) The governor must be a person from outside the state concerned;
- (iii) The governor should not take much active participation in the local politics of which state, before his appointment, he should not have been in the active politics of that state for a few years before his appointment, this is a constitutional convention.

---

<sup>4</sup> [Election Commission Appointments - Supreme Court Observer \(scobserver.in\)](http://scobserver.in)

<sup>5</sup> [CHAPTER IV \(interstatecouncil.nic.in\)](http://interstatecouncil.nic.in)

## 2.2 Term and tenure of office of governor

Another issue is the tenure of the governor. According to Article 156(3), the governor is appointed for five years i.e. for a fixed term. But there is an exception to it as provided by the article 156(1) which permits president to remove him anytime as provided by the phrase “During the pleasure of the president”. Since the president is bound by the Council of Minister as per article 74 thus implicitly the governor holds his office at the discretion of the Union council of ministers. Thus, it is very natural for a person, whose fortune lies with other person, will obviously work according to the person having power to remove him and hence there is no scope of him saying no to him. Therefore, the Punchi commission in its report have recommended to delete the phrase “during the pleasure of president” and thus removing the sweet will concept from the constitution.

Also, The National Commission to Review the Working of the Constitution, on the lines of the Sarkaria Commission, has advocated that the tenure of office of the Governor should be guaranteed for the term provided for under Art. 156(3) and, barring the very binding There should be no interference. reasons and if any action are to be taken against him, he should be given a reasonable opportunity of showing cause against the grounds. This will ensure that the governors are not treated as “political footballs” as whenever there is change in government at union level, there is mass arbitrary removal of them.

## 2.3 Post retirement benefits

Some state governments have flagged the concerns regarding the governors given other offices after completing their term of office of governor. This not only lowers the dignity of such a high constitutional office but also compels to suspect his non-partisan and independent characteristics. Thus, the Sarkaria commission recommended to all the concerned stakeholders especially the governor to not to accept any office of profit or return to active politics after demitting their office. It can be said that such convention is if not full-fledged but at the majority of times being followed by the concerned stakeholder barring few exceptions.

## 3. Misuse of office of Governor

After analysing the reasons of why there is high chances of misuse of office of Governor, in this section we would refer some of alleged misuse i.e. what actually becomes issue between the centre and state in the federal polity. The 42nd Amendment, which was passed in 1976,

made it mandatory for the governor to act on the advice of the union Govt. This reduced the discretionary powers of the governor and made their role more ceremonial. However, there are still some situations where the governor is needed to act independently. This independent decision making often encounters with the criticism of the state governments (particularly those which are opposition ruled) due to the pre- determined perception that the centre elected governor is always bias to them. Some of them are-

### 3.1 President Rule

The Constitution of India provides specific guidelines for the imposition of President's rule, and it can only be imposed in specific circumstances such as:

- *“Failure of the constitutional machinery in the state.”*
- *“Inability of the particular state government to function in accordance with the Constitution.”*

One of the most contentious issue in centre state relationship is the governor's role in declaration of State emergency or more famously president rule. During the debates in Constituent Assembly Article 356 was referred to be “a dead letter” by BR Ambedkar<sup>6</sup>. However, since 1950, this article was invoked more than 100 times<sup>7</sup>.

President's rule is a serious matter, and the misuse of the office of Governor in declaring the President's rule can have severe consequences. It can be seen as an abuse of power which leads to gross violation of the principles of federalism and democratic process. According to Article 356, the president may invoke this emergency based on the report of governor. Such report following the sealed cover jurisprudence sometimes result to fall of state government without knowing the exact reasons.

How Article 356 misused by governor-

1. Due ambiguous nature of reasons for imposing president rule, the scope of misuse becomes wide. For example, until SR Bommai case, the governor was recommending the president rule based on breakdown of administrative machinery (such as law and order issues, corrupt administration, etc.) and not the constitutional machinery as provided by the constitution. The court through its judgement made the distinction.

---

<sup>6</sup> Justice Shri R.S. Sarkaria (Member-In-Charge & Chairperson), *“National Commission to Review the Working of the Constitution”*, May 11, 2001, Vigyan Bhawan Annexe, New Delhi – 110 011

<sup>7</sup> The Indian Express, 28th June 2019 04:01 PM, p. 01

2. When there is a hung assembly immediately after the fresh elections, the sole discretion shifts towards the governor. This discretion often results to denying the party different from that in the centre to stake the claim to form government and thus directly recommending president rule.
3. Moreover, as Supreme Court pointed out that the governor often indulges in Durbari assessment (counting majority in Raj Bhavan) rather than calling for a floor test in the assembly to test the confidence on the government.

However, after SR Bommai case, the usage of article 356 has come down as the court held “that courts are justified in probing as to whether there was any material on the basis of which the advice was given, and whether it was relevant for such advice and the President could have acted on it.”<sup>8</sup>

**Current Role of Governors:** The current role of governors is mainly ceremonial. They act as a link between the state government and the union government and are responsible for ensuring that the constitutional machinery of the state is functioning smoothly. They also have the power to promulgate ordinances in certain circumstances. However, the role of governors has become increasingly controversial in last years. There have been instances where governors have been accused of acting in a partisan manner and undermining the democratic process.

### 3.2 Consideration of a bill

Another root of the dispute is the consideration of the bill by governor. The states strongly contend that since they are the elected representatives of the people, it is they who understand the needs of them and hence when the bill is passed by the assemblies, the governor should be mandated to give assent to the same. However, it does not go as stated. The Governor has some choices under Art. 200, when the bill is presented for assent. Those are-

1. Gives his assent to the bill
2. Can withhold consent to the bill
3. Can reserve the bill for the President
4. Send the bill back for reconsideration

In the second and fourth case, just like president the governor too is bound to give assent the bill is again passed. However, the governor has the power to reserve that bill for president<sup>9</sup>.

---

<sup>8</sup> 1994 AIR 1918, 1994 SCC (3) 1

<sup>9</sup> Purshothaman v. State of Kerala AIR 1962 SC 694.

Moreover, any bill which may impact inter-state or centre-state relations may be reserved for president. This gives a wide discretion to the governor and thus subject to misuse. The powers such as pocket veto or power to reserve the bill for president leads to problems in day to day administration as well as sometimes obstructs the state governments to fulfil their promises as in the case of anti-neet bill of Tamil Nadu which was reserved for president.

Also, the constitution does not provide any time limit within which the governor is needed to give his assent. Although due to this pocket veto, the bill does not lapse with the lapse of state assembly but it many times impedes the administration of state thus impacting the people. The recent resolution adopted by the Tamil Nadu legislative assembly against the governor urging president to instruct him to accord assent to the bills passed by the assembly shows how such provision is becoming a hot issue in governor and state government relationship.<sup>10</sup> The Sarkaria commission long before recommended to set some time limit under which both governor and president (on bills reserved) needed to give assent. It recommended 4 months in case of governor and 3 months in case of president.<sup>11</sup> The commission also recommended to delete the words “withhold the bill”.

### **3.3 Appointment and removal of Chief Minister**

When there is clear majority then there the role of governor is just symbolic, however when there is no majority then the role of governor in formation of government becomes very important. In recent years there had been controversies where the governors are alleged to be bias and not following the conventions in full faith as many times instead of inviting the leader of party having highest seats in assembly, he favours the other party often related to the party at the centre. Such examples was seen in assembly elections of Goa and Manipur in 2017 where in spite of having largest numbers, the governor didn't invited the Indian National Congress.

The practice of durbar assessment where the confidence on government was decided in the raj Bhavan was criticized by the courts and various commissions. The Sarkaria Commission recommended that the governor should not dismiss the council of ministers if he receives information that the government has lost the confidence of the assembly, but should give him an opportunity to prove the vote of confidence in the assembly. It should not happen till the government loses its majority.

---

<sup>10</sup> The Indian Express, Tuesday, 10th April 2023 03:20 PM, p. 01

<sup>11</sup> volume II Content. pmd (interstatecouncil.nic.in)



## 4. Conclusion

Over the years the role of the governor has become highly controversial. In conclusion, the role of governors in India has undergone a significant change over the years. While their role was more active in the early years after independence, it has become more ceremonial in recent years. Governors face several challenges in fulfilling their constitutional duties, including maintaining a delicate balance between their ceremonial role and their constitutional duties and maintaining a good working relationship. The changing role of Since the appointment of the Governor is based on the discretion of the Central Government, it has affected the federal structure of India, because in such a situation the Governor works at the behest of the center.

This has led to allegations of the Union Govt. trying to undermine the federal structure of India by controlling the state governments through the governor. For a healthy democracy and federalism, there is need for the stakeholders especially the governor to rise above the political considerations. Moreover, any change made must be consensual by taking regional parties in confidence to make it successful. For such consensus, there is need for continuous debate on role of governors. If such consensus is not made then such issue will remain a hot topic even after India crosses its Amrit Kaal.

## Bibliography

### 1. Books/Internet/Reports

2. Mahatma Gandhi, <https://rajbhavan.gujarat.gov.in/home-content.aspx>
3. volume II Content.pmd (interstatecouncil.nic.in)
4. Election Commission Appointments - Supreme Court Observer (scobserver.in)
5. chapter iv (interstatecouncil.nic.in)
6. Justice Shri R.S. Sarkaria (Member-In-Charge & Chairperson), National Commission to Review the Working of the Constitution (A Consultation Paper on Article 356 of The Constitution), May 11, 2001, Vigyan Bhawan Annexe, New Delhi – 110 011
7. The Indian Express, 28th June 2019 04:01 PM, p. 01

8. The Indian Express, Tuesday, 10th April 2023 03:20 PM, p. 01
9. volume II Content. pmd (interstatecouncil.nic.in)

## **2. Case Laws:**

1. S.R. Bommai vs Union Of India, 1994 AIR 1918, 1994 SCC (3) 1
2. Purshothaman v. State of Kerala AIR 1962 SC 694.